

Work and Sexuality in the Sunbelt:
Homophobic workplace discrimination in the US South and Southwest,
1970 to the present

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I, Joshua Hollands, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Abstract

In recent years, following the achievement of marriage equality in federal United States law, employment rights have become a key battleground for lesbian, gay, bisexual and transgender (LGBT) activists. Indeed, most southern states provide no protection for sexual minorities against being fired at work. As such, many workers across the South and Southwest can be married to someone of the same sex on a Sunday but be legally fired on a Monday for being gay.

This thesis uses six case studies to understand how this situation of uneven workplace protections came into being. In doing so it focuses upon the Sunbelt, an area that has been economically and politically significant over the past half-century. I am concerned with how LGBT activist strategies for equal protections and workplace rights in the South have diverged from the national trajectory due to the limited power of unions and the ascendancy of Christian morality that has reshaped free-market politics in the region. Chapters focused on individual organisations such as Apple Computer, Cracker Barrel, Duke University and ExxonMobil shed light on mainstream LGBT strategies for equality within corporations, as well as the extent to which victories at these companies impacted wider rights for sexual minorities in southern cities. Similarly, case studies on organisations of business elites in Sunbelt cities including Houston and Williamson County, Texas, demonstrate how battles over workplace rights in both the private and public sectors informed conservative rhetoric in opposition to, and in some cases, acceptance of LGBT rights during the closing decades of the twentieth-century. Through examining these case studies my thesis expands our understanding of how sexual minorities reshaped the corporate workplace in the neoliberal era to the extent that most major companies now prohibit discrimination and openly campaign for equality.

Impact Statement

This thesis has implications both within and outside the academy. It provides evidence and in-depth analysis of the impact that workplace discrimination and a lack of employment rights have historically had upon sexual minorities. It contributes to a burgeoning field of scholarship that examines the centrality of the workplace to the contestation of rights for sexual minorities. In doing so it refocuses attention to the Sunbelt region of the South and Southwest United States, an area sorely overlooked in previous studies. It traces the extent to which rights of sexual minorities have remained tenuous for most workers in the United States who are not protected by their employer or the state. In doing so it has implications for public policy in the form of legislation that is currently being considered at local, federal and judicial levels in the US.

A number of challenges to the lack of employment protections for sexual minorities are being considered by the Supreme Court of the United States. Justices are currently considering whether to accept an expanded definition of the term “sex” in Title VII of the Civil Rights Act 1964. Historians working in cognate areas to me, including one I worked with during my dissertation research, have helped to draw up amicus curiae briefs for these cases, demonstrating the vital public role scholars of workplace rights play in the current moment. Additionally, the U.S. House of Representatives recently passed the Equality Act which could also affirm non-discrimination protections for sexual minorities. This thesis demonstrates effectively the need for such protections, but also examines why they may still not be forthcoming for the foreseeable future given the partisan nature of US politics. It also provides important evidence and instruction for social and political movements that seek draw public attention to the second-class citizenship experienced by many LGBT people in the US.

This thesis contributes to multiple and intersecting political, social and cultural discourses as to the role of sexuality in public life, but especially within the workplace. Any

future publication of the material presented here can be utilised by legal professionals, activists, and other scholars alongside historians who seek to understand the intersections of sexuality and labour in the US Sunbelt and beyond. My research has already brought me into conversation with union activists at the forefront for LGBT equality in the workplace at a symposium I organised at UCL earlier this year, and I intend to build these links with organised labour as I take my project to the next stage and develop a second (oral history) project on workplace politics in the Cracker Barrel restaurant chain. In conclusion, this research will foster better understanding of the second-class citizenship that LGBT people continue to experience even with the achievement of marriage equality. My dissertation also considers together fields of scholarship that have heretofore largely been considered separately.

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Thanks to Xanthe Whittaker and Pfizer for their support (and for some of their distractions). And to Alan Kenny for his love and patience. Finally, I thank my parents, Sandra and Tim Hollands, and my sister, Laura McDowell for their unwavering love and support.

List of Illustrations

NB: These illustrations have been removed from this open access version. Please consult a physical copy of the thesis.

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Introduction

In recent years, following the achievement of marriage equality in federal U.S. law, employment rights have become a key battleground for lesbian, gay, bisexual and transgender (LGBT) activists.¹ A majority of American states do not prohibit discrimination based on sexual orientation, and a number of these states are geographically and ideologically based in the conservative “Sunbelt” region – from Florida in the Southeast to Arizona and Texas in the Southwest.² At the same time a number of corporations, including many that emerged with the growth of the Sunbelt in the latter half of the twentieth century, are now among the most vocal champions of workplace protections for LGBT people. From American Airlines to Xerox, Apple to Paypal, corporations have been pushed by activists to enact their own non-discrimination clauses, and most now offer domestic partner benefits to their employees. The situation remains, however, that many workers across the South and Southwest can be married to someone of the same sex on a Sunday but be legally fired on a Monday for being gay. Unlike protections on the basis of race, national origin, religion, or sex, all of which are federally-protected categories, protections on the basis of sexuality and gender identity have not been forthcoming. Instead, the lobbyists and activists pushing for such measures have focused more attention on a strategy of winning protections in individual cities, states and companies over the past few decades. Yet this strategy has led to a patchwork of uneven rights with employers offering full, some, or no protections; it is the Sunbelt South that has proven the region most stubbornly resistant to workplace rights for sexual minorities.

¹ A note on terminology: My research spans several decades in which the words individuals and communities used to describe themselves shifted often. In this chapter and throughout my thesis I will use the terminology individuals used during those decades. Interchangeably I will use phrasing such as “gay people,” “gay men and lesbians,” “homosexuals,” “queer” and “LGBT,” when the term is most relevant to the particular person or group that I am describing. As Craig Loftin notes in a similar section in his book, “Historians must take care not to impose the present onto the past. People in the past had their own unique ways of viewing the world, and the historian’s primary job is to understand and interpret those worldviews.” Craig M. Loftin, *Masked Voices: Gay Men and Lesbians in Cold War America* (Albany: State University of New York Press, 2012) p.15.

² Miriam Frank, *Out in the Union: A Labor History of Queer America* (Philadelphia: Temple University Press, 2014) p.8.

This thesis uses six case studies to understand how this situation of uneven workplace protections came into being. In doing so it focuses upon the Sunbelt, an area that has been economically and politically significant over the past half-century. I am concerned with how LGBT activist strategies for equal protections and workplace rights in the South have diverged from the national trajectory due to the limited power of unions and the ascendancy of Christian morality that has reshaped free-market politics in the region. Chapters focused on individual organisations such as Apple Computer, Cracker Barrel, Duke University and ExxonMobil shed light on mainstream LGBT strategies for equality within corporations, as well as the extent to which victories at these companies impacted wider rights for sexual minorities in southern cities. Similarly, case studies on organisations of business elites in Sunbelt cities including Houston and Williamson County, Texas, demonstrate how battles over workplace rights in both the private and public sectors informed conservative rhetoric in opposition to, and in some cases, acceptance of LGBT rights during the closing decades of the twentieth-century. To analyse these issues I draw together several strands of historiography not usually placed in conversation with each other. By exploring the intersection of Sunbelt historiography with that of sexuality, capitalism, and conservatism this thesis demonstrates the centrality of questions of work and sexual dissidence to our understanding of recent Sunbelt conservatism and development.

Revisiting the Sunbelt

The concept of the Sunbelt emerged in the early 1970s as journalists, political strategists, and scholars sought to understand the political and economic realignments that were taking place in the United States. Although some debate has taken place as to where to place the boundaries of the Sunbelt, the consensus view incorporates major cities below the thirty-seventh parallel.³ Alongside the economic growth of the region, “Sunbelt” also

³ For the map of the Sunbelt region, as well as further exposition of the concept, see: Sean P. Cunningham, *American Politics in the Postwar Sunbelt: Conservative Growth in a Battleground Region* (Cambridge: Cambridge University Press, 2014) p.6.

came to denote a conservative realignment that was taking place during this period. Paraphrasing the Republican strategist, Kevin Phillips, who helped to coin the phrase, Michelle Nickerson and Darren Dochuk have noted that Phillips “described a new alloy of conservatism that united voters across the southern rim of the country behind a new pro-growth, pro-family, pro-defense, antilabor, antistatist agenda.”⁴ As the Republican Party broke down the Democratic Party’s long, and racialised, dominance of the South, boosters sought to draw ever more investment and growth to the region.

This created a “unique amalgam of economics, metropolitan spaces, community life, culture, and politics,” Nickerson and Dochuk note, one that was “postindustrial in its new dependence on service and leisure industries, high tech-manufacturing, information, extractive, and defense sectors.” These elements and industries all became central to historians’ understanding of the Sunbelt as an economic and politically conservative region.⁵ It has come to refer to those cities that enjoyed rapid and substantial economic and population growth in the second half of the twentieth century. Sunbelt boosters promoted their anti-union, low tax and generally pro-business climate to investors in the North. Alongside this was an anti-government intervention line of rhetoric that ignored the outsized role of the federal government in helping to create such a region. Post-World War II research contracts and military build-up, as well as GI Bill entitlements to higher education and housing loans, provided much of the stimulus behind the growth of the region.⁶

At the same time that a conservative realignment took place on the electoral level, the emerging movement for LGBT equality provided conservative politicians with a

⁴ Michelle Nickerson and Darren Dochuk, eds., *Sunbelt Rising: The Politics of Space, Place, and Region* (Philadelphia: University of Pennsylvania Press, 2011) p.4. The introduction to this volume provides a serious and well-structured appraisal of the concept of the Sunbelt.

⁵ *Ibid.* p.5.

⁶ For more on the role of the federal government see: Charles S. Bullock III and Janna Deitz, “Transforming the South: The Role of the Federal Government” in *The American South in the Twentieth Century*, Craig S. Pascoe, Karen Trahan Leatham and Andy Ambrose (eds.) (Athens: University of Georgia Press, 2005) pp.247-262. See also: Bruce J. Schulman, *From Cotton Belt to Sunbelt: Federal Policy, Economic Development, and the Transformation of the South 1938–1980* (Durham: Duke University Press, 1994).

compelling scapegoat. This story is not linear - it is not one of a clear progression of rights from the discrimination of old to equality today. Over the course of the 1970s and into the 1980s gay men and lesbian women began to win employment rights in cities across the country. Yet with increased visibility and the AIDS crisis, opposition to their rights claims also grew. While some companies, including Apple, began to provide domestic partner benefits, other companies, including Cracker Barrel, enacted new policies of discrimination.

For several decades the Sunbelt has commanded the attention of scholars. Economic historians have long debated the driving forces behind, and impact of, the growth of the Sunbelt from the mid-twentieth century onwards. Nevertheless, some themes and trends have consistently come to the fore in what constitutes the Sunbelt as an economic and political phenomenon, as well as a geographic region. Alongside anti-trade union “right-to-work” laws, boosterism by chambers of commerce and federal policy have all played key roles in transforming the South from “the nation’s No.1 Economic Problem,” as President Franklin D. Roosevelt put it in 1938, to the technological and political powerhouse that it is today. In his masterful study of how the South went from “Cotton Belt to Sunbelt,” Bruce Schulman notes that for business surveyors, “right-to-work laws, low taxes, and industrial recruitment programs formed the main components of the South’s favorable business climate.”⁷ He highlights the fact that by 1954, “every southern state but Oklahoma had enacted anti-union legislation under section 14-b of the Taft-Hartley Act.”⁸ Further, he notes that “low taxes on businesses complemented the restrictions on unions... Aggressive promotion and special inducements for relocation rounded out the southern business

⁷ Bruce J. Schulman, *From Cotton Belt to Sunbelt*, p.164. For further definition and discussion of the term “Sunbelt” see: Carl Abbott, *The New Urban America: Growth and Politics in Sunbelt Cities* (Chapel Hill: University of North Carolina Press, 1981); Richard Bernard and Bradley Rice, *Sunbelt Cities: Politics and Growth Since World War II* (Austin: University of Texas Press, 1984); Elizabeth Shermer, *Sunbelt Capitalism: Phoenix and the Transformation of American Politics* (Philadelphia: University of Pennsylvania Press, 2013) p.348n9; Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton: Princeton University Press, 2005). For a useful review of recent Sunbelt scholarship see: Rachel M. Guberman, “Is There a Sunbelt After All? And Should We Care?” *Journal of Urban History* 41. 6 (November 2015) pp.1166–74.

⁸ Schulman, *From Cotton Belt to Sunbelt*, p.164.

climate.”⁹ Similarly, James Cobb has demonstrated how the South was sold by boosters to prospective industries through weakened unions and tax incentives. Elizabeth Shermer has examined the role of boosters, including perhaps most famously Barry Goldwater, in bringing business to the South and Southwest. Likewise, Katherine Jewell has examined how the activism by Sunbelt boosters against the New Deal helped to refashion southern conservatism’s relationship to free market economics in the mid-century. Kevin Kruse, Matthew Lassiter and Lisa McGirr have demonstrated the centrality of the suburb and family values to the redefinition of Sunbelt conservatism, especially with regard to massive resistance to the Civil Rights Movement. Not simply an economic arrangement, Darren Dochuk has established the importance of religion to the rise of the Sunbelt and the impact of Christian evangelism upon the politics of the region. Finally, Sean Cunningham has brought these important strands together by producing important works on Texas and Sunbelt history that synthesise our understanding.¹⁰

Missing in each of these studies, however, is a consideration of sexual politics to the development of the Sunbelt. As Stacey Braukman argues in her work on the anti-communist Johns Committee in Florida in the 1950s and 1960s, each of the above studies undervalue “the significance of social issues, particularly those related to sexuality, in the battles over

⁹ Ibid.

¹⁰ See: Bruce Schulman, *From Cotton Belt to Sunbelt*; James C. Cobb, *The Selling of the South: The Southern Crusade for Industrial Development, 1936-1990* (Urbana and Chicago: The University of Illinois Press, 1993); Elizabeth Shermer, *Sunbelt Capitalism*; but see also: Elizabeth Shermer, “Sunbelt Boosterism” in *Sunbelt Rising: The Politics of Space, Place, and Region* Michelle Nickerson and Darren Dochuk, eds., (Philadelphia: University of Pennsylvania Press, 2011), Katherine Jewell, *Dollars for Dixie: Business and the Transformation of Conservatism in the Twentieth Century* (Cambridge; Cambridge University Press, 2017), Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton: Princeton University Press, 2006); but see also: Matthew D. Lassiter, ‘Inventing Family Values’, in Bruce J. Schulman and Julian E. Zelizer, (eds.), *Rightward Bound: Making America Conservative in the 1970s* (Cambridge, Mass.: Harvard University Press, 2008), pp. 13-28; Kevin M. Kruse, *White Flight*; Lisa McGirr, *Suburban Warriors: The Origins of the New Right* (Princeton: Princeton University Press, 2002); Bethany Moreton, *To Serve God and Wal-Mart: The Making of Christian Free Enterprise* (Cambridge, MA: Harvard University Press, 2009); see also Darren Dochuk, *From Bible Belt to Sunbelt: Plain-Folk Religion, Grassroots Politics, and the Rise of Evangelical Conservatism* (New York: W. W. Norton & Company, 2011); Sean P. Cunningham, *American Politics in the Postwar Sunbelt*.

integration and the ascendancy of conservatism.”¹¹ This is especially striking when considering the important role that reaction to claims of gay and lesbian rights and equality have played in redefining the moral conservatism that is so prominent in the region. When scholars have examined this rise in moral conservatism, they have tended to focus on moments like Anita Bryant’s Save Our Children campaign that rolled back gay rights in Miami-Dade County in 1977.¹² In contrast, this thesis details how conservatives sought to roll back gay and lesbian rights in ways beyond just popular referendums to include active corporate and political strategies of discrimination.¹³ Through mobilisation of both the State House and the company boardroom, conservative politicians and economic elites worked to prevent sexual minorities from gaining the rights of full citizenship in the Sunbelt.

The southern workplace, especially the new Sunbelt industries of higher education, high technology, telecommunications, oil, fast-food and service became key battlegrounds for gay and lesbian rights throughout the second-half of the twentieth century. The gay liberation and equality movements of the 1970s drew people out of the closet and placed demands on corporations and public officials for non-discrimination protections, and later for same-sex domestic partner benefits. Some Sunbelt companies, including the telecommunications giant AT&T, were initially receptive and in 1975 it became the first Fortune 500 company to confirm a non-discrimination policy on the basis of sexual orientation. However, the drive to workplace rights quickly came up against opposition as employers and politicians used any tools at their disposal to push back against workplace rights claims of sexual minorities, such as anti-sodomy laws, anti-union laws, public

¹¹ Stacy Braukman, *Communists and Perverts Under the Palms: The Johns Committee in Florida, 1956-1965* (Gainesville, FL: University Press of Florida, 2012) p.6.

¹² On Anita Bryant see: Darren Dochuk, *From Bible Belt to Sunbelt*, pp.379-382, and Matthew D. Lassiter, “Inventing Family Values”. See also: Gillian Frank, “The Civil Rights of Parents’: Race and Conservative Politics in Anita Bryant’s Campaign against Gay Rights in 1970s Florida,” *Journal of the History of Sexuality*, vol. 22.1, 2013, pp.126-160.

¹³ James T. Sears, *Rebels, Rubyfruit, and Rhinestones: Queering Space in the Stonewall South* (New Jersey: Rutgers University Press, 2001); and see also: Gillian Frank, “The Civil Rights of Parents.” One notable exception is Stacy Braukman, though her work is concerned with an earlier period. See above.

referendums, withdrawal of tax incentives for pro-LGBT businesses, insurance discrimination, disability discrimination, and transphobia. These structures of exclusion and discrimination were not used *exclusively* in the Sunbelt but they were used *extensively*, mobilizing the region's anti-labour, anti-statist political infrastructure to extend existing patterns of marginalization to sexual minorities. This thesis details the ways in which these tools and structures were deployed by conservative politicians and homophobic business boosters, as well as how sexual minorities fought back against them with varying levels of success.¹⁴

In their attacks upon notions of rights for sexual dissidents, Southern conservatives have drawn upon rhetorical structures of exclusion crafted during resistance to the civil rights movement of African Americans during the mid-century. The Sunbelt experienced significant racial upheaval during the twentieth century as African Americans challenged the Jim Crow structures of oppressive racial segregation. Scholars have long debated the role of local business booster elites in this process. On the one hand, historians have argued that business played a central role in overturning the more explicit and violent modes of racial subjugation by "becoming reluctant advocates of a new departure in southern race relations." Businesses and chambers of commerce quietly championed peaceful racial integration that was in their economic interests.¹⁵ Elizabeth Jacoway characterises this as a reordering of priorities: "Although the maintenance of white supremacy remained a cherished objective, somewhere along the way it slipped from its traditionally dominant position and the primary objective for the South's business leaders became economic growth."¹⁶ In this historiography, emphasis is placed upon the actions of southern business elites in shepherding peaceful desegregation. It was "good business to be 'too busy to

¹⁴ For more on AT&T and activism in corporations across the US see: Nicole C. Raeburn, *Changing Corporate America from Inside Out: Lesbian and Gay Workplace Rights* (Minneapolis: University of Minnesota Press, 2004).

¹⁵ Elizabeth Jacoway, "An Introduction" in *Southern Businessmen and Desegregation*, Elizabeth Jacoway and David R. Colburn eds. (Baton Rouge: Louisiana State University Press, 1982) p.1.

¹⁶ *Ibid.* p.3.

hate,” writes Alton Hornsby when considering the process in Atlanta.¹⁷ Steven Lawson in his work on Tampa argues: “Southern merchants and businessmen ‘calculated that ugly racial incidents did not make good dollars and cents.’”¹⁸ Yet others have noted this impetus to be superficial. In *The Selling of the South*, James Cobb has demonstrated that southern business elites were willing to turn away new investment if it threatened to upturn local racial and/or anti-union sentiment.¹⁹ Other historians, including Timothy Minchin and Gavin Wright, have detailed how certain business elites welcomed the intervention of the federal government in segregating southern industry because, alongside being profitable, it allowed them to pass blame onto the federal government when desegregation spurred white backlash.²⁰

Yet scholars have also challenged the notion that Sunbelt booster elites in cities such as Atlanta and Charlotte were “too busy to hate.” Kevin Kruse and Matthew Lassiter have demonstrated how white conservative politics was reshaped by suburbanisation and confrontation with the civil rights movement at the grassroots level.²¹ Kruse demonstrates how white “southern conservatives were forced to abandon their traditional, populist, and often starkly racist demagoguery and instead craft a new conservatism predicated on a language of rights, freedoms, and individualism.” He notes: “This modern conservatism proved to be both subtler and stronger than the politics that preceded it and helped southern

¹⁷ Alton Hornsby Jr., “A City That Was Too Busy to Hate: Atlanta Businessmen and Desegregation” in *Southern Businessmen and Desegregation*, p.121.

¹⁸ Quoted in Elizabeth Jacoway, *Southern Businessmen and Desegregation*, p.10; but also see: Steven F. Lawson, “From Sit-in to Race Riot: Businessmen, Blacks and the Pursuit of Moderation in Tampa, 1960-1967” in *Southern Businessmen and Desegregation*, pp.257-281.

¹⁹ James C. Cobb, *The Selling of the South*.

²⁰ Gavin Wright, “The Economics of the Civil Rights Revolution” in *Toward the Meeting of the Waters: The Civil Rights Movement in South Carolina*, Winfred O. Moore, Jr., and Orville Vernon Burton, eds., (Columbia: University of South Carolina Press, 2008) p.387. See also: Timothy J. Minchin, “Federal Policy and the Racial Integration of Southern Industry, 1961–1980.” *Journal of Policy History*, vol. 11. 2 (1999) pp.147–78.

²¹ Kevin M. Kruse, *White Flight*; and Matthew D. Lassiter, *The Silent Majority*.

conservatives dominate the Republican Party and, through it, national politics as well.”²² Rather than simply being against the rights of others, segregationists saw themselves as fighting for their own rights, “such as the ‘right’ to select their neighbors, their employees... and, perhaps most important, the ‘right’ to remain free from what they saw as dangerous encroachments by the federal government.”²³ As we shall see in the chapters that follow, similar dynamics emerged later with reference to sexual minorities, while southern conservatives also explicitly sought to outlaw those who they understood to be sexual deviants through anti-sodomy laws, as chapter one demonstrates.

Kevin Kruse has also demonstrated how the roots of the New Right are tied to the racial conservatism of the “Old South” even as Republicans from the 1970s onwards argued that their politics were colourblind. The conservative activist Paul Weyrich, Kruse notes, “asserted that the leadership of the New Right ‘bears no resemblance to the reactionary Southern icons of the past.’”²⁴ Historians including Kruse have demonstrated this to be false. Similarly, my research shows that Sunbelt boosters and politicians drew upon this rhetoric of anti-state intervention, and anti-“special privileges” to attack the rights of sexual minorities in the late decades of the twentieth-century. At the same time, historians Robert Self and Ryan Patrick Murphy have demonstrated how a notion of “breadwinner conservatism” came to the fore of “family values” politics after the 1970s. As Murphy writes, “white men began to see state intervention as a threat to their role as providers. Being a successful breadwinner would require eliminating government regulation that prevented employers from creating work opportunities, as well as cutting the taxes that transferred workingmen’s money to poor people with the wrong values.”²⁵ Such reasoning was salient in the Sunbelt and repeatedly

²² Kevin M. Kruse, *White Flight*, p. 6.

²³ *Ibid.* p.9.

²⁴ *Ibid.* pp.9-10.

²⁵ Ryan Patrick Murphy, *Deregulating Desire: Flight Attendant Activism, Family Politics, and Workplace Justice* (Philadelphia: Temple University Press, 2016), p.11. See also. Robert O. Self, *All in the Family: The Realignment of American Democracy Since the 1960s* (New York, NY: Hill and Wang, 2012).

mobilised by business elites, who pushed back against any form of state including through anti-discrimination laws, bans on gay teachers, or domestic partner benefits. Boosters argued that it was in both the economic as well as moral interests of their local business communities to be allowed to fire sexual dissidents and later refuse the extension of benefit privileges attached to work and marriage.

This thesis examines how these processes impacted sexual minorities as well as racial minorities in the South, and explores how sexuality and "family values" became central to broader discourses of Sunbelt conservatism after the 1970s. Kruse and Lassiter, among others, have correctly demonstrated that the image of business elites as a driving force behind peaceful desegregation and the new progressive image of the South is a fallacy. However, my research also complicates our understanding of Sunbelt politics by demonstrating how sexual politics splintered the alliance of conservative politics and business boosterism. In battles over non-discrimination ordinances and domestic partner benefits, questions of family values and sexual diversity challenged southern conservatives over their priorities. Were they to be "free market" champions or "family values" reactionaries? If these business boosters were "too busy to hate" on the basis of race in the mid-twentieth century, by the end of the century they found time to push back against any increase in visibility or rights of sexual minorities in the Sunbelt. I draw together several case studies to demonstrate that, in this era of supposed colourblindness, boosters and politicians scapegoated sexual dissidents in an effort to shore up their own political power. As gay and lesbian activists demanded nondiscrimination protections, and later, domestic partner benefits, southern business elites and politicians adapted the tools of anti-government intervention, anti-affirmative action, and anti-labour conservatism to attack those who they believed were undermining traditional family values and Sunbelt values. Far from being too busy to hate, boosters found themselves compelled to turn away business when it threatened to undermine these values, as they did to Apple Computer in Williamson County.

Work and Sexuality

Historians of sexuality have demonstrated the central role that the workplace has played in the development and renegotiation of sexual dissidence and claims to rights. John D’Emilio’s seminal essay, “Capitalism and Gay Identity,” posited that it was only with the advent of industrial capitalism that homosexuality became an identity rather than simply an act. Jeffrey Escoffier, Allan Bérubé, Miriam Frank, Phil Tiemeyer and Anne Balay have all demonstrated the importance of the workplace to later formations of sexual identities. While this field continues to grow no study has yet sought to understand this intersection of work and sexuality within the region which enjoyed the most economic growth at the same time as gay and lesbian activism was breaking down the closet door within the workplace.²⁶ In a recent *Journal of Southern History* article on homophobia in Houston in the 1980s, Wesley Phelps has laid down the gauntlet for such a study: “Studies of other southern cities would shed light on what might have been significant regional variations in the national narrative of gay and lesbian rights during the 1980s.”²⁷ Indeed, the particular mixture of anti-sodomy laws, anti-union laws, and historic resistance to racial integration and federal intervention did help to create a Sunbelt-specific variation in the narrative of gay and lesbian rights with implications for sexual minorities across the country.

Just as historians of the Sunbelt have overlooked the importance of sexuality, likewise historians of sexuality who examine workplaces have largely overlooked the

²⁶ See: John D’Emilio, *Making Trouble: Essays on Gay History, Politics, and the University* (New York, Routledge, 1992); Jeffrey Escoffier, *American Homo: Community and Perversity* (Berkeley, University of California Press, 1998); Allan Bérubé, *My desire for history: essays in gay, community, and labor history* (Chapel Hill: University of North Carolina Press, 2011); Anne Balay, *Semi Queer: Inside the World of Gay, Trans, and Black Truck Drivers* (Chapel Hill: The University of North Carolina Press, 2018); but see also: Anne Balay, *Steel Closets: Voices of Gay, Lesbian, and Transgender Steelworkers* (Chapel Hill: The University of North Carolina Press, 2014); Miriam Frank, *Out in the Union*; Phil Tiemeyer, *Plane Queer: Labor, Sexuality, and AIDS in the History of Male Flight Attendants* (Berkeley, CA: University of California Press, 2013). See also: Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Philadelphia: Princeton University Press, 2011).

²⁷ Wesley G. Phelps. "The Politics of Queer Disidentification and the Limits of Neoliberalism in the Struggle for Gay and Lesbian Equality in Houston." *Journal of Southern History* 84.2 (2018) pp. 311-348.

Sunbelt, either passing quickly over some sites, or omitting it altogether. Yet the region has played an important role in national politics over the past half century, especially around questions of work and sexuality. For instance, Miriam Frank notes that there is a common link between Sunbelt states that have legislated against both gay and lesbian communities and organised labour, noting they have “common foes and common friends.”²⁸ Specifically, Frank highlights the connection between right-to-work and anti-sodomy laws:

In 2003, the US Supreme Court’s decision in *Lawrence v. Texas* (539 U.S. 558 [2003]) struck down anti-sodomy laws in the fourteen remaining states [where homophobic laws persisted]. Of those states, twelve were among the twenty-four that maintain right-to-work statutes: Alabama, Florida, Idaho, Kansas, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Texas, Utah, and Virginia. Michigan, an anti-sodomy state at the time of *Lawrence*, adopted right-to-work sanctions in 2013.

As such, the Sunbelt offers a compelling proposition for scholars interested in sexuality, conservatism and capitalism.²⁹

Donna Jo Smith has demonstrated that the South has continually had a closet mapped onto it by scholars who prioritise notions of set identities and coming out narratives. She states the South has been “conceptualized as spaces of uniform, hegemonic oppression, with minimal, if any, lesbian/gay visibility and community.”³⁰ Since the 1990s, historians of sexuality in the South have challenged this notion and demonstrated the emergence of queer visibility and community throughout the region. Yet still, where scholars have examined the history of sexuality and the South, such as John Howard, E. Patrick Johnson and James Sears, they have failed to explicitly examine the role of work and business to the formation of southern identities. One notable exception is Anne Balay, who has recently published important research on the history of black, queer and transgender

²⁸ Miriam Frank, *Out in the Union*, pp.7-8.

²⁹ *Ibid.*

³⁰ Donna Jo Smith, “Queering the South: Constructions of Southern/Queer Identity” in *Carrying On in the Lesbian and Gay South* ed. John Howard (New York, NY: New York University Press, 1997) p. 381.

truck drivers who are forced to constantly renegotiate their identities as well as their safety as they travel through the region.³¹

The workplace is a central arena for the contestation of social rights in the United States due to the way that a private social safety net developed which attaches welfare and security to employment. The private sector has assumed responsibility in the US for providing almost all economic and social goods for working people. So, the private workplace has emerged as an important battleground at the level of both public and private policy. The American welfare system has been privatised to the extent that, in addition to wages, over two-thirds of workers rely upon their employers to provide health insurance, pension plans, and support for dependents, among other provisions. Without specific protections, such as company anti-discrimination protections or federal civil rights laws, it is up to individual employers to determine who enjoys these privileges.³²

To be secure as an economic citizen in the United States one needs to be employed in a secure job that offers a safety net for retirement, as well as for health care needs. The United States is exceptional among developed nations in terms of this privatised welfare system attached to work. Corporate social welfare programs and private sector insurance were legitimised in the wake of New Deal labour upheavals. Over the course of the century, these systems became a central way for racial and ethnic minorities, women, and, crucially, sexual minorities, to seek parity with their white, cis-gendered colleagues. As scholars including Margot Canaday, Jennifer Klein, and Jennifer Mittelstadt have demonstrated, this system of work and welfare was also gendered in such a way as to confine women to the

³¹ See: John Howard, *Carryin' On in the Lesbian and Gay South* (New York: NYU Press, 1997); John Howard, *Men Like That: A Southern Queer History* (Chicago: University of Chicago Press, 1999); E. Patrick Johnson, *Sweet Tea: Black Gay Men of the South* (Chapel Hill: University of North Carolina Press, 2011); E. Patrick Johnson, *Black. Queer. Southern. Women.: An Oral History* (Chapel Hill: University of North Carolina Press, 2018); James T. Sears, *Rebels, Rubyfruit and Rhinestones*; Anne Balay, *Semi Queer*.

³² Jennifer Klein, *For All These Rights: Business, Labor, and the Shaping of America's Public-Private Welfare State* (Princeton: Princeton University Press, 2003) p.3.

home, and men in work. As the realities of domestic organisation shifted over the course of the twentieth century, so too did claims for the benefits of work and economic citizenship.³³

Through the twentieth-century large firms began to take over more social provisions such as “supplemental pensions, disability wages, and unemployment benefits.” In other developed nations these are things provided by a modern public welfare state. “By the 1960s, middle-class and working-class Americans,” Jennifer Klein notes, saw their major corporate employers as a source of social security. “Since then, such workers have proved increasingly unwilling to support expansions of public welfare programs beyond supplements to their employer-provided benefits.”³⁴ Without a drive for the expansion of public pensions, universal healthcare and other social security provisions, the workplace has continued to be a key arena in the contestation of rights and benefits. The private corporation thus provides employment, but it also provides the tools for an individual's full economic participation in the neoliberal era.

Added to the difficulty in challenging for rights within the workplace has been the limited opportunities for reform within US structures of governance. Indeed, in the course of the history of the United States there have been very few moments in which opportunities aligned for major liberal reform, such as during the New Deal of the 1930s, or the Great Society of the 1960s. Jefferson Cowie argues that the New Deal, for instance, was a “great exception” in an otherwise anti-statist, anti-reformist structure of American governance rooted in capital. Other great exceptions might include the Civil Rights Act of 1964, and Lyndon Johnson's Great Society liberalism. However, Christopher Phelps has challenged this notion by asserting that even these “exceptional” moments of liberalism actually helped to herald more restrictive and codified systems of oppression for sexual minorities. For instance, Margot Canaday's important and influential work has demonstrated the way that

³³ Margot Canaday, *The Straight State*; Jennifer Klein, *For All These Rights*; Jennifer Mittelstadt, *From Welfare to Workfare: The Unintended Consequences of Liberal Reform, 1945-1965* (Chapel Hill: University of North Carolina Press, 2005). See also: Nancy MacLean, *Freedom is Not Enough: The Opening of the American Workplace* (Cambridge: Harvard University Press, 2008).

³⁴ Jennifer Klein, *For All These Rights*, p.7.

post-war moments of liberalism, such as GI Bill benefits, effectively helped to map a closet onto the state, "the straight state" as Canaday terms it.³⁵ The federal system that underpins governance and lawmaking in the United States has acted as a constraining force against expansive visions of civil rights and universal welfare. As noted above, it has only been on rare occasions that liberal Democrats have secured large enough majorities to shepherd legislation to transform and expand the rights enjoyed by minorities. Beneath the federal level, local politics and opportunities for reform vary wildly between each state. In the Sunbelt, with conservative politics entrenched in statehouses in most parts of the region, opportunities for winning rights and benefits have been few but nevertheless activists have fought to open these structures to sexual dissidents in recent decades.

This thesis intervenes in each of these historical fields to draw together our understanding of how Sunbelt cities and industries became battlegrounds for LGBT employment rights. In doing so it is focused temporally between 1970 and the present. 1969 marked a change in the openness, visibility, and political organising of gay and lesbian individuals and communities across the United States following the Stonewall Riots.³⁶ It was also the year in which Republican Party strategist Kevin Phillips coined the term "sun belt" in his influential book, *The Emerging Republican Majority*. As historian Elizabeth Shermer has described, while "public memory of his book has faded, Phillips's identification of a 'Sun Belt Phenomenon' has had a lasting impact. In just five pages, the author defined a region that

³⁵ Jefferson Cowie, *The Great Exception: the New Deal & the Limits of American Politics* (Princeton: Princeton University Press: 2016); Christopher Phelps, "Queer Eye for the Straight Historian", *Martin Duberman Visiting Fellowship Public Lecture*, New York Public Library, April 26, 2016; See also: Christopher Phelps and Jefferson Cowie. "Taking Exception." *Labor: Studies in Working-Class History of the Americas* 14.2 (2017): 95-99; Margot Canaday, *The Straight State*.

³⁶ It is important to note that the history of the Stonewall Riots, especially its impact upon national movements is contested, for the most recent discussion see: Marc Stein, *The Stonewall Riots: A Documentary History* (New York: NYU Press, 2019). See also: Simon Hall, "Gay Liberation and the Spirit of '68" in Martin Halliwell and Nick Witham, eds. *Reframing 1968: American Politics, Protest and Identity* (Edinburgh: Edinburgh University Press, 2018); John Howard, *Men Like That*; and: Timothy Stewart-Winter, *Queer Clout: Chicago and the Rise of Gay Politics* (Philadelphia: University of Pennsylvania Press, 2016).

captured popular and scholarly attention for the next thirty years.”³⁷ 1970 marked the year in which outward migration from the South reversed after several decades, as deindustrialisation took place across Northern states which had previously formed the heart of the economy and jobs moved to the Sunbelt, looking to take advantage of tax incentives and weakened unions. My research examines how the worlds of work and sexuality interacted in the South, after the region had established itself as economically unrivalled, and during a broader economic shift to neoliberalism.

The term “neoliberalism” has come to broadly define the current era of global capitalism from the 1970s to the present – the temporal parameters of this study. This economic era has been defined by the dismantling of welfare, outsourcing (from northern to southern states as outlined above, as well as abroad), the privatisation and deregulation of industry, and the free-flow of capital in an unrestricted free market.³⁸ Phil Tiemeyer, in his groundbreaking analysis of male flight attendants, demonstrates how the more recent and broader impact of neoliberalism has weakened workplace organisation at the same time that rights for lesbians and gays have been gained. He notes that for airline workers, “nondiscrimination clauses and domestic partner benefits,” were historically “not anchored in laws or constitutional rights, and they were not secured by collective bargaining.” In fact, they were the result of executives hoping to attract affluent lesbians and gays, “as components of more elaborate marketing plans designed to enhance their respective

³⁷ Elizabeth Tandy Shermer, "Counter-Organizing the Sunbelt: Right-to-Work Campaigns and Anti-Union Conservatism, 1943–1958." *Pacific Historical Review* 78.1 (2009) p.81.

³⁸ On neoliberalism see: Gary Gerstle, “The Rise and Fall (?) of America’s Neoliberal Order,” *The Proceedings of the Royal Historical Society*, 28 (2018), pp. 241-264; Angus Burgin, *The Great Persuasion: Reinventing Free Markets since the Depression* (Cambridge: Harvard University Press, 2015); Mike Davis, *Prisoners of the American Dream: Politics and Economy in the History of the US Working Class* (London: Verso, 1991, 5th edition); David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005); Nancy MacLean, “Southern Dominance in Borrowed Language: The Regional Origins of American Neo-Liberalism” in *New Landscapes of Inequality*, eds. Micaela di Leonardo and Jane Collins (Santa Fe: School of American Research, 2009); Daniel Stedman Jones, *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics* (Princeton: Princeton University Press, 2012). For a recent discussion of the issues of gender and sexuality within frameworks of neoliberalism see: Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (New York: Zone Books, 2017).

airlines' appeal to wealthy gay and lesbian frequent flyers." As Tiemeyer demonstrates, these victories are tenuous at best when faced with neoliberal restructuring that effectively de-fangs unions, and subject to the whims of individual corporate executives. Wesley Phelps has argued in his study of Houston that in resisting the conservatism of homophobic boosters in that city, Democratic Party activists pulled the lesbian and gay movement in a neoliberal direction by prioritising economic arguments to win support rather than fight homophobia outright. Activists fighting to win protections and benefits in individual workplaces, as well as those fighting against incidents of discrimination and the roll back of rights at the municipal and state-wide levels, mobilised economic reasoning of being "productive citizens" with an associated entitlement to state and corporate protection, only for these rights to remain tenuous without federal employment protections.³⁹

In the 1990s and early 2000s, as the mainstream LGBT movement shifted focus towards the corporate sphere, activists and scholars warned of the exclusionary effect this changed strategic direction could have. One such activist was Urvashi Vaid, who had previously led the National Gay and Lesbian Task Force (NGLTF). In 1995 Vaid theorised that lesbian and gay rights were in a state of "Virtual Equality" in which people felt they were accepted but lacked the rights and benefits that come with full citizenship. Similarly, Alexandria Chasin in 2000 warned that even the focus upon federal nondiscrimination rights was being constrained within capitalism. "Movements appeal to the state to extend greater rights to more individuals and social groups, but the state to which they appeal is one designed to leave significant regulatory power to the market." This thesis will provide further evidence and more in-depth analysis of how these issues played out in individual workplaces such as Duke University and ExxonMobil. In doing so it traces the extent to which LGBT rights have remained virtual for most workers in the United States who are not protected by their employer or the state. My work supports the more recent findings of

³⁹ Phil Tiemeyer, *Plane Queer*, p.195. See also: Wesley G. Phelps, "The Politics of Queer Disidentification", pp.311-348.

political scientist, Stephen Engel, who has demonstrated that LGBT people experience “fragmented citizenship” within the American political system, due in part to the reliance upon corporate support and a privatised social safety net concerned more with profit than welfare and equality.⁴⁰

As demonstrated above, there is a wealth of scholarship on the Sunbelt South, sexuality, and business, yet rarely, if ever, have historians examined the intersection of these subfields of United States history. This thesis finds that oversight to be a profound mistake. Sunbelt industries became key battlegrounds for gay and lesbian workplace rights from the early 1970s, and continue to be so today. At the same time that boosters were seeking to draw corporations to the South, those businesses were beginning to provide non-discrimination and domestic partner benefits in response to demands by sexual minorities. Faced with a locally-ascendant conservative movement as well as increasingly visible gay and lesbian communities, these workplaces emerged as arenas in which debates over rights protections and benefits raged.

All of this is not to argue that the US South is somehow exceptional. Matthew Lassiter, challenging what he argues is the top-down view of Sunbelt historiography, has argued that “the era of Southern exceptionalism is over.”⁴¹ Nevertheless, regional distinctions are important. On questions of work and sexuality, the anti-sodomy, anti-union nature of the Sunbelt South constrained the progress of gay and lesbian employment protections for decades after cities and states in northern and coastal regions provided them. The reaction of Sunbelt politicians to companies who provided domestic partner benefits also illuminates the ways in which the Sunbelt remained an outlier for most of this period. Yet in other ways Lassiter is correct in arguing that notions of southern exceptionalism no longer hold water. There remains no federal protection against being fired

⁴⁰ Urvashi Vaid, *Virtual Equality: The Mainstreaming of Gay and Lesbian Liberation* (New York: Anchor Books, 1995); Alexandria Chasin, *Selling Out: The Gay and Lesbian Movement Goes to Market* (New York: St. Martin's Press, 2000), quote on p.6. Stephen M. Engel, *Fragmented Citizens: The Changing Landscape of Gay and Lesbian Lives* (New York: NYU Press, 2016).

⁴¹ Matthew D. Lassiter, *The Silent Majority*, p.15.

on the basis of sexual orientation. As such, rather than being exceptional, the South actually fits within the national status quo of a lack of workplace protections for sexual minorities. However, considering that many Representatives and Senators who regularly block the extension of these protections are elected from districts in the South and Southwest it is also necessary to examine the sexual politics of Sunbelt dominance. In other ways the South is similar to the rest of the country. Right-to-work laws have been initiated in states that were previously considered to be union strongholds, such as Michigan and Wisconsin.⁴² Cracker Barrel stores have focused their growth strategy on opening new stores in the Midwest and Northeastern states which they see as sharing the values of the South. This thesis therefore focuses attention upon the Sunbelt region's response to claims for gay and lesbian workplace rights because the battles that emerged are emblematic of the broader trajectory and contestation of those demands, rather than because these cases were exceptional to a supposed trajectory of increasingly liberal acceptance of sexual dissidence in the working world elsewhere in the US.

Access to sources has posed several challenges when undertaking this project. On the one hand, some corporations and universities keep extensive records that can be used to draw out discussion of how they responded to claims for rights and protections. Similarly, executives and academics are more likely than others to collect their own papers. This, however, has skewed the focus of this thesis towards examining the concerns of those for whom we have sources. Yet these tend to be richer, whiter, and more male than the communities in which they operated. Likewise, archival collections pertaining to more recent incidents such as ExxonMobil (whose corporate records are sealed), PayPal and the Houston Equal Rights Ordinance (HERO), are not currently available for research. Nevertheless, these cases are examined towards the end of the thesis due to their centrality

⁴² The trajectory of former union strongholds "emulating southern business pioneers in their efforts to create a "favorable business climate" was one long ago predicted by labour historians of the South including Robert Zieger. See: Robert H. Zieger, *Organized Labor in the Twentieth-Century South* (Knoxville: The University of Tennessee Press, 1991) pp.5-7.

to our understanding of workplace rights in the Sunbelt. There is a heavy reliance in some chapters on newspaper and other media sources, both mainstream and community/activist based. At the same time a wealth of new information has been gained from archival collections across the United States, including LGBT community-based archives such as the Stonewall National Museum & Archives in Florida, and the ONE National Gay & Lesbian Archives at the USC Libraries in Los Angeles.

This thesis cannot claim to be comprehensive. It does not examine every incidence of homophobic discrimination in every city or state of the Sunbelt. Similarly, it does not detail how every corporation reacted to demands for domestic partner benefits. Indeed, the thesis purposely overlooks two of the biggest, AT&T and Wal-Mart. While not a case study in its own right, the telecommunications giant AT&T will be discussed throughout this thesis in comparison to other corporations. Wal-Mart has received a wealth of interest from other scholars, although there is still much work to be done to assess their relationship to sexual minorities. Nevertheless, this thesis examines representative case studies and corporations to understand how the broader Sunbelt has acted as a battleground for these rights claims.⁴³

Thesis Structure

Work and Sexuality in the Sunbelt is divided into two main sections which run chronologically from the mid-1970s to the present. The first section (consisting of Chapters 1, 2 and 3) examines the structures of oppression that activists contended with in the Sunbelt as they pushed for workplace non-discrimination protections and the right to privacy. These structures included anti-sodomy laws, anti-union “right-to-work” laws, resistance to affirmative action measures as well as resistance to other forms of government intervention, and religious discrimination. All of these elements helped to underpin broader notions of southern conservatism. Nationally, the 1970s and 1980s were marked by a shift in the

⁴³ See Bethany Moreton, *To Serve God and Wal-Mart*; and see also: Nelson Lichtenstein, *Wal-Mart: The Face of Twenty-First-Century Capitalism* (New York: The New Press, 2005).

experience of sexual dissidents as they exited the closet and demanded their rights. Yet in the South and Southwest the strategy of coming out and demanding workplace rights was complicated by the entrenchment of anti-sodomy laws, as well as an anti-labour and anti-affirmative action climate that complicated strategies for advancing movement goals of non-discrimination protections. For instance, activists were challenged by the notion of how to legislate against discrimination when your sexual activity, and identity, is understood to be illegal. As such activists were forced to first challenge and remove anti-sodomy laws alongside fighting for anti-discrimination protections on the basis of a right to privacy.⁴⁴

Conservatives also adapted their arguments in favour of discrimination in this era. First, they argued against the act of same-sex intimacy as sinful, immoral and dangerous. Second, they argued against the homosexual as a person with particular traits for which they should be removed from the workplace, which was especially true with regards to teachers. Finally, they acted against the “homosexual” as an employee who they argued should be denied protections afforded to other minorities due to those two other aspects. This thesis considers the way lesbian, gay, bisexual and transgender (LGBT) people fought as sexual minorities who needed protections against specific forms of discrimination. This was due to both their outlaw status under anti-sodomy laws, and because as workers in the Sunbelt they experienced broader forms of precarious employment due to weakened unions and laws that allowed bosses to fire them “at-will.” As such it contributes to our understanding of all workers in the US who need social rights, as well as employment rights, through the workplace. By examining the ways in which these issues were contested through the 1980s it is possible to understand how both vitriolic homophobia, and a grassroots activist response to it emerged at the Cracker Barrel restaurant chain in 1991, a case study at the centre of the thesis. The first section, therefore, considers gay men and women as employees – teachers, city government workers, and service workers in the restaurant

⁴⁴ William Eskridge Jr. *Dishonorable Passions: Sodomy Laws in America, 1861-2003* (New York: Viking Penguin, 2008).

industry – who found themselves in the vanguard of early workplace struggles over sexuality, struggles that revealed the structures of discrimination at the heart of Southern and Sunbelt culture.

The failure of politicians and activists to win federal employment non-discrimination (ENDA) protections in Congress during the battle at Cracker Barrel suggested to activists that a more fruitful approach to gaining protections and benefits would be through individual corporations.

By assessing the success of activists in doing this, and the response from local Sunbelt politicians and boosters, as well as corporate executives, the second half of this thesis (chapters 4 through 6 and the epilogue) provide a detailed trajectory of how these issues remain contested, and the shortcomings of the movement today. Through examining case studies of corporations such as Apple Computer, ExxonMobil, and Research Triangle universities, the section expands our understanding of how sexual minorities reshaped the corporate workplace in the neoliberal era to the extent that most major companies now prohibit discrimination and openly campaign for equality. In doing so, the thesis uncovers the central role that battles for workplace protections for gay men and lesbian women in the Sunbelt region have played in the development of broader national strategies for LGBT equality. It establishes how these rights have remained fragile as they are reliant upon the goodwill of corporations and still not codified in federal law. Case studies are drawn from several states representative both of Sunbelt growth and of battles over sexuality in this period. These include incidents that took place in Texas, North Carolina and Georgia. Although each of these are locally distinctive, they also represent broader regional and national trends, movements and tensions that make them particularly compelling.

As gay men and lesbian women began to win workplace rights in the 1970s, a backlash emerged that specifically targeted gay teachers and their allies. Sunbelt conservatives used anti-sodomy laws as well as public ordinances to force gay teachers out of the classroom and back into the closet. Chapter 1 establishes how movements by both

conservative politicians and liberal gay and lesbian activists developed as they did battle over teachers rights in the late 1970s and early 1980s. Campaigns such as Anita Bryant's "Save Our Children" in Florida and John Briggs' Proposition 6 in California centred gay and lesbian teachers in their reaction to the rights claims of sexual minorities. While these episodes have received historical attention, less scholarship has focused on teachers in the South and Southwest, yet unlike Briggs, conservatives in Oklahoma were successful in banning gay/lesbian teachers and their allies. The chapter first re-examines the Briggs initiative in California, where unions and a broad liberal movement succeeded in halting his plan, before pivoting to understand the importance of challenging anti-sodomy laws for wider workplace rights by probing the activism of Donald Baker, an openly gay teacher who sought to halt anti-sodomy laws in Texas, and temporarily succeeded.

Donald Baker's challenge to the Texas anti-sodomy statute opened space for a liberal coalition in Houston to protect the workplace rights of sexual dissidents. Chapter 2 examines how Sunbelt boosters in 1985 successfully repealed a non-discrimination ordinance that specifically protected public workers on the basis of sexuality. The chapter details the ways in which sexual minorities were used as scapegoats for a local economic crisis by these business elites and conservative politicians. Those elites charged that the non-discrimination ordinance endangered the city's growth as businesses who considered relocating there would be deterred by the idea that sexual minorities should be protected. In doing so they argued that bias was good for business, and that sexual minorities should not be awarded "special privileges." As such, the chapter demonstrates how anti-union and anti-affirmative action rhetoric was adapted by business elites to target sexual minorities as scapegoats for economic turbulence. It also demonstrates the tenuous nature of workplace protections in the Sunbelt city in an era of conservative ascendancy and the AIDS crisis.

Chapter 3 focuses upon the challenges that the AIDS crisis posed to gay and lesbian activists, employers and conservative politicians across the South throughout the 1980s. The chapter demonstrates the insidious ways that New Right activists were able to openly

discriminate against sexual minorities by using the AIDS crisis as cover. The success that North Carolina activists experienced in winning a non-discrimination campaign to protect people with AIDS was undermined by restaurant owners who won an exemption from coverage which weakened the resultant legislation. In doing so they opened space for further opportunities for discrimination in the service sector. One such example was the Cracker Barrel restaurant chain which, in 1991, became the first corporation to put in writing their policy of open discrimination against gay men and lesbian women. The chapter traces the grassroots movement that emerged to win back the jobs of several employees who were fired under this homophobic policy. As Cracker Barrel continued to expand its operations across the country, activists staged sit-ins and demonstrations against the company's policy of discrimination. Faced with the failure of national politicians to win federal employment non-discrimination act (ENDA) in the mid-1990s, the campaign around Cracker Barrel shifted to focus upon changing that company's nondiscrimination policy from within. Activists became embroiled in a campaign to sell gays and lesbians shares in Cracker Barrel in order to vote in favour of non-discrimination policy at shareholder meetings. As a result, the movement transformed from grassroots to corporate activism in the 1990s. This shift in corporate activism had the consequence of directing the movement to ever narrower demands within individual workplaces. This ultimately led activists to supporting forms of heteronormative, monogamous marriage and the private social safety net rather than more expansive visions that would have more directly challenged these structures of inequality.

Whereas Section 1 examines structures of oppression and direct incidents of discrimination against sexual minorities, Section 2 demonstrates the ways in which sexual minorities were able to shift corporate culture in the 1990s to become more welcoming and protective. The shift in activist strategy at Cracker Barrel was representative of a wider trend in which employees focused upon transforming corporate culture in light of the decreasing opportunities to win federal non-discrimination protections for sexual minorities. As Human Rights Campaign activist George Kronenberger spelled out in 1991: "Corporate anti-

discrimination policies are a primary concern for lesbians and gays who don't have state or local civil rights ordinances protecting them. A basic statement that employees are given the same opportunities to enter, advance, and succeed in an organization sets the tone for how that organization relates to lesbians and gays."⁴⁵ This focus upon the corporate sphere provided opportunities but it also helped to constrain the broader LGBT movement.

Chapter 4 examines how the successes of employees at the Apple Computer corporation in winning anti-discrimination protections and domestic partner benefits were undermined by southern politicians as the company sought to expand. In 1993, politicians in Williamson County, Texas denied Apple a tax incentive to open a new state-of-the-art campus due to the fact that the company provided domestic partner benefits for their employees' same-sex spouses. The chapter demonstrates how questions of sexual diversity continued to divide Sunbelt boosters almost a decade after Houston in 1985. It examines how Silicon Valley employment practices posed new challenges to Sunbelt conservatism in an era in which Republican Party officials debated their stances over the free market and family values in the wake of their defeat to Bill Clinton in 1992. For gay and lesbian activists, the episode further demonstrated the need to prioritise winning protections in individual corporations, like Apple, rather than upon winning non-discrimination protections and domestic partner benefits at the local level. Such a strategy entrenched economic disparities within gay and lesbian communities as increasingly wealthy executives found protections and benefits, while workers in the Sunbelt did not.

Chapter 5 examines the success of this movement at private universities in the South as faculty, staff and students went beyond defending their visibility on campus to demand domestic partner benefits. To win these rights and benefits students and faculty at Duke University mobilised booster arguments of the need to remain competitive with other private universities. The success of this strategy, however, was not replicated on public campuses

⁴⁵ George K. Kronenberger, "Out of the Closet", *Personnel Journal*, June 1991, in Box 2.12, McNaught Papers - Cornell.

where similarly placed activists faced greater resistance due to those schools' reliance upon conservative legislators for funding. Whereas activists at private universities, such as Duke, could rely upon an argument of competition with other private, elite universities, their neighbours at UNC-Chapel Hill were unable to mobilise such arguments as convincingly. The continued presence of anti-sodomy laws in North Carolina further undermined the movement on public campuses, and limited the ability of activists to extend their struggles to include other workers in the state. As such, private universities became islands of rights and privileges in locations where communities of sexual minorities were criminalised.

By the early 2000s, scores of Fortune 500 corporations had installed non-discrimination protections on the basis of sexuality, and some also provided domestic partner benefits. Chapter 6 examines the staunchest of corporate hold-outs to these demands, Exxon. Not only did the oil giant refuse to acquiesce to demands for non-discrimination protections, but the company leadership also actively repealed them from companies they acquired, as was the case with Mobil in 1999. Buoyed by the neoconservatism of George W. Bush, and the security of oil extraction in this era, ExxonMobil was able to ignore activists who sought to convince them that bias was bad for their profit. The Sunbelt oil industry was therefore able to buck national trends of corporate acceptance of sexual diversity due to size and power. The repeal of anti-sodomy laws nationally made claims upon Sunbelt corporations more viable but it also led to a backlash against the rights of sexual minorities. When the company finally did enshrine non-discrimination protections and benefits, it was in the wake of the Supreme Court's 2015 decision to rule same-sex marriage legal and constitutional, not because of activist pressure upon the corporation. Yet at this same moment other corporations, mainly based in the Sunbelt, sought to roll back domestic partner benefits after the Supreme Court's ruling. They did so on the basis of arguing that such benefits were only a stop-gap for gays and lesbians because historically they could not be married like their colleagues in different-sex relationships. Therefore, the failure of the movement to extend domestic benefits to different-

sex couples in the South led to the entrenchment of family as the unit in which economic security, rights and benefits are awarded in the US's privatised welfare system. As such, the disparity between the workplace rights and benefits afforded to those who are married, and those who are not, has been upheld, with continuing consequences in the welfare and health care provisions available for sexual minorities.⁴⁶

Finally, the epilogue follows the tensions of LGBT corporate activism and Sunbelt business conservatism up to the present day by demonstrating the ways in which workplace rights remain tenuous in the Sunbelt. This is due to the continued lack of local and federal non-discrimination protections in the region. It also demonstrates the ongoing reliance upon a corporate strategy to push back against southern conservatism. Most notably, PayPal cancelled plans for a multi-million-dollar facility in Charlotte in 2016 when North Carolina enacted anti-LGBT measures via the state legislature. Yet, as demonstrated with the repeal of domestic partner benefits, the historic reliance of the movement upon the goodwill of individual corporations demonstrates that workplace rights and benefits can be weakened when they no-longer understand them as profitable. The Trump era has further demonstrated the fragile nature of LGBT employment rights throughout the US. The administration seeks to limit LGBT workplace rights by asserting that Title VII of the Civil Rights Act (1964) does not cover sexual orientation. It also actively discriminates against transgender military personnel by attempting to exclude them on the basis of healthcare costs — an argument first mobilised by employers against gay men during the AIDS crisis, as demonstrated in chapter three. The workplace rights of LGBT people continue to remain fragmented and unstable in 2019, and the individual case studies and historiographies that this thesis places into conversation aid our understanding of why this is.

⁴⁶ For further discussion of the history of battles over marriage equality and their impact upon the movement, see: Elizabeth Pleck, *Not Just Roommates: Cohabitation after the Sexual Revolution* (Chicago: University of Chicago Press, 2012). But see also: Mark Brandon, *States of Union: Family and Change in the American Constitutional Order* (Lawrence: University Press of Kansas, 2013); Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, Mass.: Harvard University Press, 2000).

Part One: Nondiscrimination and the Structures of the Sunbelt

Chapter One

Schools, Sodomy and the Sunbelt

On June 7, 1977, voters in Florida's Miami-Dade County voted overwhelmingly to repeal a recent ordinance, "which banned discrimination against gay people in housing, employment, and public accommodation."¹ Historians, including Robert Self and William Eskridge, have analysed this moment as a key turning point in the political trajectory of gay rights, and as a marker of the New Right's shift towards moralism and traditional family values.² The victory for the "Save Our Children" campaign, founded by the singer Anita Bryant, successfully mobilised the spectre of gay men having access to children to provide the first major roll back of gay rights since the Stonewall riots in 1969. In doing so, she shifted the debate away from minority rights to emphasise the threat protections for gay men and lesbians posed to the traditional family.³

Though not specifically focused on teachers, the Florida ballot initiative was heavily influenced by age-old fears of gay men and paedophiles in schools. Robert Self notes that "Bryant shrewdly declared that the new law would require the hiring of 'homosexual' teachers."⁴ Additionally, James Sears recalls that "Anita Bryant worried to the press about homosexual teachers showing up to work 'in drag,'" while "newspaper ads warned that homosexuals 'must reproduce through recruitment.'"⁵ In the months before polling day, Miami-Dade County became a battleground as both left and right-wing activists descended upon Florida to intervene in the repeal efforts. Self ultimately notes that "Bryant's Dade

¹ Robert O. Self, *All in the Family*, p.243.

² For discussion of the Dade County campaign see: Fred Fejes, *Gay Rights and Moral Panic: The Origins of America's Debate on Homosexuality* (New York, NY: Palgrave Macmillan, 2008); James T. Sears, *Rebels, Rubyfruit, and Rhinestones*; and Robert O. Self, *All in the Family*.

³ Self, *All in the Family*, p.243.

⁴ *Ibid.* p.244.

⁵ James T. Sears, *Rebels, Rubyfruit, and Rhinestones*, p.239.

County campaign and her invocation of the language of the family established the model for future battles over gay rights.”⁶

It is the battles in the Sunbelt education sector inspired by Bryant’s campaigning, including that of homophobic California State Senator, John Briggs, that form the focus of this chapter. The rights of gay teachers became a critical early battleground for workplace equality in the wake of the rights revolutions of the Sixties, and we need to understand the differing ways homophobic legislators and activists attempted to expel and ban gay teachers from the late 1970s into the 1980s, and the diverse methods used to counter this by the teachers themselves. To do so, this chapter contrasts the use of ballot initiatives in Florida and California with legislative action in Oklahoma and sodomy law repeal in Texas to better understand how conservatives built upon and reshaped Anita Bryant’s activism to speak to the political and religious nuances of their states.

Workers and gay and lesbian activists must be understood as products of their political, social, economic and cultural environments. Encountering different levels of labour union strength, gay and lesbian legality and visibility, as well as conservative controlled state legislatures, activists sought to defend the rights of teachers and their allies to not hide their sexuality in work for fear of dismissal. This chapter’s case studies have been selected to highlight the uneven progress of LGBT workplace rights at a critical early stage of the post-Stonewall movement, as well as the different issues at stake in the Sunbelt. From reaction against the Briggs Initiative to proactive assault on anti-sodomy laws, gay and lesbian teachers used any means at their disposal to secure their rights, with varying levels of success.

In his campaign to roll back the rights of teachers, John Briggs portrayed the homosexual as a category of person to distinguish between upstanding moral citizens and the immoral other, stripped of the right to equal treatment by the potential to influence children through his work as a teacher. As California had repealed its anti-sodomy statute in

⁶ Self, *All in the Family*, p.246.

1975, the attention of homophobic politicians shifted from acts to people, with the schoolhouse as workplace the obvious choice for an attack on the civil rights of sexual minorities. California's strong history of teacher unionism, however, as well as the fact that Briggs targeted all teachers without impunity should they positively mention homosexuality, meant that building a massive and visible campaign against him was relatively easy compared to other locations in the Sunbelt.

Attempts to attack gay and lesbian teachers in Nevada and Oklahoma followed the Briggs Initiative closely, again broadening the assault upon all teachers, not just those who identified as a sexual minority, or who performed certain private and consensual but illegal sexual acts. Yet, unlike in California, weakened union organisations struggled to provide the same level of support. Indeed, gay activists in those states noted that even the gay and lesbian communities themselves were unwilling to be visible at such a time of conservative retrenchment. As a result, social conservatives had more success in utilising their state legislatures to ban gay teachers than Briggs did in California, where he encountered a growing liberal coalition that included allies of gays and lesbians.

In Texas, too, the lack of serious union organisation limited the capacity of gays and lesbians to build a coalition to defend their rights in the workplace. Activists were forced to frame their appeals for equality in limited and problematic ways. In order to win sodomy law repeal in Texas, Donald Baker and others argued that the "homosexual" was a citizen who was unjustly denied the full benefits of citizenship because of their sexuality. He argued that his upstanding role as a teacher, and as a member of the wider community, trumped his sexual orientation, which was a private matter irrelevant to one's public role as an employee. In arguing for a "privatisation" of sexuality, Baker's activism fitted into a broader libertarian strategy of arguing that private sexual matters were not a concern for the state. At a moment of AIDS crisis in which conservatives were concurrently calling for gay men to be quarantined, and using age-old tropes of the homosexual as paedophile, politicians were able to argue for the importance of sexuality to the public realm.

No type of workplace has been fraught with more examples of homophobic discrimination than that of education. Specifically, homophobia has historically been levelled at gay men and lesbian women teaching in elementary and high schools. Yet there has been a lack of research into campaigns to fire and ban gay and lesbian teachers in the Sunbelt, outside of Florida and California. Karen Graves has provided a rich study of the purge of lesbian and gay educators in Florida during the 1950s and 1960s lavender scare, as well as the resistance of those teachers to the “Johns Committee” who were investigating them. However, Graves’ work ends in 1965. While Jackie Blount’s work has detailed a longer history of the struggles of gay and lesbian teachers, she only momentarily touches upon cases in the South and Southwest.⁷ Historians Fred Fejes, Robert Self, and James Sears have also examined Anita Bryant’s successful “Save Our Children” campaign in Florida in 1977 and John Briggs’ unsuccessful Proposition 6 in California in 1978, but their coverage of attempts to ban gay teachers in this era has been by no means comprehensive.⁸

Meanwhile, James Cobb has demonstrated the importance of public schools as a concern to Sunbelt boosters and the corporations they sought to attract in the 1950s and 1960s.⁹ By the 1970s, when the Sunbelt had established itself as the nation’s economic powerhouse, K-12 education emerged as a key battleground for gay and lesbian workplace rights. In school environments that were long overshadowed by fears of child abuse, gay men especially found their jobs increasingly under threat as visibility increased over the course of the decade. From Miami to San Francisco, Dallas to Oklahoma City, as the gay liberation movement enabled sexual dissidents to become more open about their sexuality in the workplace, they faced a backlash from right-wing activists. The case studies below have

⁷ See Jackie M. Blount, *Fit to teach: same-sex desire, gender, and school work in the twentieth century* (Albany, NY: State University of New York Press, 2005); and Karen Graves, *And They Were Wonderful Teachers: Florida’s Purge of Gay and Lesbian Teachers* (Urbana, IL.: University of Illinois Press, 2009).

⁸ Fred Fejes, *Gay Rights and Moral Panic*; James T. Sears, *Rebels, Rubyfruit, and Rhinestones*; and, Robert O. Self, *All in the Family*.

⁹ James C. Cobb, *The Selling of the South*, pp.160-162.

been selected as they complicate the historiographical attention given to Anita Bryant and John Briggs. True, Bryant was successful, and Briggs was not, but the broader experience of teachers in the Sunbelt was one of constant contestation of their rights well into the 1980s. New Right politicians used a range of tools in seeking to remove sexual dissidents from their jobs as teachers. In California and Florida, they relied upon public referendums, in Nevada and Oklahoma they used legislative tools, but in Texas, New Right activists used anti-sodomy laws and the emerging AIDS crisis to push back against teachers' rights.

The first case study in this chapter will assess how teachers and their allies defended their rights in California in the face of John Briggs' 1978 Proposition 6 through a broad grassroots coalition, before contrasting this with the fate of similar legislation in Oklahoma and Nevada, also in 1978. The final case study will explore the ways in which teachers in Texas were at the forefront of challenging that state's sodomy law, which was used to blackmail gay and lesbian workers into leaving their jobs through the mid-1970s and early-1980s. In doing so, this chapter will highlight the different strategies utilised by conservative activists who sought to ban gay teachers, and who did not face a broad or entrenched movement to stop them, as Briggs did in California. Additionally, the chapter explores the differing responses of gay activists and their allies to each of these attempts to ban gay teachers that also reflected the uneven conservative and religious politics in different Sunbelt states. Whereas building grassroots, labour-led coalitions was possible in California, in Oklahoma, Nevada and Texas, gay rights activists used litigation and appeals to business elites in their cities for support in overturning sodomy laws and halting homophobic initiatives in education. Through using the tools most obviously available to them, especially claims to respectability and professionalism, which they believed would bring greatest success, these distinct coalitions reflected class dynamics that came to define Sunbelt gay and lesbian activism in subsequent decades. In making this case, the chapter demonstrates that the response by gay and lesbian movements to these measures in Texas reflected the wider conservative politics of the Sunbelt in this era.

California

After the victory in Miami, Anita Bryant announced her intention to roll back gay rights across the country. Her "Save Our Children" movement enjoyed successes in St. Paul, Minnesota, Wichita, Kansas, and Eugene, Oregon within the space of a year. California was seen as an important goal in efforts to roll back gay rights due to the visibility of gay men and lesbian women in San Francisco and Los Angeles. It was here that the focus of ballot initiatives turned to attack gay teachers and their allies.

As the Briggs Initiative has received the most historical attention, it is worth using the California episode as a way of contrasting how New Right politicians in other states that also sought to proscribe gay and lesbian teachers in this era. California is a state that can be considered to be, politically as well as geographically, half in the Sunbelt due to the conservative regions of the southern part of the state which rely upon military spending and high-tech investment. Sunbelt historian Sean Cunningham has noted that: "Southern California remained a hotbed of evangelical growth and conservative activism throughout the late 1970s and early 1980s."¹⁰ He notes that evangelical Christians were drawn to Southern California from across the rest of the Sunbelt. These patterns of migration and religious belief undoubtedly informed the reception of Briggs' ballot initiative. Yet the statewide politics of California is marked by historically strong public sector unions, including schoolteachers' organisations, which contributed to a growing liberal majority in the legislature. Appeals to support from organised labour at both the local and national levels around the basis of a common fight against the Briggs Initiative were successful in pulling the union movement behind gay rights in California, a state unaffected by anti-union and anti-sodomy laws in place in other states facing similar homophobic initiatives.¹¹

¹⁰ Sean P. Cunningham, *American Politics in the Postwar Sunbelt*, pp.182-184. See also: Darren Dochuk, *From Bible Belt to Sunbelt*.

¹¹ For the discussion of the role of labour unions, specifically those of teachers, and California politics see: Sara R. Smith, *Organizing for Social Justice: Rank-and-File Teachers' Activism and Social Unionism in California, 1948-1978* (UC Santa Cruz, PhD thesis, 2014). But see also: Jonathan Bell, *California Crucible: The Forging of Modern American Liberalism* (Philadelphia: University of Pennsylvania Press, 2012).

John Briggs was one of those who traveled to Florida to support Bryant during the Dade County campaign. As a California state senator he devised a ballot proposition to ban openly gay teachers from public schools. Briggs was, in many ways, the typical Sunbelt politician. He was elected in succession to represent conservative districts in both the California State Assembly and State Senate, and had previously been president of a chamber of commerce and joined the military at the height of the Korean War. Briggs utilised the same language as Bryant's campaign and placed children at the centre of his argument of why the state needed to attack gay and lesbian school teachers. He wrote: "One of the most fundamental interests of the State is the establishment and preservation of the family unit. Consistent with this interest is the State's duty to protect its impressionable youth from influences which are antithetical to this vital interest."¹² The initiative did not stop at threatening openly gay teachers and school workers but attacked their allies as well, including anyone: "who has engaged in advocating, soliciting, imposing, encouraging or promoting of private or public homosexual acts directed at, or likely to come to the attention of school children."¹³ As such, a teacher who voiced support for gay and lesbian rights would be fired regardless of whether they identified as gay or lesbian.

Briggs sought to use a statewide ballot initiative to push through his ban. Such a referendum sought to build upon the lessons of Anita Bryant's success in Miami, where right-wing activists were able to use connections to wealthy individuals to drum up support and circumvent a Democrat-controlled legislature. Such tactics had previously been used by right-wing activists in California. For instance, Proposition 18 in 1958 attempted to pass anti-union "right-to-work" restrictions, and Proposition 14 in 1964 succeeded in nullifying

¹² Diane Ehrensaft and Ruth Milkman, interview with Amber Hollibaugh "Sexuality and the State: the Defeat of the Briggs Initiative and Beyond" in *Socialist Review*, May-June 1979, no.45, vol.9.3.

¹³ Sasha Gregory-Lewis, ""Californians face prop. 6 and it will be written..." *The Advocate*, November 15, 1978.

California's fair housing laws.¹⁴ California made consensual sexual activity between people of the same sex legal in 1975. That the state also did not have a right-to-work law on the books meant that unions could be a powerful force in California. These factors, as well as a strongly liberal state legislature, meant that Briggs was unlikely to achieve his goals through legislative means. In contrast, using a ballot initiative could institute his desired discrimination by direct appeal to voters. Briggs collected enough signatures for his initiative, Proposition 6, to be placed on the November 1978 ballot. In California right-wing activists were buoyed by the success of Howard Jarvis' Proposition 13 in May, which limited statewide property taxation.¹⁵ Historian Josh Sides notes that Briggs saw himself as building a broader project of the New Right through his campaigns to fire gay teachers, and in his separate attempt to extend the death penalty. Sides argues that: "Briggs skilfully wove together the strands of rhetorical populism and moral and fiscal conservatism that would become the hallmark of the Reagan revolution."¹⁶ Support for Briggs was high in both Southern and Northern California in the run up to the ballot. As late as September 1978, Briggs was winning in both areas with 52% in the North and 55% in the South.¹⁷ It seemed that the initiative would pass easily. Gay activists were well rooted in San Francisco, Los Angeles and other big cities but Briggs seemingly represented millions in suburbs and rural areas increasingly viewed as conservative.¹⁸ Defeating the Briggs Initiative was therefore not

¹⁴ Jonathan Bell, *California Crucible*, p.209, and p.265; Sean P. Cunningham, *American Politics in the Postwar Sunbelt*, pp.110-112. See also: Daniel Martinez HoSang, "Racial Liberalism and the Rise of the Sunbelt West: The Defeat of Fair Housing on the 1964 California Ballot" in *Sunbelt Rising: The Politics of Space, Place, and Region*, Michelle Nickerson and Darren Dochuk eds. (Philadelphia: University of Pennsylvania Press, 2011) pp. 188-214.

¹⁵ Fred Eldridge, "Pete Wilson and the 'right to work'", *Daily Independent*, Corona, CA. November 14, 1977, in Berner/Briggs Box 2, SFPL. On Propositions 6 and 13 See also: Jonathan Bell, *California Crucible*, pp.272-277.

¹⁶ Josh Sides, *Erotic City: Sexual Revolutions and the Making of Modern San Francisco* (Oxford and New York: Oxford University Press, 2009), p.155.

¹⁷ "A major shift in 'no' on prop. 6", *San Francisco Chronicle*, October 5, 1978.

¹⁸ For a detailed consideration of the urban and suburban tensions during the Briggs Initiative see: Clayton Howard, *The Closet and the Cul de Sac: The Politics of Sexual Privacy in Northern California* (Philadelphia: University of Pennsylvania Press, 2019).

certain for much of the campaign, as the *Advocate* noted in the week before polling day: “If Proposition 6 loses it will be one of the greatest upsets in California political history.”¹⁹

However, gay activists had built impressive coalitions with liberal politicians, organised labour, and African-American activists over the preceding decade. Notably, this coalition had brought about the decriminalisation of private consensual sex between adults in 1975.²⁰ In that battle, conservative politicians from Southern California linked reform with the spectre of child sexual abuse and in doing so foregrounded the debate for Briggs’ challenge later on. “The most impressive opponent was the towering Senator John Stull, a former naval captain from San Diego,” William Eskridge notes. “‘The Admiral’ argued that deregulating sodomy would victimise ‘future generations of children who see that it’s ok because it’s legal.’”²¹ Through such rhetoric, alongside the area’s links to conservatism and military industry, Southern California came to be viewed as the region of the state most likely to support traditional family values.²²

Gay economic activism was well rooted in California and dovetailed with the legislative coalition that had decriminalised homosexual acts. Teaching unions and gay activists first united in 1975 when groups campaigned jointly for the San Francisco Board of Education to include sexual orientation in future nondiscrimination policies and to permit notices about gay teacher meetings in district newsletters. The Bay Area Gay Liberation (BAGL) group coordinated protests at the board meetings which inspired hundreds to demonstrate. During this campaign, Tom Ammiano came out as the first openly gay teacher in San Francisco. Likewise, teachers were also on the cutting edge of national gay-labour activism throughout the decade. Miriam Frank notes that teaching unions were the first to

¹⁹ “Politics”, *The Advocate*, November 15, 1978 in King Collection (GLC81), SFPL.

²⁰ William Eskridge Jr. *Dishonorable Passions*, p.200.

²¹ *Ibid.* p.199.

²² On militarisation and conservatism in Southern California see references in: Sean P. Cunningham, *American Politics in the Postwar Sunbelt*, and: Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (London: Verso, 1990).

enshrine anti-discrimination policies based on sexual orientation.²³ Now at the end of the 1970s, unions and gay organisations put this solidarity into practice in defence of their recently won rights and in an attempt to stem the tide of insurgent conservatism in California.

When the threat of Briggs became apparent, gay activists, alongside trade unions, and liberal politicians, immediately set about building broad campaigns to crush it. By early October, there were around twenty-one organisations in California fighting the Briggs Initiative.²⁴ One such organisation was the Bay Area Committee Against the Briggs Initiative (BACABI), which focused upon building coalitions with women's, African-American, and Chicana(o) groups. To deepen connections with unions they established a 'Labor Committee' within BACABI that attracted the support of many union leaders and rank and file activists, both gay and straight.

BACABI portrayed its struggle as connected with fighting right wing backlashes against African-Americans and women. "The Briggs Initiative is not an isolated incident, but part of a series of attacks attempting to roll back gains the gay rights movement has made in the past several years, much in the same manner as the backlash the civil rights and women's movements have faced."²⁵ Black voters, above all other racial categories, were resolutely opposed to the initiative in the months before the ballot, 64% in September, whereas white voters remained more in favour until the final days.²⁶ BACABI and other campaigns encouraged black participation in the movement and linked the struggle with opposition to Briggs' other proposition (7) which threatened to extend the death penalty.²⁷

The response from unions was tremendous. Miriam Frank asserts that "labor's response to Proposition 6 was sharp and sure: trade unionists were familiar with Senator

²³ Miriam Frank, *Out in the Union*, pp.6-7.

²⁴ "Californians face prop. 6 and it will be written...", *The Advocate*, November 15, 1978.

²⁵ *BACABI*, June 12, 1978 in Box 6.24, Harvey Milk Archives (GLC35), SFPL.

²⁶ "A major shift in 'no' on prop. 6" *San Francisco Chronicle*, October 5, 1978 in Box 6.24, GLC35, SFPL.

²⁷ *BACABI*, June 12, 1978 in Box 6.24, GLC35, SFPL.

Briggs's consistent legislative record of opposition to union issues and understood his proposition as a bold attempt to disrupt the contractual process while legalizing workplace discrimination."²⁸ As Frank suggests, for the most part unions became involved because it was their members under attack, and they could see that a victory for Briggs in sacking gay teachers would lead to other attacks against other minorities, as well as the trade union movement in general. Public sector unions in California were seen as particularly strong but were beginning to see their power threatened. Pete Wilson, Mayor of San Diego and a contender for the Republican California gubernatorial election in 1978, made attacking unions a central part of his platform. The previous year he had proposed a no-strike measure which would have forced public agencies to fire striking employees. Columnists noted a resemblance between Wilson's proposal and "right-to-work" laws in place in other states but voted down in California in 1958.²⁹

In a July 1978 letter, several leading Californian trade unionists encouraged labour organisations to join BACABI and ask their members to vote against Briggs, pitching the battle as one of civil rights and labour representation: "The Briggs Initiative, or Proposition 6, is an attack on the civil rights of teachers and gay people and would have the effect of limiting the collective bargaining rights of teachers."³⁰ Union leaders, therefore, utilised the rhetoric of rights movements, as well as suggesting common cause by highlighting the threat of the proposition to their collective bargaining power.

Other union locals seized the opportunity not only to campaign against Briggs but also to institute broad protections for gay and lesbian workers. Many activists, when presenting resolutions against Briggs to union locals, demanded that the union include "sexual orientation" in the list of protections for future contracts. For instance, the Hayward Unified Teachers Association passed the following resolution: "The District and the

²⁸ Miriam Frank, *Out in the Union*, p.90.

²⁹ Fred Eldridge, "Pete Wilson and the 'right to work'".

³⁰ BACABI Labor Committee Letter for Support, July 28, 1978 in Box 6.25, GLC35, SFPL.

Association agree not to lawfully discriminate against any unit employee on the basis of race, color, creed, national origin, sex, age, political affiliation, physical handicap, marital status, domicile, sexual orientation.”³¹ As a result, teachers began to solidify the rights of gays and lesbians in their workplaces for the first time through their unions.

Elsewhere, activists in the women’s movement joined coalitions and sought out opportunities to further their struggles in this moment as well. *Union WAGE* (Women’s Alliance to Gain Equality) posed the Briggs Initiative as “a matter of workers’ rights” and argued that the proposition was a “test case for the New Right.”³² Amber Hollibaugh recalls some of the educational work organised around unions and workplaces outside of schools. Specifically she remembers speaking to Teamsters’ locals openly about how the initiative would affect her. “We did a lot of speaking in places like that as out-dykes, and lesbians don’t walk into Teamsters’ unions and speak about lesbianism too frequently. We selected places we thought were crucial because we never get into them.”³³

One key initiative put forward by the labour committees of a number of local groups was the Statewide Workers Conference Against Briggs, which took place on September 9, 1978, supported by numerous union locals. Again they posed the Briggs Initiative as emblematic of a national fight against the New Right:

Our intent is to give each other the practical tools we need to defeat this measure and the forces behind it. The Bakke decision, Proposition 13, the death penalty proposition, anti-ERA and the anti-abortion forces are not isolated in who they attack but are part of a growing right wing movement promoting ignorance and suspicion. They build on fear and prejudice.³⁴

Cesar Chavez would later be quoted in “No on 6” literature, stating: “Proposition 6 preaches intolerance and prejudice. The farm workers are convinced that freedom in this

³¹ “Resolution from Hayward United Teachers Association” in Box 1.9, Paula Lichtenberg papers, GLBT-HS.

³² “California: Test Case for the New Right” in *Union WAGE* September-October 1978, no.49 p.1.

³³ Amber Hollibaugh, “Sexuality and the State.”

³⁴ Statewide Workers Conference Against Briggs leaflet, September, 9 1978 in Randy Burns Papers, GLBT-HS.

country is in greatest danger when good people do nothing when the rights of any group or individual are threatened.”³⁵ Appeals to labour on both local and national level around the basis of a common fight were successful in pulling the union movement behind gay rights in California, a state unaffected by anti-union laws in place in other states facing similar homophobic initiatives, such as Florida and Nevada.

Activism was not limited to winning over liberal coalition partners. The late 1970s saw the rapid growth of anti-government and anti-tax rhetoric, which found its primary success in California in June 1978 when voters passed Proposition 13 to limit state property taxes. Gay, lesbian and labour activists sought to appeal to a wider audience than metropolitan liberals by speaking to the discourse of ascendent fiscal conservatism in California. Jonathan Bell demonstrates that gay activists linked struggles against the anti-tax and homophobic ballot initiatives: “the campaigns against 13 and 6 used the same political forces and the same set of ideas, placing civil rights in the context of an activist state that required fiscal freedom in order to function.”³⁶ However, activists also attempted to relate to the anti-tax movement through pointing out how costly the Briggs Initiative would be to enact. They highlighted that “everyone involved in education... would be at the mercy of any disgruntled student, parent, or colleague willing to make an accusation. And every accusation would have to be resolved by an expensive public hearing.”³⁷ Activists later recalled that “many who may have sympathized with the intent of Proposition 6 were appalled when it was pointed out how much it might cost.”³⁸ Indeed, Howard Jarvis, the Proposition 13 tax revolt instigator, would himself come to rally against Proposition 6.

Interestingly, while the campaigns saw battling the Briggs Initiative as part of a wider fight against the New Right, it should be noted that perhaps the New Right’s most famous

³⁵ “Protect our schools - don’t legalize discrimination” BACABI leaflet, undated, in Box 6.26, GLC35, SFPL.

³⁶ Jonathan Bell, *California Crucible*, p.276.

³⁷ “How we won” in Correspondence 1979, Box 4B33, THRRF, UT-Austin.

³⁸ *Ibid.*

(and eventually successful) spokesperson, Ronald Reagan, came out against Briggs too, stating that he felt the initiative was unnecessary and cumbersome.³⁹ Both Briggs and many gay and lesbian activists later saw this as the tipping point. Briggs, speaking the day after his defeat, said: “For Ronald Reagan to march to the drums of the homosexuals has irrevocably damaged him nationally.”⁴⁰ This statement would prove ironic in the next presidential election in which Reagan defeated incumbent Jimmy Carter.

Final votes in the ballot proved that the activism carried out across the state was successful in turning opinions.⁴¹ Voters defeated the measure “by more than a million votes, 58 percent to 42 percent.”⁴² In the end, Briggs was defeated even in his own backyard in Orange County, by 46,000 votes.⁴³ Activists in California were also inspired by polls taken on election day in which 54 percent of voters said they thought “fair housing and fair employment laws should be extended to cover homosexuals.”⁴⁴ Legislation outlawing discrimination against lesbians, gay and bisexual people was finally enacted by California Governor Pete Wilson in 1992.

In California, then, activists successfully built upon coalitions they developed over the preceding decade while expanding their reach into workplaces and community organisations. Anti-Briggs campaigns appealed directly to organised labour through rhetoric that portrayed the initiative as a menace to workers in general, as well as to gay teachers specifically. They also pulled sections of Howard Jarvis’ anti-tax movement that was emerging in California against one of the state’s most entrenched conservative figures. Yet

³⁹ “Briggs says ‘6’ defeat down to lack of funds,” *Santa Ana Register*, November 9, 1978 in Box 6.26, GLC35, SFPL.

⁴⁰ “Briggs to try antigay move again in 1980”, *Los Angeles Times*, November 8, 1978 in Box 6.26, GLC35, SFPL.

⁴¹ “Victory in California” *The Advocate*, December 13, 1978, Issue 256 in Folder 16, GLC81, SFPL.

⁴² Robert O. Self, *All in the Family*, p.246.

⁴³ “Briggs says ‘6’ defeat down to lack of funds” *Santa Ana The Register*, November 9, 1978 in Box 6.26, GLC35, SFPL.

⁴⁴ “Employment Rights Bill Expected to Pass” in *The San Diego Pride*, January 8, 1979, vol.2.1 in Box 97, LGBT Periodical Collection, NYPL.

while the Briggs Initiative was defeated in California, New Right activists sought to remove gay and lesbian teachers elsewhere in the Sunbelt using state legislatures rather than public referendums. In states where gay and lesbian communities were less visible, and workplace organisation considerably weakened in contrast to California, state representatives and senators were able to pass legislation banning gay teachers. Attempts to ban gay and lesbian teachers, as well as their allies, were spurred in Oklahoma and Nevada by the attempt by Briggs in California, and yet with differing results.

Oklahoma and Nevada

In California, gay and lesbian activists alongside their allies were able to build upon earlier examples of unity, such as the Coors Beer Boycott which allied them with the Teamsters Union, Cesar Chavez's United Farm Workers, and San Francisco's African American community. That unity helped to rally support around California Assemblyman Willie Brown, who led the successful efforts to repeal the state's sodomy law in 1975. Brown's bill decriminalised "'adulterous cohabitation,' sodomy and oral copulation," between all consenting adults.⁴⁵ The same could not be said of other states. For instance, as will be discussed more fully later in this chapter, Texas revised its sodomy law in 1973 to criminalise partners of the same sex only, decriminalizing non-procreative sex acts for different-sex couples.⁴⁶ William Eskridge notes that by the 1980s, "legislative repeal campaigns had reached the point of diminishing marginal returns." He claims that: "Sodomy reform was possible in California because gay people there were well-organized and TFV [traditional family values] groups were less prominent in politics." As this chapter has demonstrated, gay and lesbian activists built upon these conditions to further protect their rights in the workplace later in the decade. Eskridge notes that the other states that held back from

⁴⁵ Josh Sides, *Erotic City* pp.135-137. See also: William Eskridge, *Dishonorable Passions*, pp. 197-201.

⁴⁶ "Texas teacher challenges state law", *Gay Community News*, vol.7.20, December 8, 1979 in Box 496, Resource Center LGBT Collection, UNT.

legislating sodomy law reforms in this period were those most marked by a strong religious culture that was beginning to dominate politics, especially present in the Sunbelt, and which used gay rights to broaden their activism. He recalls:

The states that had not legislated reforms were the ones where the Southern Baptist Convention (the South and border states), the Church of Jesus Christ of Latter-day Saints (Utah, Idaho, Montana), and the Roman Catholic Church (New York, Massachusetts, Rhode Island, Michigan) retained a strong influence in local politics. Because it is much easier to block than enact laws, gay people faced difficult odds in these states. No state legislature repealed its consensual sodomy law between 1978 and 1983.⁴⁷

As a result, the focus for gay and lesbian activists returned to the courts in efforts to solidify their rights. However, the presence of sodomy laws became more sinister for gay men and lesbians as they became more visible in the late 1970s and 1980s. Politicians in Oklahoma and Nevada sought to increase discrimination against gays and lesbians, building upon their state sodomy laws to be used not only as a rationale for discrimination in employment and housing, but also to enshrine workplace discrimination into law. Teachers were quickly targeted, as politicians in these states tried to build upon the momentum encouraged by Bryant and Briggs. In Oklahoma, state senator Mary Helm succeeded in her attempt to ban gay/lesbian teachers and their allies, whereas Karen Hayes failed in her attempt in Nevada. These two episodes, in the late 1970s and culminating with a Supreme Court challenge in 1984, demonstrate the growing influence of the religious right in this period, and the perceived weaknesses of gay and lesbian communities in the states where they were less visible and politically connected as in California.

Oklahoma's Helm Act was introduced by state senator Mary Helm at the same time that the Briggs' Initiative was gaining traction in California. Helm copied Briggs in targeting not only gay and lesbian teachers themselves but their allies as well — proscribing all mention of homosexuality. The bill read: "Public homosexual conduct is defined under the

⁴⁷ William Eskridge, *Dishonorable Passions*, p.219. For further discussion on the importance of religion in the Sunbelt, see: Darren Dochuk, *From Bible Belt to Sunbelt*. See also: Kevin Kruse, *One Nation Under God: How Corporate America Invented Christian America* (New York: Basic Books, 2015).

measure as advocating, soliciting, imposing, encouraging or promoting public or private homosexual activity in a manner that creates a substantial risk that such conduct will come to the attention of school children or school employees.”⁴⁸ The Helm Bill was particularly disturbing considering that a spate of homophobic attacks by teenagers affiliated with the local Ku Klux Klan were being carried out in Oklahoma City at the time. David Newton notes: “Educators in the city who spoke out against these crimes would, under provisions of the Helm Act, have been subject to dismissal from their jobs.”⁴⁹ Nevertheless, Anita Bryant traveled to Oklahoma City to lobby for the bill in person, and it received support from across the state, “including a favourable comment from future chief justice of the Supreme Court, William Rehnquist, who compared homosexual behavior to a contagious disease that needed to be quarantined.”⁵⁰ The bill passed the Oklahoma House of Representatives with a vote of 88 to 2, while the State Senate passed it unanimously. The act went into effect in April 1978.⁵¹ In California John Briggs would have failed to have enacted his discrimination through the state legislature as it was more evenly divided between liberals and conservatives, and gay rights activists had success in coalition building. However, whereas Briggs had to rely upon a statewide ballot initiative, in Oklahoma the religious right dominated politics and thus it was far easier to push through legislation.

The success of Oklahoma’s law inspired an attempt to pass similar legislation in Nevada. Though unsuccessful, it is worth briefly exploring this episode before assessing how Oklahoma’s law was challenged. Karen Hayes, a Democratic State Assembly member who chaired the Judiciary Committee, announced in July 1979, “her intention to introduce a

⁴⁸ “Teachers Under Fire,” *Gay Community News*, May 13, 1978, Box 4, Fred Fejes Collection, Stonewall Archives.

⁴⁹ David E. Newton, *Gay and Lesbian Rights: A Reference Handbook, 2nd Edition* (Santa Barbara, CA: ABC CLIO, 2009) p.25.

⁵⁰ Carol Mason, *Oklahoma: Lessons in Unqueering America* (Albany: State University of New York Press, 2015) p.74 and Newton, *Gay and Lesbian Rights: A Reference Handbook*, p.25. Rehnquist compared gay liberation students to measles sufferers who need to be quarantined for the good of society. See: William Eskridge, *Dishonorable Passions*, p.190.

⁵¹ Newton, *Gay and Lesbian Rights: A Reference Handbook*, p.25.

bill virtually identical in wording and intent to... [the] ‘Briggs Initiative’” and to Helm’s bill. A fiscal conservative, Hayes sought to build upon efforts of Briggs and Bryant to shift the discourse away from rights for gay and lesbian teachers towards the threat posed to families and children. She argued “that her intent was not to deny anyone the right of free speech but simply to prevent homosexuals from ‘molesting my children.’”⁵² The announcement came at a time when Las Vegas Police Department appeared to be stepping up arrests of gay men in the city, and fuelling greater scrutiny of teachers. One newspaper reported:

In the most widely publicized case, a high-school business teacher was one of four men arrested by an undercover police agent whom each of the men had attempted to pick up at a pornography shop. That teacher is said to have decided to resign at the end of the current academic year.⁵³

Gay and lesbian activists in Nevada first organised themselves through the American Civil Liberties Union (ACLU) in 1977 and shortly thereafter formed their own group called Nevadans for Human Rights (NHR). The group was organised in Las Vegas from 1978 until 1985. Dennis McBride notes, however, that “Nevada’s great area and small population kept queer people isolated, while the state’s sodomy law kept them fearful and closeted.”⁵⁴ NHR was the brainchild of Sunbelt migrants, Lamont Downs and Steve Hinkson, who moved to Nevada from Rochester, New York and found the local gay and lesbian communities to be shockingly closeted in comparison. Downs and Hinkson also published *Vegas Gay Times*, which closely followed Anita Bryant and John Briggs’ campaigns.⁵⁵ The NHR linked Hayes’ bill not only to the above local concerns but also to the rising tide of conservative activism

⁵² “Vegas Gay Times (July 1979)” in *Gay Teachers Association Newsletter*, September/October 1979, Vol.2.7/8, in Gay Teachers Association file, Stonewall Archives. A short biography on the Clark County website notes Hayes’ fiscal conservatism but makes not mention of her homophobic stance. “Karen Hayes”, *Clark County Nevada News*, undated. Available: <http://www.clarkcountynv.gov/parks/Documents/centennial/commissioners/commissioner-k-hayes.pdf> (accessed 5/1/2018).

⁵³ “Nevada Teachers Threatened” in *Gay Teachers Association Newsletter*, June 1979, Vol.2.6. Unless otherwise stated, further references to this newsletter can be found in Gay Teachers Association file, Stonewall Archives.

⁵⁴ It would not be until 1993 that the state legislature repealed the anti-sodomy law. Dennis McBride, *Out of the Neon Closet: Queer Community in the Silver State* (North Charleston, South Carolina: CreateSpace Independent Publishing Platform, 2017) Kindle edition location: 64.

⁵⁵ *Ibid.* pp.72-75

nationwide. Indeed, they noted that Hayes was “regarded as being part of the whole movement against the ERA, gay rights, abortion, and so forth.” Hayes had made defeating the ERA a central plank of her campaign for election in 1975.⁵⁶ Further, Nevadans for Human Rights (NHR) recalled that “as a delegate to the 1977 International Women’s Year Convention in Houston, [Hayes] was reported to have spoken against feminist issues.”⁵⁷ Nevada gay and lesbian activists were concerned that the state had been purposefully selected by national conservatives as the next battleground to roll back rights after California and Oklahoma, supported by local politicians looking to shore up their own electoral base. Stephen Hinkson, chairperson of the NHR Speakers Bureau, argued that they were experiencing: “a stepped-up level of harrassment [sic] of gays in the state. We can’t be sure why it’s happening right now, but it seems someone wants to gain some electoral points at our expense.”⁵⁸

Had the bill been introduced, activists feared there was a good chance it would have passed the legislature. They cited the fact that Nevada politics was dominated by the Mormon Church, whose members campaigned vigorously the year before to defeat the Equal Rights Amendment (ERA) by a two-to-one margin. The NHR President Lamont Downs noted that during the ERA campaign “one of their leaflets, signed by a group called the ‘Pro-Family Coalition,’ warned that the ERA would legalize ‘homosexual marriages.’”⁵⁹ Hayes herself graduated from Brigham Young University, a Mormon institution, with a business degree in 1959.⁶⁰ Conversely, Downs also noted that had the bill been introduced: “we would

⁵⁶ Karen Hayes biography, *Clark County Nevada News*.

⁵⁷ “Nevada Teachers Threatened” in *Gay Teachers Association Newsletter*, June 1979, Vol.2.6. Though in popular memory the Houston conference is remembered fondly by feminists in fact it was a battleground that also attracted anti-feminist activists, such as Phyllis Schaffley and Karen Hayes. See: Sean P. Cunningham, *Cowboy Conservatism: Texas and the Rise of the Modern Right* (Lexington: The University Press of Kentucky, 2010). p.189; and, Marjorie J. Spruill, *Divided We Stand: The Battle Over Women’s Rights and Family Values That Polarized American Politics* (New York: Bloomsbury, 2017).

⁵⁸ *Gay Teachers Association Newsletter*, June 1979, Vol.2.6.

⁵⁹ *Ibid.*

⁶⁰ See Karen Hayes biography, *Clark County Nevada News*.

get a lot of support from the hidden liberal community here. A basic motivating force in the non-Mormon community here is to keep the government out of our lives.”⁶¹ This libertarian inflection upon gay and lesbian activism reappears elsewhere in the Sunbelt, as will be highlighted later in this chapter. The region’s wider conservative politics helped to orientate how activists differentiated their concerns and organising tactics to those in more liberal political climates on the West and East Coast. They saw the state as repressive and intrusive, an opinion that hindered expansive claims to rights, but one that is understandable given the role of the state in criminalising same-sex sexual intimacy through sodomy laws.

Hinkson argued that the effects of Hayes’ bill would be greater on heterosexual teachers supportive of gay rights than gay teachers themselves. The language that was suggested to be used in the bill was thought to target heterosexual teachers who had invited Hinkson’s speakers’ bureau into their classrooms. In contrast, Hinkson argued, “gay teachers would only go further in their closets,” and lamented, “that’s just the way it is in Nevada.”⁶²

Nevadans for Human Rights and other pro-gay and lesbian groups were beginning to build their organisations more openly at this point. Nevertheless, this episode highlighted their own concerns as to what was achievable in a more conservative state than California. “When asked what the response of the gay community in general would be, Hinkson remarked that ‘nine-tenths of them would do absolutely nothing. Nevada is such a redneck place that gays are even afraid of their shadows.’” His colleague, Lamont Downs, concurred: “Any kind of street demonstration is unthinkable at this point. Our movement in this state is at least four to five years away from that point.” Instead, they insisted that they would be able to challenge the bill, were it to be proposed, by raising money from closeted elites. Hinkson was quoted as noting that his organisation had “raised some money from the better-off closeted community, and have prepared educational materials to send to state legislators

⁶¹ *Gay Teachers Association Newsletter*, June 1979, Vol.2.6.

⁶² *Ibid.*

which quote a number of the opponents to Briggs from last year's fight."⁶³ Unlike teachers who actually fought the Briggs Initiative, however, Nevada activists shied away from grassroots- and union-led resistance to their state's version of the proposed ban. Whereas gay and lesbian activists in San Francisco, including Harvey Milk, cultivated strong relationships with both local business leaders and unions, in Nevada the movement was not yet as strong, visible or mature to have the confidence to more openly challenge the homophobes. Downs and Hinkson's status as recent migrants to the state also surely helped to tone their impression of what was possible in terms of gay and lesbian organisation and public backlash. They therefore demonstrate the difficulty gay Sunbelt migrants faced in their efforts to overcome the historically oppressive structures of the region. Indeed, it would not be until 1983 that the NHR held its first public, city-wide event in Las Vegas, a seminar.⁶⁴

In fact, Hayes dropped the bill before it ever became a formal proposal when her colleagues at the legislature made clear that they did not want have to vote on it as they were concerned that it was "a no-win issue."⁶⁵ Director of the Nevada State Museum, and gay rights activist, Dennis McBride has noted the contradictory nature of the state which sells itself as a tourist destination where one can live out their fantasies but at the same time enacted stricter laws to police the lives of gay and lesbian citizens. "Alone among the fifty states Nevada has most consistently and proudly promoted itself as socially libertarian—tolerant of activities the rest of the nation shunned. Gambling, prostitution, fast marriages and faster divorces are respectable industries in Nevada." Yet when it came to the gay liberation era of the 1970s, Nevada joined the coterie of other states with powerful Christian interests and "refined the state's sodomy law making it applicable only to gay people and increasing the penalties."⁶⁶ The Hayes episode highlights this contradiction. It may have

⁶³ Ibid. See also: *OutHistory*: <http://outhistory.org/exhibits/show/las-vegas/articles/nhr> (accessed: 30/6/2017).

⁶⁴ Dennis McBride, *Out of the Neon Closet*, pp.85-86.

⁶⁵ "Nevada Teachers Threatened" in *Gay Teachers Association Newsletter*, June 1979, Vol.2.6.

⁶⁶ Dennis McBride, *Out of the Neon Closet*, Kindle edition location: 33-45.

been the case that state legislators simply believed that the bill was a waste of time because gays and lesbians in Nevada were not perceived as a threat due to the presence of a strict sodomy law, or that politicians felt no good could come of creating a controversy that may have deterred potential, liberal, visitors from visiting the state's tourist meccas. In the end, Hayes received backing from only one other official, the School Board president, James Lyman. Lyman stated "his support of the bill as a way to fight 'sexual deviance.'"⁶⁷

In opposition to Hayes plan were newspapers in both Reno and Las Vegas, which printed "violently negative" editorials and letters. Additionally, a local teaching union, the Clark County (Las Vegas) Classroom Teachers Association, came out against the bill. President Tom Hood in an interview quoted by *Vegas Gay Times*: "attacked the bill as a 'modern-day witch hunt.'" He highlighted the hypocrisy in such a bill that: "If we're interested in morals... we would have to stretch it to include the single female teacher who goes to a singles bar to pick up men or the heterosexual man who solicits a prostitute." Likewise, the State Superintendent of Public Instruction in Reno, Ted Sanders, also came out against the bill. He was quoted as saying, "I don't believe that just because a person is homosexual, they should be banned from the classroom, then who's next?" He added that he would not oppose a homosexual teaching his four children, 'so long as that person didn't try to influence my child in that kind of direction.'"⁶⁸

Though it was fleeting, the Nevada episode highlighted a number of important issues to consider in the movement to ban gay teachers. First, the movement was not solely that of "New Right" Republicans. The role of Karen Hayes, a Democrat and later the first woman to "hold a leadership position for an entire session" in the Nevada state legislature, highlights that there were conservative Democrats who also attacked gay and lesbian rights when they

⁶⁷ *Gay Teachers Association Newsletter*, September/October 1979, Vol.2.7/8. For more on James Lyman see: Dennis McBride, *Out of the Neon Closet*, p.209.

⁶⁸ *Ibid.*

believed it was in their electoral interests.⁶⁹ Second is the importance of different religions in the perception of the South and Sunbelt as being favourable to attempts to instil homophobic workplace discrimination. The prominence of Mormonism in Nevada dovetailed with the prominence of southern Baptists in states such as Oklahoma and Texas — organised religion in this era grew steadily and united around opposition to gay rights. As noted earlier, William Eskridge has demonstrated that this era was marked by a newfound notion of unity between Christian denominations that “came together in the 1970s over issues of sexual morality.” A main driving force was “state promotion of homosexuality through sodomy reform and antidiscrimination laws [that] not only bound various religious groups in a common moral stance, but that stance brought them all into politics — a politics that changed the nature of religious faith in America.”⁷⁰ Finally, the limited response from gay communities to attacks on teachers in Nevada points to the closeted nature of sexual politics in some parts of the Sunbelt, even as the visibility of sexual minorities and political organisation was increasing elsewhere.

Although the attempt to pass legislation proscribing gay and lesbian teachers and their allies failed in Nevada, it remained on the books in Oklahoma until the mid-1980s. In fact, it can be argued this was the most successful homophobic teacher legislation introduced in the wave spurred by Anita Bryant. Activists in Oklahoma focused on challenges in the courts, with the National Gay Task Force making Oklahoma’s teachers a cause-célèbre. However, it would take years for the ban on teachers to be finally ruled unconstitutional and with limited ramifications.

After years of attempting to gain support for their challenge against the teachers ban, activists were buoyed by a decision of the Oklahoma Supreme Court in January 1982. For five years gay and lesbian student activists had been fighting for recognition of the

⁶⁹ According to interview with Assemblyman Robert R. Barengo, Hayes was the first woman in a position of power in the Nevada state legislature. Robert R. Barengo interview with Dana R. Bennett, *Nevada Legislature Oral History Project*, Reno, Nevada, October 7, 2008. Available: <https://www.leg.state.nv.us/Division/Research/LegInfo/OHP/transcripts/Barengo.pdf> (accessed May 2017).

⁷⁰ William Eskridge Jr. *Dishonorable Passions*, p.203.

Oklahoma Gay Activist Alliance at the University of Oklahoma. They finally won their case in front of the state supreme court in January 1982 in a five-to-two decision by the justices. The court agreed that “the students’ First Amendment rights of speech and association required recognition as a university organization.” Though the language used was hardly supportive of the students, arguing: “Mere undifferentiated fear or apprehension on the part of the University Regents or disagreement with philosophy no matter how repugnant to those officials,” was “not enough to overcome First Amendment Freedoms.”⁷¹

Legal activists from around the country who had been fighting on behalf of both gay students and teachers in Oklahoma noted the importance of this decision for other legal battles in the Sunbelt. “‘It is significant,’ said Don Knutson of Gay Rights Associates in San Francisco, ‘that this decision comes from one of the most homophobic Bible-belt states. We should learn from these decisions that our First Amendment claims will receive fair hearing from even the most conservative courts.’” Indeed, “Knutson predicted that the opinion would have an important impact on Gay Rights Advocates’ federal court challenge to Oklahoma’s version of Proposition Six... ‘This decision should prove decisive in convincing the federal court that First Amendment protections apply to all — regardless of sexual orientation.’”⁷²

Oklahoma teaching unions backed away from the fight in defence of their gay and lesbian members. Even though Oklahoma was one of a few states in the Sunbelt region which did not have a right-to-work statute in the early 1980s, unions claimed they were unable to support litigation. Weldon Davis, the director of the Oklahoma Education Association, noted “his organization had not been involved in the suit because the membership does not support non-discrimination based on sexual preference.” He nevertheless accepted that “the law was, in his view, ‘clearly discriminatory’ and he expected it to be ‘struck down once it got outside of Oklahoma.’ He concluded, ‘Sometimes we allow

⁷¹ “Oklahoma activists win,” *Gay Teachers Association Newsletter*, April 1982, Vol.5.4. See also William Eskridge Jr. *Dishonorable Passions*, pp.225-228.

⁷² *Ibid.*

others to make the hard decisions for us.” This episode highlights the issue of a top-down approach in tackling homophobic laws and workplace discrimination. National activists from top law firms were able to bring a campaign to challenge Oklahoma’s homophobia, yet teachers in the state had little recourse while they were waiting for a decision, which could take years. As Davis suggests in claiming the union had its hands tied because it had no specific policy, one strategy to counter this would have been to pass motions calling on the union locally to defend its gay and lesbian members — as had happened in California during the battle against the Briggs Initiative.⁷³ At the same time, workers must be understood as products of their environments. Enshrining the rights of gay and lesbian workers in this era was more likely among unionised workers who had some say in the running of their organisations and provided anti-homophobia education, as Miriam Frank’s research has demonstrated.⁷⁴ Gaining workplace rights also required the presence of openly gay and lesbian workers willing to educate their colleagues, as demonstrated earlier in California by BACABI and Union WAGE’s activism.

In 1984, the Tenth Circuit Court of Appeals ruled the Helm Act unconstitutional. This led to a fight before the US Supreme Court the following year. Arguing to uphold the ban on gay teachers, their allies, and any positive mention of homosexuality in schools, Dennis Arrow, for the Oklahoma City School Board said: “students have the right to learn ‘traditional, fundamental, cultural values... Those values do not include being encouraged to commit any type of crime. Oklahoma’s teacher-fitness law defines homosexual activity as sodomy, which is a crime under state law.” As such, in seeking to uphold their homophobic discrimination against teachers, the New Right mobilised the broader illegality of homosexual acts through

⁷³ “Court decides Oklahoma law against gay teachers is unconstitutional” in *Gay Teachers Association Newsletter*, May 1984, Vol.7.5.

⁷⁴ See Miriam Frank, *Out in the Union*.

sodomy laws which were rarely legally enforced but nonetheless present in Oklahoma's penal codes.⁷⁵

US Supreme Court Justices, including William Rehnquist, who had spoken positively about the law at the time of its inception, appeared uneasy about hearing arguments for or against, and were concerned about the precedent they might have to enforce. Rehnquist asked repeatedly whether the law had ever actually been enforced, to which lawyers on both sides answered no. Yet Lawrence Tribe, a Harvard Law School professor arguing on behalf of gay rights organisations, used his response to Rehnquist to point to how the law limited free speech of teachers. "The chilling effect (of the law) is so thorough, that members of the gay community are afraid to speak out,' he said. 'It tells teachers: 'You'd better shut up about this subject... or you might be fired.'"⁷⁶

Oklahoma's ban on gay teachers and their allies was never actually used and the Supreme Court ruled it unconstitutional in 1984. Activists who relied on litigation rather than street protests, like Jean O'Leary, the National Gay Rights Advocates executive director, saw the ruling as a victory, stating that "the court vindicated our employment rights and the rights of all people to discuss homosexuality." In actuality, the ruling offered little for gay activists to celebrate. Only the portion of the law that punished "teachers who advocate or encourage homosexual activity - was unconstitutional." In doing so the court overturned a "10th Circuit Court of Appeals [decision that] said the state was within its rights to fire or punish teachers who engage in public homosexual activity." This Court of Appeals decision had been due to the fact that the state of Oklahoma also had an anti-sodomy law on its books that criminalised all homosexual sex as unlawful. The ruling highlighted the need to challenge not only individual issues of workplace discrimination, education sector or otherwise, but to also challenge wider criminalisation of gay men and lesbians through sodomy laws where they

⁷⁵ "Supreme Court skeptical of gay rights case" in *The Daily Texan*, January 15, 1985 in Austin Lesbian/Gay Political Caucus Papers box 3.1, AHC-APL. See also: Ellen Ann Anderson, *Out of the Closets and into the Courts* (Ann Arbor: University of Michigan Press, 2006) p.84; See also William Eskridge Jr. *Dishonorable Passions*, pp.225-228.

⁷⁶ "Supreme Court skeptical of gay rights case" in *The Daily Texan*, January 15, 1985.

remained on the books. Though rarely used, sodomy laws were regularly relied upon to pressure open or suspected gay and lesbian teachers from their jobs.⁷⁷

Texas

In Texas, the presence of an anti-sodomy law, alongside a lack of union power, necessitated a different strategy to that in California. Rather than utilising municipal or statewide referenda, officials in Texas first sought to exclude gay teachers on a citywide basis, as was the case in Dallas, and then reverted to relying upon statewide sodomy laws to force gay teachers from their workplaces, as had also been the case in Oklahoma. In challenging these attempts, and in seeking to remove Texas's sodomy law altogether, activists mobilised an argument that both prioritised the role of teachers as respectable, and contributing members of society, while at the same time trying to downplay the ways in which access to children would encourage homosexuality. In harnessing notions of professionalism and respectability, gay political activists in Dallas sought not only to win their rights but also gain allies among business executives and appeal to other booster elites.

Dallas School District Superintendent Nolan Estes introduced plans to fire gay teachers in November 1977. Estes was building upon the success of "Save Our Children" earlier that year, telling a press conference that "any school teacher identified as a homosexual will be asked to resign immediately, regardless of whether the person has engaged in improper conduct... we're not going to have our young people exposed to that." In the year before he made his announcement, Estes had pressured two gay teachers to resign. The Superintendent was also buoyed by the Supreme Court's refusal to hear the appeal of James Gaylord, a teacher in Tacoma, Washington, who was fired for being gay in 1972. Estes noted that he was "all the more confident in firing gays" because of the court's

⁷⁷ *Gay Teachers Association Newsletter*, May 1984.

refusal.⁷⁸ Local gay leaders decried Estes' statement, and warned of the likelihood of a "witchhunt" in the school system.⁷⁹

Nolan Estes defied easy political labelling. On the one hand he was hired by a liberal school board impressed with his Harvard education and his being credited with helping to de-segregate Dallas schools. Yet, on the other hand, he was described as being a Baptist, and commentators noted that his impact was such that the school district "swung full-circle to become a conservative board of education." A profile of him published later in his career described his school politics as "pragmatic but so murky that, at times, liberals complained that he was slightly to the right of Henry VIII while conservatives believed that he was a flaming liberal."⁸⁰ Apparently encouraging this reputation as a political butterfly, Estes dropped the issue of gay and lesbian teachers.

In a recap of the year's events, *D Magazine*, a Dallas area monthly, handed Estes the title of "fastest forked tongue in the west" and claimed that his threat to fire gay teachers had been an impulsive remark that he reneged on when he was informed that: "in all likelihood, the DISD employs some 500 homosexual teachers. Whereupon he performed some of his classic verbal backpedaling [sic]."⁸¹ In reversing his position he stated that: "homosexual teachers have a right to their private lives, as long as their professional conduct is not affected."⁸²

Evidently Estes had hoped to score political points by joining the bandwagon of scapegoating homosexual teachers, but quickly came to realise that those teachers were apparently indispensable in Dallas' rapidly growing school district. Gay rights activists in

⁷⁸ "Dallas, D.C. vote on gay teachers" in *Advocate*, November 30, 1977, p13, in Box 4, Fred Fejes Collection, Stonewall Archives.

⁷⁹ *Ibid.*

⁸⁰ Eric Miller, "Whatever Happened To Nolan Estes?" in *D Magazine*, August 1983, available online: <https://www.dmagazine.com/publications/d-magazine/1983/august/whatever-happened-to-nolan-estes/> (accessed 30/6/2017).

⁸¹ "Best and Worst" in *D Magazine*, January 1978, available online: <https://www.dmagazine.com/publications/d-magazine/1978/january/best-worst/> (accessed 20/8/2017).

⁸² "Homosexual says state law produces 'chilling effect'" *Dallas Times Herald*, November, 21, 1979.

Dallas then found they had some clout. Even as a minority less visible than their counterparts in California and Florida, they too could have a big impact if they mobilised effectively.

Though Estes was operating on a local, municipal level, the episode highlighted to gay and lesbian community leaders that Texas was not immune from the movement to “Save Our Children” and a statewide fight was needed to secure their constitutional and workplace rights. At that time the Texas sodomy law, Section 21.06 of the penal code, made it a Class C misdemeanour for persons of the same sex to engage in sexual intercourse, with the punishment being a fine of \$200 upon conviction.⁸³ Though Texas “repealed laws prohibiting sodomy between men and women, a 1973 revision of the penal code included the section outlawing sexual relations between members of the same sex.”⁸⁴ In 1979, the Texas Human Rights Foundation (THRF) launched litigation to have Section 21.06 ruled unconstitutional. They argued that defeating the sodomy law was crucial for other battles for gays and lesbians in the state:

21.06 is the basis for discrimination against homosexual persons in jobs, housing, and child custody cases. It is a violation of our basic American rights as guaranteed by the Bill of Rights.⁸⁵

One teacher in Texas took on 21.06 as a way to protect his career, and to send a message to his students. Donald Baker was portrayed by THRF as a perfect plaintiff to take on 21.06 in the courts: a Dallas native, a highly commended veteran, and a school teacher. He was active in the gay rights movement and served as a Democratic Party precinct chairman.⁸⁶ Baker was the president of the Dallas Gay Alliance (DGA) and was playing an

⁸³ “Texas teacher challenges state law”, *Gay Community News*, vol.7.20, December 8, 1979 in Box 496: 21.06 Clippings, Box 496, Resource Center LGBT Collection, UNT.

⁸⁴ “Homosexual says state law produces ‘chilling effect’” *Dallas Times Herald*, November 21, 1979.

⁸⁵ Donald F. Baker, “Texas teacher clarifies suit” in *Gay Teachers Association Newsletter*, March 1980, Vol.3.3.

⁸⁶ “Baker vs. Wade” leaflet, 1981 in Austin Lesbian/Gay Political Caucus Papers box 1.12, AHC-APL.

important role in convincing the Texas Democratic Party to support the repeal of 21.06, which they finally would in their platform for the 1980 elections.⁸⁷

Before launching their lawsuit THRF sought advice from activists in California who had been involved in stopping the Briggs Initiative. They noted that the campaign started very early, while Briggs was still collecting signatures for the initiative to be placed on the ballot. Of most interest to the Texas activists was public opinion polling carried out by the Californians: “the polls showed that voters were deeply worried about governmental and corporate invasions of their personal privacy — and that protecting this privacy was more important to them than trying to regulate other people’s sexual behavior to conform with their own moral beliefs.”⁸⁸ THRF activists also paid special attention to the ways in which Californian activists had been able to speak to anti-tax sentiments in their campaign, as well as noting the importance of highlighting that all workers were at risk of discrimination.⁸⁹ THRF sought advice from Californian activists and interpreted the information to fit their own political environment.

Baker filed his suit in November 1979. He argued that 21.06 infringed on his first and fourteenth amendment rights because the statute was based on religious sentiment, and that it denied due process and equal protection. In launching his lawsuit charging that the Texas sodomy law was unconstitutional, Baker identified himself as “a practicing homosexual, who regularly engages in private homosexual acts and who is constantly in fear of criminal prosecution.” He added to this that the law had “psychologically destructive effects on homosexuals.” In pointing to the effects of sodomy laws upon the workplace, he stated: “The law intimates that the homosexual is a criminal,” and as such he was

⁸⁷ “Out of the Closet and into City Hall: Will Dallas gays change the face of city politics” in unknown publication, July 1983 in Box 4B33, THRF, UT-Austin.

⁸⁸ “How we won” in Correspondence 1979, Box 4B33, THRF, UT-Austin.

⁸⁹ *Ibid.*

“constantly faced with the loss of his job and livelihood.”⁹⁰ Whereas Californian teachers reacted to a political threat in which the Briggs Initiative portrayed them and their allies as being a vague danger to children, here Baker went on the offensive against pre-existing homophobic laws that had a far-reaching effect upon the lives of gay and lesbian Texans.

Baker initially prioritised his role as a teacher, noting that he pursued the lawsuit “in part to demonstrate to young people the effectiveness of the American justice system.” He noted that: “‘I pursued this because I am a teacher and we teach children to have faith and confidence in the American system,’ Mr. Baker said. ‘We teach that people who are unjustly treated can seek redress through the system.’”⁹¹ Having taught sixth-grade social studies and languages since 1975, Baker noted “his homosexuality was never an issue with his employers in his school district.”⁹² Yet Baker believed that teachers would be positively impacted by a repeal of 21.06, perhaps more so than other types of workers in Texas. He wrote to the Gay Teachers Association newsletter shortly after his lawsuit was announced, noting: “It is common knowledge in Texas that the ‘moral turpitude’ or ‘moral propriety’ clause used to sanction dismissals [of teachers] refers to, among other things, homosexual conduct. So with 21.06 gone it will be more difficult to dismiss a teacher because of his/her sexual orientation.”⁹³

Although selected as the plaintiff because of his stature in the local community as an educator, Baker attempted to play down his teaching career during the litigation. In contrast to Tom Ammiano, who was an openly gay teacher in San Francisco during the Briggs fight, Baker did not make his teaching career a central part of the campaign. “‘It just so happens that I am an educator,’ he said.” Baker feared “that controversy over his case might bring the

⁹⁰ “Curb on Homosexuality in Texas Is Challenged in Suit by Teacher”, *New York Times*, November 25, 1979, p.66. See also: “Gay teacher sues in Texas” in *Gay Teachers Association Newsletter*, January 1980, Vol.3.1.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Donald F. Baker, “Texas teacher clarifies suit” in *Gay Teachers Association Newsletter*, March 1980, Vol.3.3.

issue of homosexual teachers before the school board.”⁹⁴ This stands in direct contrast to Ammiano’s strategy against Briggs in which the teacher called for others to come out of their closets, believing that a strategy of visibility would win the gay movement allies. Further Baker argued that: “I didn’t bring my sexuality into my occupation because there’s no need for it” to be mentioned, adding that “many people” in the Dallas Independent School District “knew but did not make an issue of it because I did not, shall we say, flaunt it.”⁹⁵ Yet Baker’s own experience of coming out at school challenged the notion that rights for gay and lesbian teachers could not be won in Texas.

While working as a teacher, “Baker appeared on television to debate evangelist James Robison. For the first time, his students’ families and his co-workers learned of his homosexuality.”⁹⁶ Robison was the archetypal Sunbelt televangelist who used his weekly broadcasts from outside of Dallas to rail against the world’s evils and promote social conservatism.⁹⁷ In an episode months after the murders of San Francisco Mayor George Moscone and openly gay Supervisor Harvey Milk, Robison blamed the slayings, as well as the recent Jonestown Massacre, on San Francisco’s acceptance of homosexuality. In the same episode Robison praised Anita Bryant and attacked gay men as child molesters and murderers. Don Baker and the Dallas Gay Political Caucus successfully pressured the local television network, WFAA-TV, to allow them a fifteen minute segment in response to Robison in which they invited various local pastors to debate them. The channel caused further furore when they dropped Robison’s show altogether, claiming it violated fairness

⁹⁴ “Homosexual says state law produces ‘chilling effect’” *Dallas Times Herald*, November 21, 1979.

⁹⁵ “Curb on Homosexuality in Texas Is Challenged in Suit by Teacher”, *New York Times*, November 25, 1979, p.66. See also: *Gay Teachers Association Newsletter*, January 1980, Vol.3.1.

⁹⁶ “Out of the closet, into the fire” *Dallas Morning News*, August 9, 1981.

⁹⁷ For more on James Robison see: Sean P. Cunningham, *Cowboy Conservatism*, p.188; see also references in Darren Dochuk, *From Bible Belt to Sunbelt*.

doctrines. In response Anita Bryant came to Robison's defence claiming: "This country is in very serious trouble when religious leaders are muzzled."⁹⁸

Baker was well placed to debate Robison: as the son of a Baptist preacher he had developed numerous arguments as to why religion and sexuality were compatible.⁹⁹ In debating Robison, and outing himself to co-workers and the parents of pupils, Baker brought visibility to gay Christians as well as gay teachers in the South and caused an understandable storm in his community. "Several parents called the school, Baker recalls. Half of the feedback was positive; half was negative. Of his 60 students, one was pulled from his class, at the request of the parents." Yet, he notes that: "two days later, nothing had changed... the students still looked for the encouragement," and he was not forced out of the school district.¹⁰⁰

Whether Baker wanted his profession to be part of the battle or not, being a teacher did come up in the litigation as Dallas District Attorney Henry Wade and the other defending Texas attorneys argued Baker had no right to bring the case because he had never been convicted of sodomy. However, as has been noted above, sodomy laws were only rarely used to actually convict someone of homosexual sex. What was more common was to use the fear of conviction to force someone to resign from their job. Indeed, Baker countered to Wade that because the law existed he "lived in fear" of losing his job if anyone found out he was gay. In addition a member of the Dallas School Board "was called to the stand to testify about what impact a conviction under Article 21.06 could have on a Dallas teacher... She said a teacher convicted of violating Article 21.06 might be dismissed under at least three provisions in DISD's personnel guidelines."¹⁰¹

⁹⁸ "Robison case 'tactics' shock Anita Bryant", *Dallas Morning News*, March 17, 1979 in Folder 43: "James Robison "Religion", Resource Center LGBT Collection, UNT.

⁹⁹ Ibid.

¹⁰⁰ "Out of the closet, into the fire" *Dallas Morning News*, August 9, 1981.

¹⁰¹ "Gay man says he's 'typical'" *Dallas Times Herald*, June 16, 1981 in Folder 48: Newspaper Clippings, 1980-1988, Resource Center LGBT Collection, UNT.

In 1982, Baker celebrated a victory when a District Judge ruled that the sodomy law was unconstitutional. Judge Buchmeyer argued 21.06 “violated constitutional guarantees of privacy and equal protection under the law.”¹⁰² A backlash was quick to surface in response to the decision with some conservative commentators decrying the repeal. In response the liberal *Austin American-Statesman* highlighted the contradictory nature of Texan politics:

For a people who pride themselves on independence and who don't like government intrusion, Texans seem to have a penchant for permitting the government to do just that. The state has no business peering into the private lives of consenting adults.¹⁰³

When it was announced that the state, under guidance from newly elected Democratic Attorney General, Jim Mattox, would not challenge the decision, enraged officials sought both independent legal challenges and new legislation to reinstate the ban.

Republican Bill Cerveha, a state legislator for the Dallas “Telecom Corridor” of Richardson, quickly attempted not only to reinstate the ban on sodomy but also to drive gays and lesbians from public view. Cerveha attacked Mattox for dropping the state’s appeal, noting: “This action was taken despite the fact that Texas has had some form of sodomy law on its books since 1860 and despite the fact that the majority of Texans stand opposed to putting any sort of public seal of approval on homosexual activity in our state.” Cerveha then went further to argue that the recent discovery of the AIDS was a reason to go beyond simply reinstating the sodomy ban but to further strip rights of gay men and lesbians.¹⁰⁴ Cerveha’s bill would target teachers specifically but it would also “make felons of all gay citizens and would be used to keep gay people from jobs in food handling... law enforcement, and health care, ‘or any other position of public leadership or responsibility.’”¹⁰⁵

¹⁰² “Texas Ban On Homosexual Conduct Struck Down” in *New York Times*, August 18, 1982. Also see: “Texas Ban Banned” in *Gay Teachers Association Newsletter*, September/October 1982, Vol.5.7/8.

¹⁰³ “Homosexual rule sensible decision” in *Austin American-Statesman*, August 19, 1982.

¹⁰⁴ Letter from Bill Ceverha, March 23, 1983 in Austin Lesbian/Gay Political Caucus Papers, Box 1.16, AHC-APL. Also see Ellen Anderson, *Out of the Closets and into the Courts*, p.79.

¹⁰⁵ Dallas Gay Alliance letter from Mike Stewart, undated [1983] in Austin Lesbian/Gay Political Caucus Papers, Box 1.16, AHC-APL.

Gay and lesbian activists wrote to members of the Criminal Jurisprudence Committee who were hearing testimony on the bill, and donated money for lobbying efforts. Ceverha's bill stumbled through committee hearings and was dropped when the legislative session ended.¹⁰⁶

At the same time that legislators sought to reinstate the sodomy ban, events elsewhere in the state suggested gay teachers were still under scrutiny. An episode in a Houston school district highlighted the need for further workplace protections for gay and lesbian teachers. James Frein, a twenty-five year old, sixth grade English teacher was forced out of his job when students found a sealed envelope addressed to the *Advocate* personals section in his briefcase. The schoolgirls opened the envelope, read it in their restroom and then handed it to other teachers. "Frein characterized the letter as an attempt to 'meet with other Texas men. It said that I wasn't into drugs and that I did have a lover.... The letter brought out that I was gay.'" An attorney for the Alief Independent School District argued that the letter "was a solicitation of sexual relations from other readers of the publication." Reportedly the envelope also included a photograph of Frein, "partially clothed."¹⁰⁷

School administrators, fearing a backlash from parents, pressured Frein to resign. "Of course you'll lose your respect as a professional over this," an administrator told him. A Texas gay community newspaper reported that he was then told to sign a blank piece of paper, presumably to signal his resignation. "Frein asked for a transfer to another school," but was told "another position was not available." Frein signed the blank sheet of paper and left. Unlike in the case of teaching unions in Oklahoma, workplace representation was forthcoming for Frein in Texas. Frein "contacted Sam Blackman, a union representative with the Alief Education Association which is affiliated with the Texas State Teachers' Association.

¹⁰⁶ Ibid.

¹⁰⁷ "Houston teacher fired over ad response" in *Gay Teachers Association Newsletter*, January 1984, Vol.7.1.

Blackman advised Frein to retract his resignation, which Blackman saw clearly as being made under duress.” Frein would seek support from the wider Texas gay and lesbian community for his battle to be reinstated.¹⁰⁸

Meanwhile, Don Baker’s 1982 victory in having the sodomy law ruled unconstitutional was short-lived. Separate from Bill Ceverha’s attempt to re-legislate the homophobic policy, Potter County (Amarillo) District Attorney Danny Hill appealed the case when the Texas Attorney General refused. Hill argued that the sodomy law was legal and simply continued centuries old understanding that sodomy was wrong. Furthermore, Hill and others used the burgeoning AIDS crisis to argue the need for Texas’ sodomy law to be reinstated. “Dallas Doctors Against AIDS” (DDAA), a group of physicians who were encouraged by Hill and Cerveha, used the AIDS crisis to call for the reinstatement of sodomy laws. They argued that “homosexual acts may present a public health hazard” and called on the court to “reinstate the Texas law banning such acts.”¹⁰⁹ In doing so they echoed the earlier sentiment of William Rehnquist who as noted earlier, “compared homosexual behavior to a contagious disease that needed to be quarantined” in the years before the AIDS crisis.¹¹⁰ A newspaper editorial in *The San Antonio Light* challenged DDAA and noted it would have a more negative impact on the spread of the disease: “Hill’s reasoning, we would suggest, is specious. The law is more likely to make those who may have the disease even more reluctant to seek medical help. It gives them another reason to fear being ‘found out.’”¹¹¹

In 1985, the 5th U.S. Circuit Court of Appeals, in a nine-to-seven decision, ruled in favour of Hill that the sodomy law was indeed constitutional, citing a previous ruling in

¹⁰⁸ “Texas teacher fired after administrators discover he’s gay” in *Dallas/Fort Worth Gay News* Issue 60, October 28, 1983 p.1 in Dallas/Fort Worth Gay News in Box 95, LGBT periodical collection, NYPL.

¹⁰⁹ “Group seeks reinstatement of law in effort to fight AIDS” in *Dallas Morning News*, 2-25-83 in Box 4B33, THRFR, UT-Austin.

¹¹⁰ David E. Newton, *Gay and Lesbian Rights: A Reference Handbook*, p.25.

¹¹¹ “Homosexual law ruling is a threat to privacy” in *The San Antonio Light*, September 1, 1985 in Box 4B33, THRFR, UT-Austin. See also: Ellen Ann Anderson, *Out of the Closets and into the Courts*, pp. 78-80.

Virginia that sodomy laws were valid due to “the strong objection to homosexual conduct, which has prevailed in western culture for the past seven centuries.”¹¹² Baker announced that he would take his appeal to the US Supreme Court and was now supported by a growing number of liberal editorials in Texas. *The San Antonio Light* argued: “Last week’s federal appeals court decision to reinstate a Texas statute [sic] outlawing homosexual sodomy, in effect reinstates a law serving no worthwhile purpose.” Further the editors noted the use of sodomy laws for employment discrimination: “the law can be used to discriminate against gays. If the law stands, potential employers can refuse to hire them on the basis that, in Texas at least, they are criminals.”¹¹³ *The Dallas Times Herald* also bemoaned the court’s overturning over the anti-sodomy law, arguing that AIDS should not have been brought into the case, and that Hill should not have been allowed to represent the whole state. They argued the statute: “is unneeded and is clearly unenforceable, and its purpose is more symbolic than real. More than anything else, it subjects a minority to embarrassment and scorn, and that is not in the American tradition.”¹¹⁴

Baker’s challenge did make its way to the Supreme Court but the justices refused to hear the case one week after they upheld anti-sodomy laws in their *Bowers v. Hardwick* decision in 1986. Texas’s anti-sodomy law remained in place until the court’s 2003 decision in *Lawrence vs. Texas* finally ruled the laws unconstitutional.

Contrasting Texas and California Activism

While inspired by Californian activism against Briggs, Baker and his allies intentionally sought to be distinct from those they viewed as West Coast radicals. In explaining how the Dallas Gay Alliance (DGA) came into being he states: “Of course, the whole concept of gay rights was novel to us”:

¹¹² “An unenforceable law” in *Dallas Times Herald*, September 1, 1985 in Box 4B33, THFRF, UT-Austin.

¹¹³ “Homosexual law ruling is a threat to privacy” in *The San Antonio Light*, September 1, 1985.

¹¹⁴ “An unenforceable law” in *Dallas Times Herald*, September 1, 1985.

We didn't have a lot of examples out there to follow. What we did see was a lot of things on the East and West Coasts that we didn't feel comfortable with as far as a style in gay activism. And that's why the alliance took on the personality we did of being very balanced. Very Dallas. Because we thought that the gay community in Dallas represented a crosscut of the city as a whole, which tended to be more business and conservative in nature. Being more realistic, we saw that to accomplish the things you want, you have to come to terms with your environment and deal within that structure, If we were to make formidable inroads, we would have to accommodate by being more business-like in our approach.¹¹⁵

Echoing this sentiment, another activist used Baker's initial 1982 victory to call for an incremental strategy that sought respect before specific rights or claims to power. They argued that: "Before there can be anti-discrimination ordinances, before there can be appointments to city boards and commissions... conservative Dallas has to see that we're not the vile, venomous creatures they imagine."¹¹⁶ These activists may have had a point about the use of West Coast imagery in a strongly conservative Dallas. Robert Self notes in reference to Anita Bryant's initial campaign that she successfully mobilised images to suggest gay men were seeking only sexual gratification:

Television ads played an important role in swaying Dade County residents. A typical spot played footage of bare-chested men and drag queens, viewers were exhorted to protect their children's innocence.¹¹⁷

Though Baker may have had a point about the ruinous effect stereotypically gay imagery could have in the South, in practice he reflected conservative concerns that business elites would not be convinced of the need to enshrine gay rights on behalf of gay men if they realised that gay men in Texas were anything other than "professionals" like themselves. In doing so, the politics of the DGA and other "professional" gay organisations replicated the conservative culture and politics of Sunbelt business elites they hoped would fight for their rights.

While grassroots activists in California could perform their politics more openly, and in doing so, built an impressive coalition alongside trade union leaders, African-American

¹¹⁵ "Divided they stand" *Dallas Life Magazine*, May 17, 1987.

¹¹⁶ "Out of the Closet and into City Hall: Will Dallas gays change the face of city politics", unknown publication, July 1983 in Box 4B33, THRFR, UT-Austin.

¹¹⁷ Robert O. Self, *All in the Family*, p.244.

and Chicana(o) groups, the Dallas Gay Alliance (DGA), Don Baker's political vehicle and the driving force behind the 21.06 challenge, sought instead to gain access to backers in the city's wealthiest boardrooms through claims to respectability and in being less ostentatiously visible. Baker described the DGA as "a very impressive group, including attorneys and doctors and teachers, people who knew a lot about the 'businessicity' [sic] of accomplishing goals and objectives."¹¹⁸ Furthermore, another DGA member, Mike Stewart noted: "On our board we have well-placed managers, entrepreneurs, officers of major corporations, ad executives and educators. In our membership of 600 active members, we have many doctors, attorneys and financiers."¹¹⁹ As such, the strategy of not only working "within the system" and relying upon business elites highlighted the weaknesses of grassroots gay rights activism in Texas. Expanding on his claim, Stewart points to the fact that this strategy was an extension of the class position and general politics of the DGA: "'Were it not for the gay issues, most of our members would fall squarely to the right of the center line,' Stewart says. 'We've kept a much lower profile than the 'Coast' gays, but I think we've been more effective. Our progress is probably more secure.'"¹²⁰ This may seem like an odd assertion but for Texas activists, countering a political culture that was less welcoming to the intervention of gays and lesbians than in California, it seemed that their rights were more secure than if they were more visible and openly interventionist in local politics. This issue of visibility and political intervention would arise in Houston in 1985 when the growing influence of the Gay Political Caucus drew a backlash from local political and business elites, the subject of the next chapter.

With the benefit of hindsight, this statement appears to have been premature. The fact that the sodomy law was reinstated and continued to be in place until 2003 demonstrates that it would take decades for this approach to bear fruit. In the meantime,

¹¹⁸ "Divided they stand" *Dallas Life Magazine*, May 17, 1987.

¹¹⁹ "Out of the Closet and into City Hall" in unknown publication, July 1983.

¹²⁰ Ibid.

Texas re-affirmed its right-to-work statute in 1993 when lawmakers updated the state labour code.¹²¹ This continued to limit the power of unions to provide solidarity and support to gay and lesbian workers. A coalition that prioritised unity between gay and lesbian teachers and their unions may have demonstrated the mutual support that both could offer one another, and provide a more successful route to those “formidable inroads” Baker sought. Scott De Orio has assessed the Baker case as an important marker in the shift towards the creation of “bad gay sex” in that claims to privacy that emerged in the arguments for sodomy law to be struck down mobilised heteronormative claims and therefore left behind those whose sexual activities took place outside of the home.¹²² De Orio rightly argues that: “In the *Baker* case, gay activists were constrained by what the political scientist Doug McAdam calls the ‘structure of political opportunities’ in which they were operating.” Further he continues, “gay activists... were constrained by the larger political culture that limited the types of arguments they could make about sexual freedom if they wanted to achieve their goal of sodomy law reform.”¹²³ As has been demonstrated in this chapter, it was in this space that DGA looked towards corporate executives and business leaders for support. Yet in doing so they demonstrated the ways in which notions of professionalism and class diverged between Texan and Californian gay economic activism in this moment. This episode is therefore important in understanding the way in which the reliance upon corporate support became more widely prioritised in the 1980s and 1990s.

While Donald Baker should be commended for taking on the homophobic establishment, at the same time the reliance upon him as an individual, and the strategy of gaining support from business elites rather than build grassroots organisations, acted as a

¹²¹ Texas Labor Code: Title 3. *Employer-Employee Relations*, Chapter 101. Labor Organizations. Enacted: Sept. 1, 1993. Available: <https://statutes.capitol.texas.gov/Docs/LA/htm/LA.101.htm> (accessed October 2018).

¹²² Scott De Orio, “The Invention of Bad Gay Sex: Texas and the Creation of a Criminal Underclass of Gay People”, *Journal of the History of Sexuality*, Volume 26.1, January 2017. p.75.

¹²³ *Ibid.* p.81.

precursor to the rightward shift and mainstreaming of gay and lesbian politics.¹²⁴ In Dallas, activists saw more legitimacy in a top down approach to winning workplace rights, and their broader goal of decriminalising sodomy laws, through a reliance upon business executives. This precipitated what would become a key strategy for gay and lesbian activists in the Sunbelt over the following decades. From teachers in Texas to Cracker Barrel servers in the Carolinas, activists in the Sunbelt came to see accessing corporate boardrooms as a more viable strategy to win rights in their region. In doing so they mirrored the booster elites whose discrimination oppressed them in the first place.

In tackling Texas' homophobic anti-sodomy laws and in attempting to protect gay and lesbian teachers' rights in the workplace in Oklahoma and Nevada, activists in these states were inspired by their peers on the West Coast, but also reflected the conservatism of their own region. New Right activists had varying success in implementing their homophobic education bans, while gay rights activists similarly had varying success in opposing them. The above episodes highlight the distinct class and regional interests that united both gay rights activists and the homophobes they reacted against. These debates were of course not limited to debates within K-12 education, but emerged in other industries too. Nor have the class dimensions of gay activism been limited to Texas. The next chapter will nonetheless focus on Texas to examine how gay and lesbian activists pushed for workplace rights in Houston, and the backlash that emerged in the wake of Donald Baker's brief victory over anti-sodomy laws.

¹²⁴ Urvashi Vaid, *Virtual Equality*.

Chapter Two

Homophobic Booster Activism in Houston

Donald Baker's challenge to the Texas anti-sodomy law opened the door to new drives for gay and lesbian rights across the state. Although Penal Code 21.06 was to be reinstated in 1986 when the Supreme Court refused to hear questions of constitutionality, the space opened up by the legalisation of same-sex sexual practices provided activists in Austin, Dallas, Houston and beyond with a strong argument for workplace protections, namely city-wide ordinances banning employment discrimination. At the same time, however, the temporary legalisation of sodomy and the media attention it garnered also provided the background, alongside the AIDS crisis, for a backlash against gay and lesbian rights. Houston Chamber of Commerce boosters led the charge against city-wide non-discrimination ordinances while using the opportunity to push back against an insurgent liberal coalition that had come to power in local government earlier that decade. To do so they invoked the fear of AIDS and their Christian morality to mobilise public opinion against the civil rights of sexual minorities. Yet in arguing that rights for gays and lesbians would turn off investors from the city, the Chamber also intervened by using an economic argument that bias was good for the health of business in Houston. Sexual minorities became a scapegoat for the economic turmoil the city was beginning to face as oil prices began to drop and boosters fought to retain their influence on Houston politics. In doing so, boosters drew upon rhetoric previously mobilised against affirmative action and organised labour.

In 1984, Houston's Gay Political Caucus (GPC), working with the downtown liberal establishment, secured nondiscrimination protections. However, a bitter battle ensued, during which the protections were withdrawn following a city-wide referendum which the GPC would lose by a margin of four-to-one. The repeal established that gay and lesbian rights would remain tenuous in Houston, and would push activists to seek rights on the basis of arguing that bias was bad for business in later campaigns. The most immediate impact of

the loss in Houston was felt during the mayoral election later in 1985, when gay rights became a key campaign issue.

The Houston episode in the mid-1980s would become a major battleground as to whether gay and lesbian workers had a place to be open in Sunbelt cities and industries. This chapter will trace the struggles of gay and lesbian communities in Houston as they did battle with homophobic business elites. In doing so it will demonstrate the centrality of workplace rights claims for gays and lesbians to broader economic and political debates throughout the 1980s and in the Sunbelt South. The chapter will analyse how the context of sodomy law repeal, AIDS, economic crisis and northern investment challenged business elites to take an active role in debates around non-discrimination acts in their cities and industries. It will examine the coalitions that were formed on both sides of the debate, and how workplace rights became a divisive wedge used by conservatives to divide those constituencies uniting on the liberal-left, namely African-Americans and gays and lesbians. Finally, the chapter will examine how gay and lesbian activists began to frame their arguments around economic inclusion in the face of victimisation by conservative business elites seeking to shore up their political influence.

As noted throughout this thesis, and as James Sears demonstrates in his work, it is necessary to see lesbian, gay, bisexual and transgender communities in the South as ecologies with different strategies, priorities and possibilities for change.¹ Perhaps no state exemplifies this dynamic quite like Texas. Communities sprang up in cities throughout the state but with varying levels of openness and success in challenging workplace homophobia. Austin has historically been considered one of the most liberal and progressive cities in the South. This is especially true when considering the city's relationship with gay and lesbian rights in this period. In 1975 Austin demonstrated itself as a leader in protecting gay and lesbian rights not only in Texas but across the nation. The City Council passed an

¹ James T. Sears, *Rebels, Rubyfruit, and Rhinestones*, p.319, but see also: John Howard (ed.), *Carryin' On in the Lesbian and Gay South*.

equal employment ordinance in April 1975 that specifically stated: “All city employees and private employees (where 15 or more people are employed) are protected from job discrimination on the basis of age, sex, race, religion, national origin, sexual orientation, or physical handicap.”² This statement passed through the council chamber with little opposition. The city would also protect gay and lesbian rights to housing. Austin’s linear narrative, of a relatively straightforward progression to rights in the era of gay liberation, belies the more complicated picture of rights won, contested, lost, and, in some cases, won again. Indeed, not all cities wanted the designation as “The San Francisco of Texas” and actively pushed back against the possibility of protections being introduced.

In 1984, a decade after Austin became the first Texan city to do so, Houston liberals secured a similar non-discrimination policy for their city. The city council voted narrowly to introduce protections for gay and lesbian workers in June. The bill was the brainchild of the Gay Political Caucus (GPC), a broad group of activists, consultants and politicians who sought to improve the position of sexual minorities in the city through alliances with liberal politicians including the Democratic mayor Kathy Whitmire. One key campaigner, Diane Berg, summarised the protections as follows:

The ordinances protect citizens from discrimination in city of Houston jobs. They affect only city of Houston jobs —not those in the private sector. The ordinances prohibit discrimination in hiring and firing based on sexual orientation. The ordinances define sexual orientation as ‘lawful sexual conduct between consenting adults.’ We believe no city government has the right to pry into the private life of any law-abiding city employee. Contrary to the allegations of opponents, the ordinances specifically prohibit hiring quotas based on sexual orientation. There are no job recruitment requirements and no changes in city contracts.³

As activists in Dallas and Nevada had already done, Berg pitched the argument along libertarian lines, demanding no state intrusion in the personal lives of minorities while also calling for local government to provide a safety net for those discriminated against in

² “Austin bans discrimination”, *Community News* [Gay Paper of North Texas], November 1975 in Box 142, James T. Sears Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University. (Hereafter: “Sears Papers-Duke”).

³ Speech by Diane Berg, *Citizens for a United Houston*, undated in Box 144, Sears Papers-Duke.

work. The tensions between portraying sexuality as either a private or a public matter would be continually debated throughout this episode as Houston's sexual minorities were largely marginalised throughout the ordinance campaign and the subsequent mayoral election.⁴ There were plenty of recent reminders of the need for such a policy. Mayor Whitmire noted that until 1983, “the Houston police and fire departments required applicants to undergo a polygraph test that asked a lengthy set of questions about the applicant’s sexual beliefs and practices.” Likewise, the *San Francisco Examiner* pointed out that as recently as 1980 a worker for the Houston city convention bureau, an important component of boosting city business and tourism, was forced to resign “after word got out that he [Lee Harrington] had been elected chairman of Houston’s Gay Political Caucus.”⁵ This episode similarly recalled the treatment of Gary Van Ooteghem who was forced from his job as Harris County Assistant Treasurer in 1975 when he came out, calling on the County Commission to install similar civil rights bills for gays and lesbians that Austin had recently passed. It was Van Ooteghem’s firing that helped to spur the formation of the Houston Gay Political Caucus (GPC). Notably it took this entire period of 1975 to 1986 for Van Ooteghem to win his case of wrongful dismissal. Like other cases, however, his did not provide the precedent needed for a sweeping change to local or national protections for gay men and lesbian women in the workplace. Still, it served as an important reminder of the need to gain localised rights amendments where possible.⁶

Anthony Hall, an African-American council member, introduced the ordinances in a bid to shore up the liberal coalition in Houston and gain the future support of the Gay Political Caucus. Hall succeeded in adding “sexual orientation” non-discrimination protections in “both the Affirmative Action Program and the Civil Service section of the Code

⁴ For more on Diane Berg, and the liberal coalition's strategy see: Wesley G. Phelps. "The Politics of Queer Disidentification", pp.311-348.

⁵ “A hard look: Anti-gay forces fear macho Houston will be ‘another S.F.’”, *San Francisco Examiner*, January 19, 1985 in Box 144, Sears Papers-Duke.

⁶ For more on Gary Van Ooteghem’s case and the formation of the Gay Political Caucus see: James T. Sears, *Rebels, Rubyfruit, and Rhinestones* pp.219-222.

of Ordinances” in June 1984.⁷ Hall and Whitmire’s involvement suggests that there was not only a growing acceptance of homosexuality in Houston society at a time of relaxed sodomy laws, but also that the Gay Political Caucus could claim some local political clout. Indeed, the liberal coalition that they built around themselves of progressive politicians, including Mayor Kathy Whitmire, African-American churches and small businesses, alongside gay and lesbian political activists, suggested that their attempts at gaining city-wide protections would be straightforward. Yet this coalition would be challenged by an ascendant conservative business movement that would successfully drive a wedge through communities to halt the march of gay and lesbian rights in Houston.

Diane Berg recalled in a later speech that there was little public interest in the reading of the bills but opposition did appear with protests outside the hall after inflammatory adverts against the ordinances were published in local media. Groups including the Ku Klux Klan (KKK) held rallies outside of the meetings.⁸ When the vote to enact the ordinances took place, Council member John Goodner, representative of a conservative suburb in southwest Houston, “charged [ordinance] supporters with trying to sneak something by him and the public,” although he had been present at all previous readings of the bill.⁹ Alongside others, including the Harris County Republican chairman Russ Mather, Goodner immediately launched a campaign to repeal the protections.¹⁰ More than 60,000 citizens signed a petition forcing a referendum to be held in January 1985.¹¹ The question put to voters would not explicitly mention the words homosexual or gay; instead “residents were asked to decide whether sexual preference should be barred as a consideration in hiring, firing and

⁷ Billie Duncan, “Emotionalism and Ignorance Dominated the Passage of the ‘Gay Ordinance’”, *Montrose Voice*, June 22, 1984 in Box 144, Sears Papers-Duke.

⁸ Speech by Diane Berg, *Citizens for a United Houston*, undated, but see also: “Issue sparks battle not seen since ‘60s” in *Houston Chronicle*, January 14, 1985 in Box 144, Sears Papers-Duke.

⁹ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985 in Box 144, Sears Papers-Duke.

¹⁰ “Issue sparks battle not seen since ‘60s” in *Houston Chronicle*, January 14, 1985 in Box 144, Sears Papers-Duke.

¹¹ Speech by Diane Berg, *Citizens for a United Houston*, undated.

promoting city employees.”¹² Community newspaper, *Montrose Voice*, warned: “the gay community must brace itself to begin the fight to combat the ignorance that could turn that small step forward into a big push back.”¹³

Enter the Chamber of Commerce

After John Goodner’s successful campaign to collect enough signatures for a citywide referendum, he quickly set about building a coalition against gay rights. It was in December 1984 that he received his most influential support. The Houston Chamber of Commerce voted overwhelmingly to join Goodner’s “Committee of Public Awareness,” the campaign for a “no” vote in the referendum due to take place a month later.¹⁴ Barry Kaplan notes that alongside state-wide anti-union legislation, Houston’s Chamber of Commerce played a key role in both the development of the city, and in shaping local politics. Further Kaplan argues that the aim of the Chamber had been focused on re-shaping the city for “free enterprise.” Yet “this phrase is somewhat misleading... because in Houston the government is not a neutral observer of the marketplace. Rather, it is an active agent of business growth.”¹⁵

It is therefore unsurprising that, alongside arguments of supposed moral decay, fear of AIDS, and questioning the legality of sodomy, the Chamber also claimed that enshrining gay rights was bad business for the city of Houston. They argued that current investment would be jeopardised if the ordinances were allowed to stand and that all future investment would also be at risk.¹⁶ In a poster entitled: “Houston can’t risk becoming the next major

¹² “Houston defeats gay rights issues”, *Houston Chronicle*, January 20, 1985 in Box 144, Sears Papers-Duke.

¹³ Billie Duncan, “Emotionalism and Ignorance Dominated the Passage of the ‘Gay Ordinance.’”

¹⁴ “Sides are now clear for referendum”, *Montrose Voice*, December 28, 1984 in Box 144, Sears Papers-Duke.

¹⁵ Barry J. Kaplan, “Houston: the golden buckle of the Sunbelt” in *Sunbelt cities: politics and growth since World War II*, Richard M. Bernard and Bradley R. Rice (eds.) (Austin, Texas: University of Texas Press, 1983) p.199.

¹⁶ “Sides are now clear for referendum”, *Montrose Voice*, December 28, 1984.

battleground for gay political power,” Goodner’s opposition campaign prioritised the arguments of the Chamber:

In coming out against the propositions, the Houston Chamber of Commerce expressed the belief that the City policies should not create an atmosphere which would hinder the expansion, relocation or establishment of businesses in the region. It believes that these propositions are not in the best interests of the City, especially at this critical time.¹⁷

They continued: “A victory for gays would tell the nation that Houston approves of homosexual behavior, a message we can’t afford to send out. To develop our economic potential, Houston needs the respect of those outside our city as well as the support from every citizen within.”¹⁸

As the *Houston City Magazine*, a monthly direct mail magazine, paraphrased: this group of business elites “feared the city’s reputation and business climate would be tarnished if it appeared that Houston had become a haven for homosexuals.”¹⁹ On the other side of the debate, gay and lesbian activists, including Diane Berg, pushed back against these homophobic arguments by asserting that other cities that installed these protections had not suffered. Nevertheless, the Chamber and its allies were persistent in arguing this claim.²⁰

Historians including James Cobb, Katherine Jewell, and Elizabeth Shermer have demonstrated the ways in which Sunbelt boosters reshaped the economic landscape of the South in the latter half of the twentieth century and shifted the political terrain of the cities in which they operated.²¹ Houston’s growth over the preceding two decades was “phenomenal” according to Sunbelt historian Sean Cunningham. He notes that oil production spurred not simply a boom in profits for the corporations but also a huge population growth. “Between

¹⁷ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

¹⁸ “Houston can’t risk becoming the next major battleground for gay political power”, *Political advertisement paid for by the Committee for Repeal*, 1985 in Box 144, Sears Papers-Duke.

¹⁹ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

²⁰ Speech by Diane Berg, *Citizens for a United Houston*, undated.

²¹ See: James C. Cobb, *The Selling of the South*; Elizabeth Tandy Shermer, *Sunbelt Capitalism*; and Katherine Jewell, *Dollars for Dixie*.

1975 and 1980, Houston led the nation in new housing starts. Rather than allow for new suburban municipalities, Houston annexed most of these new housing developments into the city.” This, Cunningham argues, “expanded the number of white, middle-class voters at the same time that it diluted the political clout of the city’s abundant, impoverished, and still effectively disfranchised black and minority populations.”²² Oil was not always a reliable product, however, and economic turbulence plagued the city in the mid-1980s at the same time that boosters entered the battle over gay rights. Not only then did they seek to shore up their power, but they also found scapegoats in gays and lesbians, as well as the liberal coalition they represented, for the economic turbulence the city was experiencing.²³

Gay rights activists and other referendum “yes” campaigners continually countered the claim that protections against discrimination were bad for business by noting that “many businesses are attracted to and prosper in the 40 other major cities with similar ordinances. Over 100 major national corporations also have such anti-discrimination rules.”²⁴ Diane Berg, now a spokesperson for the “yes” coalition called Citizens for a United Houston, played the Chamber at its own game stating clearly that bias is bad for business and arguing that gay rights were economically astute. “We deeply regret some elements in our city care so little for the well-being of the whole city. This discrimination referendum will divide the city and create deep wounds that will take years to heal.”²⁵

Activists also countered the Chamber’s arguments more directly. Rev. Bill Oliver, a straight pastor supportive of gay communities and a veteran of previous civil rights struggles, who led the Citizens for a United Houston, questioned the seriousness of boosters who were supposed to be attracting business: “How will it look to employers if the City of Houston

²² Sean P. Cunningham, *American Politics in the Postwar Sunbelt*, pp.195-196. See also: Barry J. Kaplan, “Houston: the golden buckle of the Sunbelt,” p.196.

²³ For the impact of the oil crisis on Houston see: Colin Eaton, “1980s oil bust left a lasting mark,” *Houston Chronicle*, August 31, 2016. Available: <https://www.chron.com/local/history/economy-business/article/The-1980s-oil-bust-left-lasting-mark-on-Houston-9195222> (Accessed 1/11/2018).

²⁴ “Sides are now clear for referendum”, *Montrose Voice*, December 28, 1984.

²⁵ Speech by Diane Berg, *Citizens for a United Houston*, undated.

practices job discrimination[?]" Oliver continued with direct examples: citing "the recent layoff of more than 1400 persons by a major oil company near Beaumont. He pointed to the knock-on effect that the oil downturn was having on local businesses: "Now the banks are concerned because they can't collect loans they made, the car dealers are concerned because car sales are down, no one is buying new houses." He also countered the Chamber's own reasoning for its homophobic intervention: "'It's a matter of economics,' he said. 'That community [is] being divided up by how it is affected by green dollars, and it's the same way here.' The referendum has more to do with the 'healthy economy of Houston than anything in a moral sense."²⁶ As Oliver suggests, the economy was a key factor in the attacks on gays and lesbians where the Chamber sought scapegoats, posing gays and lesbians as degenerates looking for special privileges at a time of economic downturn. But this reasoning also provided a basis on which to counter-attack by suggesting that bias was bad for business. Bethany Moreton has demonstrated how broader shifts in the capitalist economy remade right-wing arguments and created scapegoats out of gays and lesbians. She notes: "The postindustrial economy's accelerated drive to render people functionally obsolete was figured in the imagery of the political Left as the dispossessed, the economic refugees, the reserve army of the unemployed. But its mirror image on the Right was an equally visceral horror at the potential loss in human reproduction."²⁷ As the 1970s stagflation progressed to potted recoveries in the 1980s, conservatives set their sights upon homosexuality and abortion as problems to be solved. Arguments against a perceived moral decay merged with economic concerns for Sunbelt politicians and business elites who found a compelling scapegoat in the increasingly visible gay and lesbian communities that were emerging in the post-Stonewall era.

²⁶ "Explaining the Referendum" in unknown newspaper, undated in Box 144, Sears Papers-Duke.

²⁷ Bethany Moreton, *To Serve God and Wal-Mart*, p.119. See also an earlier version of Moreton's argument in: Bethany Moreton, "Why Is There So Much Sex in Christian Conservatism and Why Do So Few Historians Care Anything about It?", *Journal of Southern History* 75.3 (2009). pp.717-38.

In Houston, with the oil economy suffering, it is no surprise that the extension of gay and lesbian workplace rights drew fire from the economic elite. Barry Kaplan, writing just before this episode, noted that “Houston's movers and shakers traditionally have been its businessmen who did not draw a fine line between their private interests and the interests of the city. To them, they were one and the same.”²⁸ As such it was unsurprising that the Chamber of Commerce would intervene in a battle for public-sector non-discrimination so directly. They had always sought to shape local politics beyond their own (private-sector) slice of the economic pie. For them what was at stake in the ordinance fight was upholding this oversized influence through scapegoating gay and lesbian workers. In so doing they were also rebelling against any notion of government or state intervention. Simply put, boosters feared that public sector protections would later expand into the private sector and they did not want to be told what to do. On the one hand, more “extreme” activists like Hotze specifically targeted gays and lesbians because of his homophobia. On the other hand, the Chamber of Commerce seems to have been less concerned with sexuality per se. After all, Louie Welch sought the support of the GPC in 1980. Instead, the boosters used sexual minorities to push back against notions of non-discrimination and state intervention more generally, while they also staked a claim in knowing how better to manage the city economically. The Chamber of Commerce therefore used numerous arguments for why Houston should vote to repeal protections against homophobic workplace discrimination. In merging moral, religious, and economic arguments with the fear of AIDS, the Chamber sought to splinter gay and lesbian community activists away from the broader liberal coalition that was beginning to form around the Democratic political elite in the city.

In her response to the Chamber, Mayor Whitmire immediately “denounced the Chamber for involving themselves ‘in a divisive election which is about bigotry and intolerance and particularly to involve themselves on the side of bigotry and intolerance.’”²⁹

²⁸ Barry J. Kaplan, “Houston: the golden buckle of the Sunbelt” p.203.

²⁹ “Sides are now clear for referendum”, *Montrose Voice*, December 28, 1984.

The Chamber countered that they were offended by Whitmire's accusation that they were bigots. However, they also appeared reluctant to acknowledge they had lent support to a side against gay rights in which those most highly visible were the Ku Klux Klan (KKK) who protested the council hearing, and produced posters in the Montrose District linking gay rights to kidnapping and pedophilia.³⁰ The impact of the Chamber's involvement was to bolster the more extreme views of others on the side of "no" and to broaden their appeal.

The Chamber executive committee was comprised of the most influential business elites in Houston. All members were skilled in boosting their own interests and bringing further investment to the city. The Chamber was headed by former five-term Houston Mayor Louie Welch.³¹ Among those companies represented by members on the executive committee were MCorp – a bank holding company, the *Houston Chronicle*, Scurlock Oil Company, Foley's department stores, Tenneco, and Exxon USA as well as numerous political contributors and developers.³² Likewise the "no" campaign relied upon major contributions and loans from local elites to finance their publicity and day-to-day operations. Around the time the Chamber became involved, Goodner reported "that they have raised about \$66,000 and spent about \$43,000. The bulk of its income, however, was a \$47,000 loan from River Oaks Bank Chairman James E. Lyons."³³

Though the Chamber voted unanimously to support Goodner's campaign against gay rights, those most forthcoming in their opposition were former mayor and Chamber president Louie Welch, the construction mogul Leo Linbeck, John Cater of MBank, and Kenneth Schnitzer, a developer. These businessmen had screened the 1980 CBS documentary, *Gay Power, Gay Politics*, which portrayed San Francisco gay politicians and activists in poor

³⁰ Ibid.

³¹ "Gay community unswayed by referendum defeat", *Houston Chronicle*, undated in Box 144, Sears Papers-Duke.

³² "Sides are now clear for referendum", *Montrose Voice*, December 28, 1984.

³³ Ibid.

light.³⁴ Indeed, San Francisco Mayor Diane Feinstein would challenge the broadcaster over the inflammatory programme, and CBS would later block other Houston “no” campaigners from excerpting the documentary for their own uses.³⁵

The spectre of San Francisco as an example of the dangers of gay rights became a key weapon in the Chamber’s campaign arsenal. In a reminder of Anita Bryant’s 1977 “Save Our Children” campaign, materials from the Houston “no” campaign consistently used images of San Francisco’s annual gay pride parade in which hundreds of thousands marched to illustrate the dangers of the onward march of gay rights in that city. Coupled with the misinformation highlighted in the CBS documentary, the boosters created a narrative that gay rights were on the advance and Houston needed to be protected. However, this use of San Francisco proved unconvincing, as numerous activists pointed to the fact that San Francisco had not struggled to continue growing as a financial centre regardless of whether CBS or the Chamber’s portrayals were true. As *Houston City Magazine* explained in a report after the referendum: “Ironically, San Francisco, New York, Austin, and 37 other cities nationwide have not suffered economically, despite the passage of some local gay-related ordinances.”³⁶

In a foretelling of the way in which homophobic forces would shift the narrative later in the 1990s and 2000s, Chamber president Louie Welch argued that gay men and lesbian women were demanding “special privileges” that others did not have. *The Montrose Voice* noted that Welch “voiced concern about ‘a negative reaction’ of people who read about special bills being passed to protect ‘unnatural minorities.’”³⁷ Similarly, he and other ordinance opponents claimed that if the referendum were to pass it “would set up gay people

³⁴ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

³⁵ “A hard look: Anti-gay forces fear macho Houston will be ‘another S.F.’”, *San Francisco Examiner*, unknown illustrator, January 19, 1985.

³⁶ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

³⁷ “Sides are now clear for referendum”, *Montrose Voice*, December 28, 1984.

as a privileged class of citizen.”³⁸ This rhetoric foreshadowed future battles around gay and lesbian rights after the victory of same-sex marriage, when opponents would portray activists as middle- to upper-class elites seeking special privileges at the expense of poorer straight people. This is an argument that would reoccur again and again as individual companies, as well as cities, instilled non-discrimination policies for their employees. These concerns began to gain credence in 1980s among other minorities, whom conservatives sought to splinter from broader liberal coalitions as cities began to protect gay and lesbian workplace rights.³⁹ This is evidenced in Houston in the ways in which Welch and Goodner mobilised new arguments that would also be amenable to African-American constituencies. Rather than being “new minorities” requiring civil rights protections, gays and lesbians were in fact seeking “special privileges.” This dynamic was not confined to Houston but evident in other cities with large black political bases too.

In his case study of battles for anti-discrimination ordinances in Philadelphia, Kevin Mumford has demonstrated the importance of race to rights claims of sexual minorities. Interestingly, he notes the opposition mobilised by some white ethnic city council members to that city's gay rights ordinance was expressed through contention at the notion of a “new” minority which appeared through the city political machine.⁴⁰ In comparison, John Goodner echoed these sentiments when he disingenuously suggested that the council was trying to slip the ordinance past an unsuspecting electorate. There was consternation at the idea that gays and lesbians constituted a new minority deserving of protection. For instance, One African-American religious leader, Rev. F. N. Williams, told the *Houston Chronicle* that: “he isn’t ready for creation of any more minorities until ‘my people get a fair share of promotions

³⁸ Ibid.

³⁹ For an example of previous battles in which conservatives pitched African-Americans against gay and lesbian rights see: Gillian Frank, “The Civil Rights of Parents”, pp.126-160.

⁴⁰ Kevin J. Mumford, “The Trouble with Gay Rights: Race and the Politics of Sexual Orientation in Philadelphia, 1969–1982” in *Journal of American History*, Volume 98.1, June 2011, pp.49-72.

(in city jobs).”⁴¹ Similarly, the newspaper reported that Rev. C. Anderson Davis of the predominantly black Concerned Pastors and Ministers of Houston claimed that “nobody yet has come up with any factual information about discrimination in jobs.”⁴² The referendum precipitated a fragmentation between African-American churches and political leaders as “all black leaders, including state Sen. Craig Washington, support the measures.”⁴³ As such the gay and lesbian non-discrimination ordinance debate had the effect of entrenching the conservative and liberal political divide within black activism as it did within other constituencies. In focusing upon the employment rights of sexual minorities, the Chamber of Commerce and conservative politicians could draw from a well-established toolkit of divide and rule to scapegoat gays and lesbians.

Yet use of terms like “privileged minority” and “special rights,” as well as fears of employment quotas, were used concurrently against African-Americans battling to save affirmative action policies. Developed by conservatives in the Reagan Administration, as Nancy MacLean has demonstrated, these designations sought to suggest that applicants were undeserving or under-qualified for the roles in which they were excluded on the basis of race and/or gender. MacLean also notes that the re-election of Reagan spurred new attacks on affirmative action from administration officials who sought to nullify the order.⁴⁴ Reagan’s first term also marked the acceleration of the political trajectory of the “solid south” from Democrat to Republican. This episode in Houston can therefore be seen as part of a wider conservative project to roll back workplace rights for minorities during the 1980s, something that activists at the time were acutely aware of. For instance, leading Houston gay rights activist Ray Hill cautioned that a setback for gays and lesbians would signal a

⁴¹ “Issue sparks battle not seen since ‘60s” in *Houston Chronicle*, January 14, 1985 in Box 144, Sears Papers-Duke.

⁴² “Houston defeats gay rights issues”, *Houston Chronicle*, January 20, 1985 in Box 144, Sears Papers-Duke.

⁴³ “Issue sparks battle not seen since ‘60s”, *Houston Chronicle*, January 14, 1985.

⁴⁴ Nancy MacLean, *Freedom is Not Enough*, pp.300-332.

much wider setback for other minorities in the face of elite divide and rule. “The reality of the referendum is that it is actually those groups that comprise the rest of our coalition that the opposition is really after.” He continued: “We are chosen as a strategic target, because it is felt we are the weakest element in that coalition... If we cannot pay the costs of our defense, they guessed right, they will win by default. And ultimately, the whole of our coalition will lose.”⁴⁵ Workplace protections for gays and lesbians were presented as being inextricably linked to the wider fortune of all minorities in the hope that rights claims would lead to a broader coalition of support. Hill further cautioned: “When discrimination becomes legal by popular vote, discrimination will become a popular activity—in the private as well as the public sector. Discrimination breeds discrimination.”⁴⁶ Conservatives bolstered by the landslide re-election of Reagan the previous year sought not only to roll back workplace rights for minorities but also to weaken and divide the liberal-left coalition that had been successful in gaining these rights in the first place. In Houston this attack manifested itself in attacks on gay and lesbian rights in similar ways to how conservatives at the time sought to halt the gains of the black freedom struggle. As Ray Hill’s pleas to his fellow gay and lesbian Houstonians demonstrate, activists were well aware of this strategy.⁴⁷

Alongside economic arguments, the Chamber joined the ranks of other "no" forces using religious and moral tropes to undermine the liberal coalition. In doing so, they found themselves aligned in a broad coalition of “no” forces which included the Ku Klux Klan (KKK) on the extreme right, Dr. Steven Hotze, the leading Texan AIDS-phobe, as well as the African American churches discussed above. Added to the pressure wrought on gays and lesbians in Houston by the referendum was the direct threat of the KKK. The KKK had been focusing more attention on homosexuality over the past decade as gay and lesbian visibility

⁴⁵ “The future after the election”, *This Week in Texas (TWT)*, 23-29 November, 1984 in Box 144, Sears Papers-Duke.

⁴⁶ *Ibid.*

⁴⁷ For more on the conservative attack on affirmative action during this era see: Nancy MacLean, *Freedom is Not Enough*, pp.300-332. See also: Terry H. Anderson, *The Pursuit of Fairness: A History of Affirmative Action* (Oxford and New York: Oxford University Press, 2004) p.82, and pp.183-197.

increased.⁴⁸ In Houston, one month before the council approved the ordinances, the KKK marched 55 members through Montrose, protected by more than 800 police officers. “The Klan was calling for the elimination of homosexuals in its ‘Death to Homosexuals’ demonstration.”⁴⁹ The KKK were a constant and visible part of the battle over gay and lesbian workplace protections in Houston. As the council debated and voted narrowly in favour of the ordinances in June 1984, the Klan demonstrated outside the building, chanting “death to homosexuals!” The impact that such imagery would have upon the debate over gay and lesbian rights as well as the Houston economy was not lost on GPC activists.⁵⁰

The Chamber of Commerce and other opponents sought to distance themselves from the activism of the KKK.⁵¹ Yet gay rights activists played up the damaging connection between politicians like John Goodner, his Chamber supporters and the toxic KKK. Indeed, Diane Berg, now a key spokesperson for the Coalition for a United Houston, used the visible alliance between the KKK and other “no” members to counter the Chamber’s rhetoric of economic necessity over rights. Berg highlighted that images of the Klan appeared alongside those of Goodner in newspapers across the country, including the *Dallas Morning Herald*. Berg noted: “Opponents are afraid that council approval sends the wrong message to the country... papers across the country carried stories that talked about the Klan and the Moral Majority types who disrupted the council meeting.” She continued, “If anyone doubted that discrimination still rages in Houston, they got plenty of evidence that day.”⁵² The role of the Chamber, whether intentional or not, was to broaden the extremism of the KKK into a more palatable bigotry for Houston residents.

⁴⁸ See Chapter 1, and Carol Mason, *Oklahoma*, p.74.

⁴⁹ James L. Gibson, “Homosexuals and the Ku Klux Klan: A Contextual Analysis of Political Tolerance” in *Western Political Quarterly*, (1987) 40.3 p.433.

⁵⁰ Speech by Diane Berg, *Citizens for a United Houston*, undated.

⁵¹ “Issue sparks battle not seen since ‘60s” in *Houston Chronicle*, January 14, 1985.

⁵² Speech by Diane Berg, *Citizens for a United Houston*, undated.

The opposition campaign also continued several tropes mobilised concurrently against efforts to repeal Texas anti-sodomy law 21.06, notably that AIDS presented a particular danger to Houston business interests. Barbara Cannetti notes in her narrative of the referendum battle for the *Houston City Magazine* that another influential group in the “no” coalition was Steven Hotze’s group of doctors who “claimed Houston could be in danger of developing an AIDS epidemic if the referendum passed, and the disease would inevitably affect the public health of all citizens.”⁵³ For Steven Holtz and his “Doctors Against AIDS” group the disease obviously played a major part in the arguments he marshalled to halt the gay rights ordinances. Yet he also picked up on the Chamber’s arguments to further support his stance. Hotze argued that the ordinances would make the city a “magnet” for gay men with AIDS, ramping up fears of contagion and an increase in cost for the city. Echoing the Chamber to an assembled rally of around 2000 people, Hotze returned to the spectre of San Francisco to suggest that the influence of groups like Houston’s Gay Political Caucus (GPC) would lead to ruin if the non-discrimination ordinance was not voted down. In his view, Hotze argued: “They’ve ruined a fine city. Forty to 50 percent of all men there are homosexuals,’ he said. ‘They literally hold the political system of San Francisco in their hands.’”⁵⁴ Likewise, the Chamber executives were not averse to using broader moralistic arguments and the fear of AIDS to win their case. For example, Louie Welch echoed Hotze’s hysteria of AIDS when he “failed to show up at a televised debate on the issue... because he said he feared ‘contamination.’”⁵⁵

The Chamber of Commerce therefore used numerous arguments for why Houston should vote to repeal protections against homophobic workplace discrimination. In merging moral, religious, and economic arguments with the fear of AIDS the Chamber sought to splinter gay and lesbian community activists away from the broader liberal coalition that was

⁵³ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

⁵⁴ “A hard look”, *San Francisco Examiner*, January 19, 1985.

⁵⁵ “Houston voting today on banning bias against homosexuality”, *New York Times*, January 19, 1985 in Box 144, Sears Papers-Duke.

beginning to form around the Democratic political elite in the city. The Chamber's interest in this matter was unsurprising given its historic oversized influence in City Hall and its aspiration to continue that influence during a period of economic turbulence that threatened to derail the prospects for growth in Houston.

Defending Non-Discrimination

In the months after Goodner succeeded in forcing a referendum, Gay Political Caucus (GPC) officials were optimistic that they could benefit from the vote. “Gays and lesbians are in a ‘win-win situation’ regarding the jobs ordinance and its possible referendum, GPC president Norman Guttman told members” in July.⁵⁶ Guttman predicted that a broad coalition would form to defend workplace protections in Houston as they had in reaction to the Briggs Initiative in California in 1978. “Even if we lose the referendum,” he said, “all the groups that will have been brought together on this issue—religious, unions, black, brown—will make a stronger Caucus and a stronger community.”⁵⁷ Guttman’s vision was reflected in the selection of Bill Oliver, a white pastor of a predominantly African-American church, “a straight, cigar-chomping political veteran who was active in the civil rights movement in the South during the 1960s,” to lead the pro-ordinance campaign. To battle the referendum the Gay Political Caucus (GPC) launched “Citizens for United Houston” (CUH) with other sympathetic local activists, groups and politicians. Throughout the campaign Oliver referred back to the black freedom struggle in the hope that such a connection would appeal to African-American communities. He told the *San Francisco Examiner*: “‘It’s precisely the same kind of fight being waged by the same people,’ he said. ‘Back then, they were scaring people by saying the blacks would go after their daughters. Now they’re saying the gays are going after their sons.’”⁵⁸

⁵⁶ “GPC discusses referendum possibility”, *Montrose Voice*, July 20, 1984 in Box 144, Sears Papers-Duke.

⁵⁷ *Ibid.*

⁵⁸ “A hard look”, *San Francisco Examiner*, January 19, 1985.

Oliver also shared Guttman's optimism that coalition partners would galvanise their constituencies to defend gay and lesbian workplace rights. He told one newspaper that: "The referendum will be gaining support from groups who do not necessarily endorse the gay lifestyle simply because discrimination is bad, and Houston does not need the reputation of being a city that discriminates in hiring."⁵⁹ Yet, from the first effort to have the ordinances put to public vote and throughout the referendum campaign, John Goodner drew together representatives from churches across Houston, and across the racial divide. In doing so he challenged the assertion of central "yes" activists like Bill Oliver who claimed black churches would naturally support the GPC's claims to rights because gay men and lesbian women were involved in the Civil Rights Movement some two decades before. Faced with the success of John Goodner in gaining traction in both black and white churches to collect signatures for the referendum, Oliver "told the gay community not to feel betrayed by some blacks who seemed to be at the forefront of the petition drive... 'Don't focus on any fractures, keep in mind the vision,' he said."⁶⁰

Bill Oliver and others directly challenged the notion that bias was good for business as the Chamber of Commerce had suggested, but they also sidelined homosexuality from the debate. As another activist argued: "this emotional issue is not just a gay/lesbian concern — it is a human rights concern. Anyone concerned about fair hiring practice in the City of Houston should vote for this ordinance."⁶¹ Gays and lesbians became conspicuously absent from the campaign as it progressed. Noting that the main spokesperson was the straight minister, Bill Oliver, the *Houston Chronicle* pointed out that: "The proponents are taking an extremely low-key approach. Gay activists, in fact, have been almost invisible in the campaign."⁶² Similarly, while commentators drew comparisons with San Francisco's Castro

⁵⁹ "Explaining the Referendum" in unknown newspaper, undated in Box 144, Sears Papers-Duke.

⁶⁰ Ibid.

⁶¹ "GPC discusses referendum possibility", *Montrose Voice*, July 20, 1984.

⁶² "Issue sparks battle not seen since '60s" in *Houston Chronicle*, January 14, 1985.

District, gays and lesbians in Houston's Montrose neighbourhood lacked the same level of visibility, concentration and power. The *San Francisco Examiner* noted: "Even in the Montrose area, though, few businesses or residents are openly gay." Local architect and political activist, Mike Nelson, told the paper: "You won't find gay couples even holding hands here... citizens of Houston wouldn't let us get away with that."⁶³ Nelson therefore suggested a need for the nondiscrimination ordinances but also that their power to save them would be limited without broad support. Nevertheless, GPC activists also put the call out for national support. Recalling the support for gays and lesbians in other states who had faced a string of referendums on their rights in the 1970s, former GPC president, Larry Bagneris stated: "We intend to be reciprocated for the thousands of dollars that Houston has given to cities in California, Oregon and to Miami to wage these same battles, only in Houston we are going to win. We are going to say no to the Moral Majority. And we can do that with your support."⁶⁴

Yet this momentum was dampened in the November 1984 elections when the GPC experienced its worst ever performance in getting their allies elected. The landslide re-election of President Ronald Reagan also fed into a feeling of uneasiness among local activists, with the vote serving as a signal that the referendum might not go the way gay rights activists were hoping. "We have lost some valuable defensive tools on which we have relied upon in times past. Foremost among these losses is LOST MOMENTUM," Ray Hill lamented.⁶⁵ Hill expected the election to serve as a wakeup call to others in the community that they could not rely on others to save their workplace rights. However, he also questioned the extent to which locals grasped the importance of their situation. In discussing the referendum, he posited: "Our previously successful campaigns had us lulled into a dangerous sense of complacency. That success-induced apathy is now closing in on us,

⁶³ "A hard look", *San Francisco Examiner*, January 19, 1985.

⁶⁴ "Explaining the Referendum" in unknown newspaper, undated in Box 144, Sears Papers-Duke.

⁶⁵ Ray Hill, "The future after the election", *This Week in Texas (TWT)*, 23-29 November, 1984 in Box 144, Sears Papers-Duke.

isolating us from political reality. It's a simple fact: *we are going to lose the referendum unless we launch a well-financed, well-planned campaign.*"⁶⁶ Hill called out those who were remaining silent, not giving money to the campaign, or, worst of all, those in the closet giving money to megachurches now involved in the assault on their rights. In doing so he pointed to the class differences among the fragmented Houston communities.

Maybe those among the more fortunate of us who never have to fill out employment application forms miss the point of protected job security. And perhaps the costs of this campaign will have to come out of the pockets of those of us paid by the hour or month. If that is going to be the case, I resent the other benefits enjoyed by the scabs higher up the economic ladder. After all, was not their sexual activity just as illegal as ours before the Baker vs. Wade decision, and will they not be recriminalized with the rest of us with changes in the composition on the U.S. Supreme Court or the Texas Legislature?⁶⁷

This class antagonism laid bare the social and political differences present among lesbians and gay men. Unlike the "no" forces, who could rely upon Chamber of Commerce elites for financing, gay rights activists relied upon individual contributions from those most vulnerable to attacks on their employment rights. This point demonstrated the growing class consciousness of gay rights activists who demanded those wealthy and perhaps closeted Houston gays and lesbians come out and contribute more. Hill's class antagonism in practice was to call for the broadest possible movement to defend workplace rights. The involvement of the Chamber of Commerce and other economic elites forced grassroots gay and lesbian activists to demand more support from those within their communities who were also wealthy. The increased involvement of wealthy gay men and lesbian women would come to be a central feature of AIDS activism in this decade as the disease forced previously closeted men who had sex with men to demand greater rights for sexual minorities.⁶⁸ Ray Hill was nevertheless also wary of the involvement of wealthy gay men and

⁶⁶ Ibid. Emphasis is by Ray Hill.

⁶⁷ Ibid.

⁶⁸ See: Peter F. Cohen, "'All They Needed': AIDS, Consumption, and the Politics of Class." *Journal of the History of Sexuality*, Vol.8.1 (1997), pp.86-115, but see also: Jonathan Bell, "Between Private and Public: AIDS, Health Care Capitalism, and the Politics of Respectability in 1980s America", *Journal of American Studies*, May 2018, available: <https://doi.org/10.1017/S0021875818000518>

lesbians in Houston, especially as they related to local gentrification. Hill warned local gay business owners not to be fooled into cleansing the neighbourhood of its more openly sexualised aspects. He argued that the business elites would soon come after regular gay and lesbian businesses too: “If you don’t think that after they clean up the massage parlors and sexually orientated businesses this person (name deleted) won’t go after whatever gay bars-businesses he can get you’re crazy.”⁶⁹

Hill’s concerns appear to be sound. After all, John Goodner’s main financier during the referendum was a banker whose Montrose headquarters witnessed the increasing visibility of gay and lesbian communities in Houston, and who sought to roll this back. Jimmy Lyons, chairman of River Oaks Bank & Trust bought full page ads in local newspapers. He told journalists that he “wanted gays to keep their lifestyles private.”⁷⁰ As such, at least one ally of the Chamber saw the local rights ordinance as connected to the increased visibility of same-sex sexuality in Houston, which needed to be forced back. This was connected to the organisation's rhetoric that bias was good for business because, they would argue, any protection of the right to be openly gay in public workplaces would encourage greater visibility in all sectors and discourage investment.

The ordinance fight, therefore, brought into focus the role of gay and lesbian communities in the urban environment as well as in City Hall. Clayton Howard argues convincingly that federal housing policy and local boosterism both explicitly and implicitly remade the American city in the mid-twentieth century, creating a binary that marked the suburbs as heterosexual and the urban environment as sexually deviant. As cities including San Francisco sought to clean up and clear out these markers of deviancy and poverty, gay and lesbian communities simply moved from one neighbourhood to another. A similar process was true of gays and lesbians in Houston in the 1970s and 1980s. As the city

⁶⁹ Hollis Hood, “Council votes for referendum” in *Montrose Voice*, undated in Box 144, Sears Papers-Duke.

⁷⁰ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

continued to sprawl out in suburbs, politicians and boosters sought to “clean up” the “deviant” Montrose neighbourhood. While some gay activists looked to aid these processes by suggesting gay owned businesses were fine as long as they were not smutty or sexual, others joined Ray Hill in calling out their naivety. These processes factored into the Chamber’s attacks on nondiscrimination, as they sought not only to halt the gay rights movement for fear of lack of investment but also to contribute to a wider political project of cleaning up those neighbourhoods marked by deviancy and supposed gay political power to be re-marketed for outside investment. As noted above, fears of Houston becoming like San Francisco were central to soliciting the Chamber’s involvement. The Montrose district for them represented the clearest indication that their fears could be realised.⁷¹

The Referendum

On the eve of the referendum, the opposition re-prioritised the economic arguments and prestige of the Chamber of Commerce to induce voters to reject gay and lesbian rights. Mixing moralism with commercial necessity, the boosters called on citizens to protect the future of Houston’s economic development. As noted earlier, the ballot did not explicitly mention the words homosexual or gay, instead “residents were asked to decide whether sexual preference should be barred as a consideration in hiring, firing and promoting city employees.”⁷² The result was overwhelmingly negative for sexual minorities. By a four-to-one margin, Houstonians denied gay and lesbian workers the protections they had been awarded in June the previous year. This was a clear demonstration to gays and lesbians that

⁷¹ See: Clayton Howard, *The Closet and the Cul de Sac*; and: Clayton Howard, “Building a “Family-Friendly” Metropolis: Sexuality, the State, and Postwar Housing Policy” in *Journal of Urban History* (2013), 39.5, pp.933–955. Alongside Howard’s focused analysis of homosexuality and urbanism, Lisa McGirr and Matthew Lassiter demonstrate how the growth of suburbs led to particular forms of conservatism becoming prominent. See: Lisa McGirr, *Suburban Warriors*; and Matthew Lassiter, *The Silent Majority*. For further discussions on the role of gay communities in gentrification see: Lawrence Knopp, “Gentrification and Gay Neighborhood Formation in New Orleans: A Case Study” in *Homo economics: Capitalism, community, and lesbian and gay life*, Amy Gluckman and Betsy Reed, eds. (New York: Routledge, 1997) pp.45-64.

⁷² “Houston defeats gay rights issues”, *Houston Chronicle*, January 20, 1985 in Box 144, Sears Papers-Duke.

their rights would not be easily maintained in an era of conservative ascendancy. A report in the *Houston City Magazine* argued that it was the broad conservative coalition that drew together the Chamber of Commerce alongside black churches and far-right activists that was central to rolling back the protections:

The vote told gays they must return to their closets because the majority of voters do not accept their lifestyles. That message came from the public and was motivated by speeches from clergy, doctors and elected officials, as well as lawyers, police, Little League coaches, and the Klan. Banding together, the opponents to the referendum made for an odd but interesting coalition. However, their reasons for joining the fight varied from moral, to financial, to merely political reasons.⁷³

The massive four-to-one vote also led gay activists to question their political clout, especially the durability of the coalitions they had worked hard for over a decade to build. Some feared that “they have been set back a decade in terms of strides they made in the community, and their political clout has been reassessed.” They also recalled strikingly that: “In the mid-1970s, an endorsement from the GPC had little impact, but by 1980 it was a much-sought after approval. In fact, John Goodner was selected as the GPC’s candidate in his council race in 1981.”⁷⁴ This clout now seemed to have evaporated and activists pondered how they came to lose so resoundingly. While some argued that it simply came on the back of a conservative wave that Republicans were riding since the re-election of Reagan a few months earlier, others looked inwards to the coalition partners they had relied upon. “One knowledgeable gay,” as the *Houston City Magazine* described them, “asks where the community’s allies were on January 19—the Jewish vote, the blacks, women, labor, and progressive thinking liberals? Apparently many of them were in the booth voting against the measures.”⁷⁵ Gay men and lesbian women were therefore successfully targeted by an insurgent conservative movement that was continuing to break apart the old liberal coalition of the earlier twentieth-century. The vote demonstrated that gay rights would not so

⁷³ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

easily be won and maintained in Houston and other Texan cities where moral and economic arguments could be mixed with religious reasoning to deny them.

Beyond the recalibration of local gay political clout, an important result of the referendum was an immediate sense that the community was under attack. Gay Political Caucus (GPC) member Sue Lovell reported that: "Since the referendum... she has seen a few gays 'all of a sudden fired' by private employers, indicating that individuals who dislike gays 'may feel a little freer about exercising their prejudices.'" Although the protections the referendum debated protected only those in public employment for the city, all employers could again feel confident in removing gays and lesbians from their workplaces because they also had no protections. Lovell also reported that a grant for AIDS services in Montrose was immediately cancelled for fears of stoking further animosity. The backlash therefore had a wider impact than simply stripping some workers of their rights. It precipitated a larger backlash against gays and lesbians in various workplaces.⁷⁶

The referendum brought national attention to the rights of gays and lesbians in Houston. The Human Rights Campaign Fund (HRCF) called on lesbian and gay communities across the country to "boycott businesses and organizations that opposed Houston's city ordinance."⁷⁷ Duke Comegys, HRCF Co-Chair, noted that: "The Houston case is a very frightening and discouraging one for Gays across the country." His co-chair, Vivian Shapiro, meanwhile specifically called out the activism of the Chamber of Commerce in leading the fight to reverse protections. "We were surprised to see an organization as supposedly upstanding as the Chamber of Commerce join forces with the Ku Klux Klan in endorsing discrimination," said Shapiro. She added that in calling a national boycott they hoped "that some flexing of the Gay community's economic muscle will send businesses a message — both in that city and in others."⁷⁸ Yet such a movement at this time did little to

⁷⁶ "Gay community unswayed by referendum defeat", *Houston Chronicle*, undated in Box 144, Sears Papers-Duke.

⁷⁷ "Boycott urged in Houston", *Bay Area Reporter*, March 28, 1985 in Box 144, Sears Papers-Duke.

⁷⁸ *Ibid.*

shift public opinion or force the Chamber to see that bias was in fact bad for business rather than good. The argument that gay and lesbian workers were productive citizens who were not a threat to profit or growth would continue to be central to demands for workplace protections in the Sunbelt over the next decades. However, gay and lesbian activists would shift their focus from winning rights at the municipal level to gaining them in individual businesses, as is examined in a later chapter on Apple Computer in Texas.

Forming the Straight Slate

In addition to the impact of a perceived or actual rise in workplace discrimination as Lovell suggests, the other short-term impact of the referendum was on local politics. Whether it was the intention of Louie Welch to use the referendum to create a base for the upcoming mayoral election or not, that is exactly what he did throughout 1985. Welch built upon the miscellaneous “no” forces to form a new coalition that sought to reinstate him, and oust Kathy Whitmire as mayor. Liberal and conservative insiders posited that this may have been what brought the Chamber of Commerce into the referendum issue in the first place.⁷⁹ Just months before the referendum, Mayor Whitmire had been toasted with a fundraiser in which several influential business people raised money for her. These included Chamber members “Cater, Mischer, Ketelsen, and Schnitzer, as well as developers Vincent Kickerillo, Ned Holmes, and Gerald Hines, oilmen Michael Halbouty and Jack Warren.” *Houston City Magazine* also reported that “Texas Commerce Bancshares chairman Ben Love, and Continental Airlines chairman Frank Lorenzo were sponsors of the dinner”.⁸⁰ Several of these would later campaign openly against Whitmire’s effort to secure workplace protections for gays and lesbians, thereby troubling their allegiance to the Mayor. “In the weeks following the dinner, it appeared the tables had turned and the referendum had become a wedge

⁷⁹ “Closet politics: what the gay rights referendum meant”, *Houston City Magazine*, March 1985.

⁸⁰ *Ibid.*

driven between the mayor and those same businessmen.”⁸¹ This suggests a possible reason for the dramatic shift in the stance of the business elite was the possibility of scapegoating gays and lesbians for the economic crisis while furthering their political aspirations against Kathy Whitmire in the upcoming Mayoral elections. The *Houston Chronicle* noted that “some observers believe that Welch, Whitmire’s chief opponent in the mayoral campaign, would not be in the race if the referendum had not occurred.”⁸² Gay rights therefore challenged the liberal coalition in Houston and became central to a local power struggle over the economic health of the city.

During the Mayoral election both Whitmire for the Democrats, and Welch who secured the Republican nomination, attempted to distance themselves from the anti-gay referendum yet it still appeared as a major component in the race. On one side Kathy Whitmire played down her role in supporting the “yes” vote which had lost so emphatically.⁸³ In doing so she sidelined her GPC allies and placed gay rights into the background. Similarly, on the other side Welch sought to demonstrate his viability as a candidate for what would have been a sixth non-consecutive term beyond the issue of gay rights. Welch prioritised arguments that he could pull the Houston economy out of doldrums — continuing a central theme of the referendum that the economy needed to be fixed, and Whitmire was unable to do this.

For Welch, however, the spectre of gay and lesbian rights would prove to be a nail in the coffin of his mayoral bid. Steven Hotze announced his candidacy for a city council seat and in doing so split the other conservative councillors. Basing his electoral campaign on the success of defeating gay rights, Hotze formed what he called a “Straight Slate” in which he and seven other candidates sought to depose those councillors who had supported the

⁸¹ Ibid.

⁸² “Gay community unswayed by referendum defeat”, *Houston Chronicle*, undated in Box 144, Sears Papers-Duke.

⁸³ Ruth Rendon, “Moral Issues Priority For Straight Slate Candidates”, *Associated Press News*, November 3, 1985, Available: <https://www.apnews.com/4df97be4517da0618be6d680880c335a> (accessed 28/6/2018).

nondiscrimination ordinances with Whitmire.⁸⁴ *The Texas Observer*, a monthly progressive newspaper noted the way in which homophobia mixed with broader conservative politics:

Straight Slaters have endorsed Welch, proposed candidates for each of the eight council seats up for election this year, and asked for an electoral mandate to make Houston the 'number one family city in the nation.' They've linked Houston's economic decline to its moral decline and come out four-square against taxation in general.⁸⁵

Those standing for election alongside Hotze could place the designation "STR SLATE" next to their names on the ballot paper to signify their opposition to gay rights. The initiative quickly divided the other conservative candidates. John Goodner, the original architect of the referendum, angrily challenged the necessity of such a slate. "I don't think it's altogether fair," said Councilman John Goodner. 'What does 'straight' mean? Does the fact that 'straight' does not appear by my name mean I am not heterosexual?'"⁸⁶

Though he distanced himself from them as the Straight Slate ramped up its campaigning and visibility in the run up to the election, Welch was increasingly drawn into homophobic slandering, and he sought to take the initiative from the slate. As the *New York Times* reported after the election: "Mr. Welch, in the final two weeks of the campaign, had stressed Mrs. Whitmire's backing of job rights for homosexuals and fear of AIDS, or acquired immune deficiency syndrome, most of whose victims are homosexual."⁸⁷ Meanwhile the Straight Slate prioritised ramping up fear of AIDS in the election as a way to discomfort their opponents' support of the gay rights ordinances. "If elected, the Straight Slate says it would require food handlers, blood bank personnel and day care workers to be issued health cards

⁸⁴ "Anti-homosexual candidates form Straight Slate", *UPI Archives*, October 10, 1985. Available: <https://www.upi.com/Archives/1985/10/10/Anti-homosexual-candidates-form-Straight-Slate/2776497764800/> (accessed 28/6/2018).

⁸⁵ Louis Dubose, "The Resurrection of Louie Welch", *The Texas Observer*, October 25, 1985, p.8. Available: http://issues.texasobserver.org/pdf/ustxtxb_obs_1985_10_25_issue.pdf (accessed 1/11/2018).

⁸⁶ "Anti-homosexual candidates form Straight Slate", *UPI Archives*, October 10, 1985.

⁸⁷ Robert Reinhold, "The '85 elections; AIDS issue seen as minor figure in Houston vote", *New York Times*, November 7, 1985.

indicating they are free of acquired immune deficiency syndrome.”⁸⁸ The homophobia peaked near election day when a broadcast difficulty during a cut-away on local television led to an incident in which Welch, “unaware that his voice was being broadcast on television... said one way to halt the spread of AIDS would be to 'shoot the queers.’”⁸⁹ Such a remark from a highly regarded figure was shocking to even his local supporters who could understand his usual anti-gay politics as distinguished from those of the KKK who chanted ‘Death to Homosexuals’ during the referendum campaign but expected more from the president of the Chamber of Commerce. Welch’s mobilisation of economic arguments alongside Hotze’s moral and AIDS-phobic arguments and the KKK’s extremism brought the rhetoric of both to a wider audience. Whether he meant it or not, the remark was more representative of the referendum year than he may have liked to admit. The episode sank his bid.

Reporting in the aftermath of the election the *New York Times* argued that the focus on gay rights “signified little” as Whitmire easily won re-election “by convincing Houstonians that she was a good Mayor, better able than her opponent to lead the city out of its economic doldrums.”⁹⁰ Indeed, reporter Robert Reinhold noted that the Straight Slate and Welch’s increasing focus on gay rights harmed their cause in the face of economic concerns somewhat ironically alienating those they hoped to represent — recent migrants following industry to the city. Crucial for these discussions were how to continue to build Sunbelt growth at a time of economic retraction. Conservative, and homophobic boosters found themselves challenged at this moment as they attempted to appeal to new migrants who may well have different moral and political outlooks around sexuality especially when they moved away from northern cities that already provided these protections with little controversy. Wesley Phelps has argued that one of the major drawbacks of this referendum

⁸⁸ Ruth Rendon, “Moral Issues Priority For Straight Slate Candidates.”

⁸⁹ Robert Reinhold, “The ‘85 elections; AIDS issue seen as minor figure in Houston vote.”

⁹⁰ *Ibid.*

was the way in which both sides appealed to economic growth arguments. This he argues, drew pro-ordinance activists like Diane Berg into marginalising gay and lesbian visibility while pulling the whole movement in a neoliberal direction.⁹¹ Yet in the eyes of the downtown democratic establishment the strategy worked: “Mrs. Whitmire ran what even Mr. Welch's people conceded was a masterly campaign, stressing the positive and offering an optimistic vision for a city whose economy is ailing. That left Mr. Welch to focus on the city's warts.” The *New York Times* reported: “His call for a return to the city government of the 1960's apparently meant little to a generation of newcomers who have migrated here over the last two decades.”⁹² However, the biggest losers of the election were the Gay Political Caucus (GPC). The election was the strongest indication that the caucus was weakened and gay rights were firmly once again forced into the background of local politics. As Reinhold notes: “Two years ago 18 candidates sought its endorsement; this year none did. The caucus refrained from making recommendations, fearing they would work against sympathetic candidates.”⁹³ *The Montrose Voice* pointed out that even Welch had previously sought the endorsement of the GPC, “and praised the political power of the Houston gay community but at other times had made homophobic campaign statements.”⁹⁴ Now the GPC was on the defensive it would be several years before the caucus would return to the forefront of Houston politics and the city would remain without employment protections for gays and lesbians in the subsequent decades.

Conclusion

Whereas Kathy Whitmire held onto her mayoralty for another term, and Houston would later elect a lesbian mayor, the city remained without any employment protections for

⁹¹ Wesley Phelps, “The Politics of Queer Disidentification”, p.332.

⁹² Robert Reinhold, “The '85 elections; AIDS issue seen as minor figure in Houston vote.”

⁹³ *Ibid.*

⁹⁴ “Sides are now clear for referendum”, *Montrose Voice*, December 28, 1984.

gay and lesbians. Steven Hotze built upon the reputation he created during the referendum to build a fiery media personality to attack liberal initiatives. Most insidiously, Hotze re-mobilised similar arguments to those he used in 1985 to again successfully attack the latest opportunity to enact lesbian, gay, bisexual and transgender rights in Houston in 2015. This time he and others built upon their experiences in 1985 to block rights through mobilisation of fears of transgender people in bathrooms.⁹⁵

The referendum took place at the same time that anti-sodomy law was on hold in Texas. The claim for further rights in Houston was won among liberal supporters in part because the legalistic arguments that posed homosexuals as criminals undeserving of protection was impossible to defend at this moment because 21.06 had been temporarily suspended due to Donald Baker's successful challenge. However, the same impetus given to gay rights activists to seek further protections at this moment also spurred a backlash that emerged to counter it. If the 21.06 ruling was a wakeup call to moral and religious conservatives that they were losing, the referendum gave them ample opportunity to mobilise their rhetoric openly and win new constituencies to their organisations. Likewise the newfound coalition of disparate voices against the ordinance gave the illusion of a united front against gay rights that could be similarly mobilised against the municipal liberal block in the upcoming elections, through the so-called "Straight Slate."

The intervention of the influential Chamber of Commerce to roll back gay and lesbian rights demonstrates the way in which sexual minorities became convenient scapegoats for economic uncertainty during an era of conservative ascendancy. Taking into account the huge margin by which the "no" coalition was able to repeal gay rights through arguments concerning the impact on business interests, gay and lesbian activists began to posit that it would not be until they could demonstrate effectively that bias was in fact bad for business in

⁹⁵ See: Joel Sanders and Susan Stryker, "Stalled: Gender-Neutral Public Bathrooms" in *South Atlantic Quarterly* (1 October 2016) 115 (4): 779–788. Also see: Mike Snyder, "In HERO vote, echoes of 1985", *Houston Chronicle*, November. 4, 2015. Available: <https://www.houstonchronicle.com/local/gray-matters/article/In-HERO-vote-echoes-of-concerns-30-years-ago-6610770.php> (Accessed: 5 August 2018).

Texas and elsewhere that they could secure their rights. This argument would be mobilised continually over the next few decades in episodes in which gays and lesbians laid claims to being productive citizens within the market economy. Activists also began to place more emphasis on winning rights through individual workplaces and corporations, rather than fighting for ordinances at the city or state level. The next chapter turns our attention to how the AIDS crisis impacted workers in Sunbelt industries and communities. In the process it will establish the need for rights to insurance and health care, as well as updated non-discrimination protections and domestic partner benefits. It will also explore the grassroots movements that emerged in reaction to firings of gay and lesbian workers due to AIDS and homophobia in the late 1980s and early 1990s.

Chapter Three

AIDS Discrimination, Cracker Barrel and Corporate Activism into the 1990s

As the incidents in Houston suggest, the AIDS crisis played a major part in conservative efforts to push back against nondiscrimination protections for sexual minorities. As the crisis deepened and the government response to it remained muted, activists turned their attention to winning more specific protections and access to medicine for those with HIV/AIDS. In doing so, they battled businesses who feared contagion and rising health care costs, as well as conservative lawmakers who sought to use the crisis to roll back gains won for sexual dissidents in the previous decade. By the end of the 1980s, activists experienced varying degrees of success in winning nondiscrimination protections for both people with AIDS, and sexual minorities more generally.

This chapter shifts our focus away from Texas towards North Carolina and Georgia, two other major Sunbelt states with growing populations, industries and increasingly organised LGBT communities. The chapter assesses the ways in which the AIDS crisis spurred new forms of activism across the South, with particular focus on how the restaurant and fast food industry which became a key arena for AIDS discrimination. As activists and lobbyists sought new protections for people with AIDS, the restaurant industry in North Carolina acquired exemption from such protections for fears that losing their right to fire food-handlers with AIDS would also mean a loss in business from homophobic and AIDS-phobic customers. This chapter will also examine the case of Cracker Barrel chain in the 1990s to understand how restaurant owners not only sought to exempt themselves from AIDS nondiscrimination coverage but also continued to actively discriminate against sexual minorities.

The workplace was a key arena for people with AIDS who needed urgent access to the health care and social security that is peculiarly attached to private sector employment in the United States. As debates raged as to whether the disease could be spread through casual contact, conservative politicians, activists and business executives sought to

proscribe people with AIDS from public workplaces including food establishments. As early as 1983 the Center for Disease Control (CDC) along with Food and Drug Administration (FDA) and the National Institutes of Health (NIH) issued guidelines which clearly stated that the disease could not be transmitted through casual contact. Similarly, in 1985 the “Public Health Service issued guidelines stating that there was no risk of work-place contagion and that exclusion of people with AIDS was not medically justified.”¹ However, this did not halt businesses from firing people with AIDS. AIDS activists won several important lawsuits to return people to work and their benefits. However, numerous incidents of AIDS and homophobic workplace discrimination continued throughout the 1980s, which suggested that nondiscrimination protects were sorely needed.² One victory for AIDS activists occurred in North Carolina. Community activists succeeded in steering AIDS nondiscrimination legislation through the State Assembly in 1989. To do so, they relied upon a strategy of lobbying that assured lawmakers that the policy would not more broadly cover sexual dissidents such as gay men and lesbian women, whose sexuality was still outlawed by the state’s “Crimes Against Nature” sodomy statute. Instead, the nondiscrimination policy would only cover people with AIDS to protect their employment rights.

AIDS, Anti-Discrimination and the Restaurant Industry

When medical authorities became aware of a seemingly new and mysterious disease striking down young gay men in the early 1980s, southern businesses and politicians were on the front-lines of arguing for their ability to discriminate against those communities most

¹ “Justice Dept. Delivers Injustice to AIDS Victims” in *New York Times*, July 3, 1986, available: <http://www.nytimes.com/1986/07/03/opinion/1-justice-dept-delivers-injustice-to-aids-victims-653186.html> (accessed 1/4/2018).

² For further discussion of the AIDS crisis and its connection to work, welfare and capitalism, see: Jonathan Bell, “Between Private and Public”. For more on the impact of AIDS on health and welfare policy, see: Jonathan Bell, “Rethinking the ‘Straight State’: Welfare Politics, Health Care, and Public Policy in the Shadow of AIDS” in *Journal of American History*, Vol.104.4 (March 2018) pp.931-952. See also: Jennifer Brier, *Infectious Ideas: U.S. Political Responses to the AIDS Crisis* (Chapel Hill: University of North Carolina Press, 2009); Cathy J. Cohen, *The Boundaries of Blackness: AIDS and the Breakdown of Black Politics* (Chicago: University of Chicago Press, 1999); Peter F. Cohen, “All They Needed”, pp.86-116.

at risk from AIDS. Indeed, at the height of the crisis the Sunbelt seemed resistant to any form of support for people with the disease. Conservative politicians and activists, including Steven Hotze in Texas, William Dannemeyer in California, and Jesse Helms in North Carolina called for a range of proscriptions to be placed upon people with HIV/AIDS. These included bans upon gay men giving blood, working in the food service and health care industries, and in the most extreme example, the quarantine of those with AIDS.³ In response to the discrimination suffered by people with AIDS, as well as sexual minorities more generally, the movement for nondiscrimination protections grew across the region. One such case was in North Carolina, where a new coalition emerged to win employment protections for people with AIDS. Yet the victory they would claim in securing a state-wide ban on discrimination against people with HIV/AIDS in employment would prove short-lived, as business lobbyists narrowed the scope of the legislation. Stephen Inrig argues in his study of North Carolina and the AIDS epidemic that the state is “pertinent to the story of AIDS in America for several reasons.” Chief among them was the cutting-edge research that was taking place at pharmaceutical corporations in the Research Triangle, including Burroughs Wellcome who created the first AIDS treatment, AZT, in 1986. But also important was the central role that the state played in national debates over AIDS discrimination and assistance. This was most infamously demonstrated through the rhetoric and actions of the homophobic, conservative U.S. senator Jesse Helms who led national charges against publicly funding AIDS assistance programs, and in favour of stripping the civil rights of people with AIDS.⁴

³ “Senator Helms and the Guilty Victims”, *New York Times*, June 17, 1987; Edward I. Koch, “Senator Helms’s Callousness Toward AIDS Victims”, *New York Times*, November 7, 1987; William Dannemeyer, “Dannemeyer Outlines His Views on AIDS”, *Los Angeles Times*, February 8, 1986. Ruth Rendon, “Moral Issues Priority For Straight Slate Candidates”, *Associated Press News*, November 3, 1985, Available: <https://www.apnews.com/4df97be4517da0618be6d680880c335a> (accessed 28/6/2018).

⁴ Stephen J. Inrig, *North Carolina and the Problem of AIDS: Advocacy, Politics, and Race in the South* (Chapel Hill: University of North Carolina Press, 2011) pp.8-9.

Activists formed the Lesbian and Gay Health Project (LGHP) in 1982 and it quickly evolved into North Carolina's first AIDS health service.⁵ Over the rest of the decade activists, lobbyists, state health workers, and researchers worked together to form an "AIDS exceptionalist" alliance that encouraged at-risk populations to come forward, get tested and receive treatment. However, as infection rates continued to rise, activists realised that one necessary element that would encourage more people to get tested was nondiscrimination laws that would provide a safety net for those who tested positive to remain in work.⁶

One strategy used to win these protections was lobbying local government. Building on the coalition of AIDS activists, lobbyists including David Jones, "a retired pharmaceutical executive," pushed politicians at the state capitol to pass a nondiscrimination bill that would protect people on the basis of HIV/AIDS status. An opportunity to pass such a bill opened in 1989. Inrig notes that the governor, legislative committees, and medical associations all supported implementing some form of nondiscrimination protection. He quotes David Jones as saying: "Politically, there's a great deal of pressure to move... Two years from now the impetus is not going to be there." This effort points to the fact that even in the most conservative of regions, legislative support for people with AIDS could be forthcoming. However, lobbyists relied upon top-down methods of gaining incremental support from lawmakers at a time when the crisis called for expediency. As Jones himself suggested, the gains of such a strategy could be lost with a change in a state's political composition.⁷

Republican lawmakers, aware of this tight timeframe, orchestrated a hearing of the bill in which the General Assembly heard testimony from Dr. James Fulghum, a leading surgeon in North Carolina who believed that "HIV attacks the brains of people who test positive for antibodies to it, rendering them incapable of quick decision-making and thus a danger to society when operating automobiles and other complex machinery." As such,

⁵ Ibid. p.17.

⁶ Ibid. p.75.

⁷ Ibid.

Fulghum reportedly favoured “barring beauticians, waiters, health care workers, and those in seven other professions from practicing if they test HIV-positive under his proposed mandatory testing regulations.”⁸ Such examples of “queer labour” workplaces in which gay men and lesbian women were more stereotypically thought to inhabit, suggests that Fulghum and others saw the AIDS crisis as an opportunity to target gays and lesbians more generally. David Jones told press that “the hearings seemed to be a carefully orchestrated stunt by the right wing to defeat an anti-discrimination bill that has a lot of support in this General Assembly.”⁹

In the end Fulghum’s testimony had little effect on the North Carolina General Assembly, which approved the bill to prohibit discrimination against people with AIDS for two years by a 26-21 margin.¹⁰ David Jones and others quickly claimed a victory. Jones argued that a grassroots campaign which involved “a massive influx of letters and telephone calls supporting anti-discrimination, particularly from the metropolitan areas of the state” helped sway the vote. Additionally, North Carolina’s Human Rights Fund organised “an eleventh hour mailing to state legislators.”¹¹ Despite attempts by Republican lawmakers to derail the measure, it passed to become law on October 1, 1989.¹²

Although the anti-discrimination bill was a huge victory for North Carolina activists, and one that would lead to new protections for people with AIDS in workplaces, the law was also severely compromised by business interests. Like AIDS protections enacted in other states at this time, lawmakers allowed non-discrimination protections but only in a trade-off that also made HIV testing reportable to state health authorities. “There are about 22 states

⁸ “ACT UP/NY invades North Carolina Burroughs-Wellcome”, *Gay Community News*, April 30-May 6, 1989.

⁹ Ibid. On notions of “Queer Labor” see: Allan Bérubé, “‘Queer Work’ and Labor History” in *My Desire for History*, pp.259-69.

¹⁰ “Senate approves anti-discrimination bill”, *The Front Page*, May 16, 1989 in Box 4, Front Page, Manuscript Collections, J. Murrey Atkins Library Special Collections and University Archive, UNC Charlotte Repository. Further references to *The Front Page* in this thesis refer to this collection.

¹¹ Ibid.

¹² “AIDS anti-discrimination will become law”, *The Front Page*, Aug. 15, 1989.

that have passed anti-discrimination laws, and they have all made HIV reportable,” David Jones told reporters. He noted that was a recommendation by the President’s Commission on AIDS “and the [NC] AIDS Coalition relied heavily on that commission’s report in its educational efforts in the Senate.”¹³ Stephen Inrig notes that the reporting element led to debates among the North Carolina AIDS activists. However, they “chose to back the bill and then worked to convince the Health Services Commission to follow what some other states had done and make HIV reportable in North Carolina by code, rather than name.” Similarly, there were other limitations placed on the legislation. These included a limit of two years unless extended by the General Assembly, and the deletion of language protecting people “perceived to be” HIV-positive. Employers were also allowed to test prospective employees for HIV, and dentists could refuse to treat HIV-positive patients.¹⁴ The General Assembly also retained “its record of not spending a penny of its own money on AIDS education by allocating only \$294,000, provided by the federal government rather than state revenues, for AIDS prevention and education.”¹⁵

Most strikingly, however, was a late addition to the bill which exempted the state’s restaurant industry from non-discrimination coverage. The N.C. Restaurant Association, “one of the most powerful lobbies in the General Assembly,” argued that their associated businesses “would suffer unfairly from an anti-discrimination law because a majority of the general public believe AIDS can be transmitted by waiters and food preparers.” The Association noted that they were aware these assumptions were untrue but said “they fear that restaurants would be subject to heavy financial losses because of public misconceptions about AIDS infection.” Instead of protecting workers within the sector, restaurant owners suggested that they would support further education efforts “to better

¹³ “Senate approves anti-discrimination bill”, *The Front Page*, May 16, 1989.

¹⁴ *Ibid.*

¹⁵ “AIDS anti-discrimination will become law”, *The Front Page*, August 15, 1989.

inform the public about the spread of the disease.”¹⁶ However, added to the state’s anti-union legislation, anti-sodomy laws and at-will hiring practices this latest lack of protections for people with AIDS made service work in the restaurant industry particularly volatile for sexual minorities and gender nonconformists. This volatility would become apparent in the next decade as southern restaurant owners continued to fire workers for their perceived sexual orientation and/or HIV-status. The restaurant exemption was dropped in 1991 when the legislature failed to extend it. This allowed others who claimed they were fired due to their HIV status to sue their employers. For instance, one manager of Pizza Hut restaurants in the Charlotte area claimed he was fired due to his status in mid-1991.¹⁷

Across the Sunbelt, examples of those in the food service industries who lost jobs because they were suspected of having HIV/AIDS abound. For example, Michael Connett, 39, a waiter in Covington, Kentucky, was forced to resign his job after he disclosed his HIV status in October 1991. “I thought I did the responsible thing by telling them,” said Connett, who had been on the job about three months.” However, three days later his employers asked him to sign a form stating that he would resign for “personal reasons.” It would take him three years to find a lawyer to represent his case.¹⁸ Likewise, Ronald Kirkland, 40, was dismissed from his job as a chef at Azio, a Buckhead (North Atlanta) restaurant, one day before he was due to obtain insurance coverage. Cartel, the company that owned Azio, claimed he was fired for failing to report to work. Kirkland claimed the company knew that he was receiving treatment for a hernia at the time. It would transpire in affidavits secured for Kirkland’s case against the company that:

The termination came from Cartel’s belief that Kirkland was HIV-positive or had AIDS, and that his addition to the company benefits plan would escalate insurance costs. Kirkland, who is not HIV-positive, said he suspected that such a belief might have spurred his termination. ‘What cued me in was that [Cartel’s] workers’

¹⁶ “Senate approves anti-discrimination bill”, *The Front Page*, May 16, 1989.

¹⁷ “Pizza Hut fires gay manager”, *The Front Page*, August 13, 1991.

¹⁸ “Waiter says firing was AIDS related” in *Southern Voice*, December 1-7, 1994 in MSS OS 3.604, LGBT Serial Collection, MSS 991, Kenan Research Center, Atlanta History Center, (hereafter cited AHC).

compensation people [who were handling payments for the hernia treatment]... called my surgeon's office over and over again to ask if I had AIDS,' he said.¹⁹

As North Carolina entered the 1990s, the politics of AIDS remained a hot-button issue in the state. North Carolina drew national attention in that year's mid-term elections as the conservative US Senator Jesse Helms sought re-election and gay and lesbian activists across the country lent support to his challenger, Harvey Gantt, the African-American former mayor of Charlotte. Longtime political correspondent for the *News & Observer* Rob Christensen argues that: "His feud with the gay community was political gravy for Helms. It not only helped Helms raise money, but in culturally conservative North Carolina it also was the perfect wedge issue to attract conservative Democrats." During the campaign Helms played up his opponent's connections to the gay and lesbian communities: "Gantt has run fund-raising ads in gay newspapers,' said one Helms ad. 'Gantt has raised thousands of dollars in gay and lesbian bars in San Francisco, New York and Washington. And Harvey Gantt has promised to back mandatory gay-rights laws.'" In response to these attacks Gantt compared Helms' rhetoric to that of southern segregationists and linked the black freedom struggle with the movement for gay and lesbian rights. "If this were 25 years ago, he'd be talking about blacks," Gantt said. "If this were 18 years ago, he'd be talking about communists or those civil rights agitators." Playing on notions of queer labour, Gantt defended his allies in the gay and lesbian communities: "This year it's artists, architects and maybe extreme liberals. Somehow we've got to make them terrible people, bad people to be with. Homosexuals: bad people. That's nothing new. I think the public sees through that."²⁰

Gantt came close to unseating Helms in the 1990 election. The results hinted that a new generation of liberal Research Triangle migrants were shifting political clout away from Helms' cold-warrior homophobia. Helms did beat Gantt, however, by again playing up white

¹⁹ "Firm fired man for fear he had AIDS, lawsuit claims." in *Southern Voice*, August 18-24 1994, AHC.

²⁰ Rob Christensen, *The Paradox of Tar Heel Politics: The Personalities, Elections, Events that Shaped Modern North Carolina* (Chapel Hill: University of North Carolina Press, 2008) p.274.

frustration at affirmative action. In an infamous television advert released just before the election, a pair of white hands is shown crumpling up a job application as a narrator states:

You needed that job, and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt say it is. Gantt supports Ted Kennedy's racial quota law that makes the color of your skin more important than qualifications. You'll vote on this issue next Tuesday. For racial quotas: Harvey Gantt. Against racial quotas: Jesse Helms.²¹

The election signalled that the intersecting issues of non-discrimination, affirmative action, racial politics and AIDS would remain salient to Sunbelt conservative politics as the region entered the 1990s. Just a few months later, employment homophobia involving the Cracker Barrel chain would bring this into sharp relief, inspiring a grassroots fightback.

Cracker Barrel

The battle over AIDS and homophobic discrimination in southern workplaces went national in 1991, when gay men and lesbian women were fired at the Cracker Barrel roadside restaurant chain. AIDS discrimination fed into a broader homophobic backlash against the increased visibility of gay men and lesbians in the workplace as fear of cost and infection remained unchallenged in most areas. A movement erupted to win back jobs for the fired Cracker Barrel employees and to challenge the company to institute a non-discrimination policy.

Cracker Barrel Old Country Stores Inc. was established in 1969 by Dan Evins, a former oil executive, who utilised the emergence of the highway system to place stores with an eatery, a gas station and a gift shop near these main interstate highways to tempt road-trippers into refilling. While McDonald's had already placed itself in the road-side market with modern fast-food restaurants, Cracker Barrel stores "played to customers' nostalgia" for simple Southern cuisine. The store was a quick success and Evins abandoned gasoline at

²¹ Ibid. p.276.

the height of the 1970s oil crisis in favour of “grits and country ham.”²² By the early 1990s, Cracker Barrel operated 124 stores with thousands of non-unionised staff. In a January 1991 directive to the company’s managers, one executive called upon stores to fire those: “whose sexual preferences fail to demonstrate normal heterosexual values.” Evins defended the controversial policy by explaining that “gay people made customers in rural areas uncomfortable.” Within months as “many as 16 openly or suspected gay employees were promptly fired.” After an initial backlash the company repealed the policy and claimed that it was “well-intentioned over-reaction.” Individual managers were able to ignore the company’s change of heart though and in some cases continued to fire gay and lesbian employees.²³ The Cracker Barrel episode suggests that private companies across the South still felt confident in openly discriminating against sexual minorities even as state legislators in even the most conservative of southern states like North Carolina were beginning to understand the need for some protections for those with AIDS. The AIDS crisis therefore provided a pretext to further discrimination on the basis of sexuality into the 1990s.

Rumours were rife in the immediate aftermath of the Cracker Barrel firings that the policy was due to the company’s fear of insuring workers at risk of infection from HIV. One community newspaper noted in March 1991 that “speculation has been that the hiring policy may be related to a change in the company’s medical insurance provider, which does not wish to insure lesbians and gay men due to the insurers’ perceived association with this group and AIDS.”²⁴ Certainly this was the proven case in a number of other workplaces at this time. Joel Starkey, a maintenance worker at a retirement community in Boca Raton, faced intimidation by his employer and insurance company who did not want to cover the

²² “Dan Evins, founder of Cracker Barrel highway empire, dies” *The Washington Post*, January 16, 2012, https://www.washingtonpost.com/local/obituaries/dan-evins-founder-of-cracker-barrel-highway-empire-dies/2012/01/16/gIQAfkt43P_story.html (accessed 4 July 2016).

²³ John Howard, “The Cracker Barrel Restaurants” in *Understanding and Managing Diversity* eds. Carol Harvey and M. June Allard (New York: Pearson, 2011, 5th ed.).

²⁴ “Cracker Barrel target of protest” in *Etcetera* vol.7.11, March 15-21, 1991 p.9/15 in Box 14, Folder 5, LGBT Serial Collection, MSS 991, AHC.

cost of his AIDS medication.²⁵ The issue at Cracker Barrel also mirrored the experiences of other workers, especially those in the food service industries, such as Connett and Kirkland, who lost jobs because they were suspected of having HIV/AIDS.

This chapter will now pivot to explore activist strategies utilised in attempting to overturn Cracker Barrel's homophobic policy, win back the jobs for the fired employees, and influence national discussions on the need for workplace anti-discrimination laws. It will examine the shift from a grassroots form of civil rights activism to a corporate shareholder activism that pulled the movement in a neoliberal direction that was emblematic of the "mainstreaming" of the national movement for gay and lesbian workplace rights in the 1990s. In doing so it highlights historic class stratification within lesbian and gay communities.

In the 1990s, workplace rights took centre stage in nationwide discussions as Democratic politicians sought first to extend the 1964 Civil Rights Act to cover sexual orientation in the workplace and then to pass new legislation including the Employment Non-Discrimination Act (ENDA). In the South, Cracker Barrel would come to the fore in demonstrating the necessity of such provision in the law as it launched open attacks upon lesbian and gay workers. For activists, the chain came to represent the perceived bigotry and backwardness of the entire region from which the company rose. As one gay columnist wrote at the height of the campaign in response to the company's homophobic policy: "It stands for Southern cooking, Southern values, "family values," the Bible Belt... Southern churches, once champions of slavery and segregation, are now (along with the Roman Catholic Church) the major sources of homophobia."²⁶ Conversely, the movement which

²⁵ "AIDS Patient says he's victimized by employer", *Sun Sentinel* (Ft. Lauderdale), March 20, 1989 http://articles.sun-sentinel.com/1989-03-20/news/8901150346_1_prescription-benefits-discrimination-human-relations (accessed 1/4/18). But see also: Jonathan Bell, "Between Private and Public", p.5. For more on the impact of AIDS on health and welfare policy, see: Jonathan Bell, "Rethinking the 'Straight State'", pp.931-952.

²⁶ Jesse Monteagudo, "Cracks in the Barrel" by in *TWN-Florida*, June 10, 1992 in Box 81, Folder 2, Atlanta Lesbian and Gay History Thing papers and publications, MSS 773, James G. Kenan Research Center, AHC.

rose up in outrage at the actions of Cracker Barrel would highlight the agency of lesbians and gay men, and their allies throughout the region.

The most notable firing by the company was that of Cheryl Summerville, a cook who had worked at the Douglasville, Georgia Cracker Barrel for three and a half years. On a day off in early 1991, she received a call from her sister, who also worked at the store, informing her of the new policy. Some employees had been called to a meeting where several were told they were fired after being read the policy. Summerville faced a dilemma: only a handful of people at the store knew of her sexuality, and there was a possibility that she could pass as heterosexual and continue working at the store by keeping quiet. There was a lot at stake. Summerville had a teenage son and was the sole breadwinner for their family, who moved from the city where her partner Sandra owned a business, which she sold, to the country, where they hoped to have another child. "At the same time, though, if I went in there and denied being a lesbian or if I didn't stand up for it, I'd be denying everything I'd worked for for so many years." The next morning she confronted her line manager who knew she was a lesbian. She demanded: "I hear you have a new policy. If you do, I want you to read it to me." In response, her manager said, "we're really targeting effeminate men on the floor, they're wanting to get rid of them."²⁷

In considering the complex historic notions of what is and what is not considered "queer labour," one can gauge from her manager's response that as Summerville's work was in the kitchen, an area strongly gendered as female, her presence at the store was not seen as a threat to societal norms. A white, gay male waiter, on the other hand, who performed work historically racialised as black and gendered as female, would have been viewed as a threat to those norms. This sentiment would be echoed to Summerville later on national television when she appeared on *The Larry King Show* to highlight her firing and subsequent activism. One female caller said: "She can be a cook as long as she does her job and does not come out of the kitchen. But this is very offensive to a family restaurant. Why a person

²⁷ *Out at Work* (Anderson/Gold Films, dirs. Kelly Anderson and Tami Gold, 1996).

should have to go into a restaurant with their family, and then their children start to have a weird idea of what men and women should be.”²⁸ Nonetheless, Summerville stood her ground at the restaurant: “‘We’re all one,’ I said, ‘And if it applies to them, it applies to me. Now are you going to fire me? You know I’m a lesbian.’” She was fired that afternoon with what would become an important piece of evidence. On her notice of termination, or “pink slip” as it is more commonly known, the manager had written: “This employee is terminated due to violation of company policy. The employee is gay.”²⁹ This stated in the clearest possible way that her firing was due to her sexuality. As *The New York Times* would later write, “Cracker Barrel’s action stood out for its sheer blatancy.”³⁰ The openness of this discrimination and the fact that management stated their intention was to fire effeminate men lends evidence to a point made by scholars of sexuality: that those most vulnerable to discrimination in the workplace have been those most stereotypically identifiable as gay or lesbian.³¹

In contrast to Summerville, Jeffrey Sherrill, a 28-year-old, white, gay man, worked in the gift shop of the Cracker Barrel store in Charlotte, North Carolina, for two and a half years. Performing work which could easily be deemed “queer labour,” he was the embodiment of the evident target of the policy: an effeminate gay man. While company executives would later try to paint those dismissed as being fired for other disciplinary reasons, rather than simply being gay, Sherrill put the lie to this. Shortly before he was fired, he received a 95% rating on his employee evaluation form, and his boss wrote “keep up the good work.” Yet two months later, the same manager would write on Sherrill’s dismissal form

²⁸ Ibid.

²⁹ “Cracker Barrel Old Country Store, Separation Notice to Cheryl Summerville”, in Folder 5, Box 6, Office of Lesbian/ Gay/Bisexual/Transgender Life records, Emory University Archives, Stuart A. Rose Manuscript, Archives, and Rare Book Library, Emory University. (Hereafter cited as EUA).

³⁰ “Danny Evins, Restaurant Founder and Focus of Controversy, Dies at 76” in *New York Times*, 16 January 2012. Available online: http://www.nytimes.com/2012/01/17/business/danny-evins-restaurant-founder-and-focus-of-controversy-dies-at-76.html?_r=0 (accessed 1 July 2016).

³¹ Margot Canaday, *Pink Precariat: LGBT Workers in the Shadow of Civil Rights*, unpublished keynote speech, 2016 HOTCUS Annual Conference.

that he was in violation of “company policy on homosexuals.” At the time, Chapel Hill was the only city to offer any employment protections for gays and lesbians in North Carolina but that policy was for municipal employees only. Sherrill would find another job a few months later but was forced to take a pay cut. He linked the discrimination to which he was subjected to the discourse of freedom around the Gulf War that was taking place concurrently. “‘There has been a lot of talk lately about pride in being American,’ Sherrill said, ‘This isn’t such a great country after all if other people can decide whether you can have a job just because of who you are.’”³² In doing so, he challenged notions of “American values” and echoed the sentiments of African Americans following the Second World War and the Vietnam War who demanded respect at home as well as victory abroad.³³

Summerville and Sherrill’s stories unpack certain myths held as truths about sexuality in the US South. Their experiences challenge the notion that the South is a region of “uniform, hegemonic oppression, with minimal, if any, lesbian/gay visibility and community.”³⁴ While the Cracker Barrel discrimination was certainly oppressive, Summerville’s wider experience would seem to problematise this notion of an all oppressive South. Her partner, Sandra, explains that while “I guess we were aware of the name ‘lesbians,’ but a small awareness of it. We never really thought about it. We really didn’t.” She recalls that neighbours were mostly supportive: “We just lived our lives and got along just fine with everybody else, and went off with our friends who were couples, and all our kids played together. We took vacations together with them... We never thought about us being different from them. We thought we were the same.”³⁵

³² “Workers fired for being gay unprotected by law” in *The Charlotte Observer*, March 15, 1991 in Box 81, Folder 2, Atlanta Lesbian and Gay History Thing, MSS 773, AHC.

³³ For further exploration of notions of patriotism in American protest movements, especially with reference to gay rights, see: Simon Hall, *American Patriotism, American Protest: Social Movements Since the Sixties* (Philadelphia: University of Pennsylvania Press, 2011).

³⁴ Donna Jo Smith, “Queering the South”, p.381.

³⁵ Quoted in *Out at Work*.

Though they experienced some difficulties with their families when they first came out, they had not experienced discrimination before the Cracker Barrel incident, claiming that “it was a shock to find out that there were people in the world who hated us just for what we were, and to find out that you have a stigma on you because you're a lesbian.”³⁶ Having moved to a rural area from the city, their family life was not troubled by prejudice and accepted among neighbours with whom they holidayed. In contrast, Sherrill’s experience was in a Cracker Barrel store located more centrally in metropolitan Charlotte, where one would expect an openly gay man to receive more support than in the countryside, yet he was also fired for his effeminacy. Both Summerville and Sherrill’s firings support the argument forwarded by John Howard of a need to see rural and city spaces as dialectical, rather than the city as always liberatory and the countryside as always oppressive.³⁷

Civil Rights Activism

Activism in reaction to the firings at Cracker Barrel took off initially in Atlanta, where a recently formed group, Queer Nation, sought the involvement of fired workers to launch a campaign. Summerville was encouraged to contact them by friends who were more connected with the local gay and lesbian scene. She recalls that she had her reservations: “The most political thing I'd ever done was go to a voting booth. I saw protests and stuff on television but I'd never been a part of one. I actually couldn't imagine it.” In response to Summerville’s firing, Queer Nation/Atlanta (QN/A) organised pickets and boycotts of local stores. Having never been active in a social movement before, and without ever considering herself as having a lesbian identity, getting involved was a learning curve: “Queer Nation was real scary sounding to me... I thought I was going to walk into maybe a ton of radical people, or crazies. I walked in, and it was all boys, real normal-looking.” The group had formed just months earlier in October 1990 and involved many who had been politicised through struggles around HIV/AIDS in the 1980s. Summerville was quickly pushed to the

³⁶ Ibid.

³⁷ John Howard, *Men Like That*, pp.13-14.

forefront of the campaign, becoming co-chair of QN/A alongside Lynn Cothren, a local activist who was working as Coretta Scott King's aide at The Martin Luther King, Jr. Center for Nonviolent Social Change.³⁸

In the first year of the campaign against Cracker Barrel, Lynn Cothren posed the struggle as a mixture of gay civil rights activism and a battle for workers' rights. Activists first staged protests outside stores and then held "sip-ins," taking over a store by occupying every table and ordering only inexpensive items. These actions had two aims: first, to limit the amount of profit the store could make by physically occupying tables that would otherwise cater to paying customers, and second, to increase visibility of the lesbian and gay communities in the store by declaring their sexuality when they ordered. In doing so, activists participated in a form of gay economic activism and civil disobedience that had its roots in the civil rights movements of the 1960s and 1970s. For instance, in 1966, activists in the New York Mattachine Society, an early gay rights organisation, adapted the sit-in tactic used by African-Americans in the South, visited bars in Greenwich Village where they "boldly proclaimed that they were homosexuals and demanded to be served" in response to the state's liquor authority, which prohibited the serving of alcohol in spaces frequented by homosexuals. Historian Jim Downs notes that "most of the bars obliged" and served the activists.³⁹

In mirroring the black freedom struggle of the 1960s, activists also built a diverse coalition of lesbians, gay men, and queer activists alongside black groups including the National Association for the Advancement of Colored People (NAACP), the National Organization for Women (NOW), Methodist Churches and Metropolitan Community Churches (MCC). National lesbian and gay activists saw this coalition as an important

³⁸ "Queer Nation Atlanta Dies" in *Etcetera* vol.10.12, March 25, 1994, p.23 in Box 87, Folder 2, Atlanta Lesbian and Gay History Thing papers and publications, MSS 773, James G. Kenan Research Center at the Atlanta History Center. See also *Out at Work*.

³⁹ Jim Downs, *Stand by Me: The Forgotten History of Gay Liberation*, (New York: Basic Books, 2016) p.75.

development: “a model of how we can build our alliances forward.”⁴⁰As Cothren argued: “This is a gay issue, but it is also a workers’ rights issue. It is an attack against all working people.” Though weakened in the South, unions including the United Food and Commercial Workers supported picketing the company headquarters. A letter of solidarity was signed by more than 35 trade union officials and presented to Cracker Barrel workers.⁴¹

In practice, demonstrators also showed that they were acutely aware of the need not to alienate other workers at the Cracker Barrel stores in which they protested, and instead sought to get them onside. The report from a demonstration in South Carolina is particularly illustrative of the non-violent civil rights tactics deployed by activists and their concern for workers:

27 people walked into the restaurant singly and in small groups, beginning at about 11 AM. They occupied about 12 tables, ordered small, inexpensive items, and stayed until about 1:45 PM, when several members of the group were asked by management to leave. As each group of protestors left, they left good tips and placed a list of demands on the table... The demands were; inclusion of sexual orientation in a Cracker Barrel equal employment opportunity statement, restitution to all unjustly-fired employees for lost wages while unemployed, the rehiring of the individuals with a guarantee of no retribution, and a public apology to the gay and lesbian community.⁴²

The protests received a mixed response from workers in the restaurants. At one demonstration at the Lithonia Cracker Barrel, a store on Interstate Highway-20 that was heavily targeted by Queer Nation activists due to its proximity to Atlanta, two workers highlighted the contradictory ways the activism was affecting staff. One worker, Judy Jackson, a server who did not identify as gay or lesbian, stated her support: “It’s not right that they’re getting fired... A lot of people are scared about their jobs.” Conversely, “Rod Frazier, an openly gay waiter at the Cracker Barrel who was not fired... expressed his

⁴⁰ “Regional protest planned against anti-gay policy of Cracker Barrel restaurants, *National Gay and Lesbian Task Force*, press release July 25, 1991 in Box 13, Folder 17, Southern Voice records, MSS 1016, AHC.

⁴¹ *Ibid.*

⁴² “SC Joins Cracker Barrel Protests” in *Community Connections*, August 1991 in Box 13, Folder 17, Southern Voice records, MSS 1016, AHC.

concern over their tactics. ‘I think what you are doing is awful for those of us working for the company who are gay. You’re going to get us fired,’” said Frazier. “I have not agreed with this militant faction.” Although the protests were beginning to receive wide support, fractures were clearly appearing within the community as to the best tactics to take. Some openly gay workers, like Frazier, who feared for their jobs, preferred not to rock the boat. Frazier appears to have been an anomaly as there are no accounts of other openly gay workers who retained their jobs. It is likely that Cracker Barrel’s policy encouraged their gay and lesbian workers to once again hide their sexualities.⁴³

By May 1991 Atlanta activists were regularly taking over entire restaurants with hundreds of activists.⁴⁴ Queer Nation released protest guidelines for those attending demonstrations to ensure participants followed principles of non-violence. “Above all, do not argue with anyone or allow yourself to be provoked. There may be hostile spectators / customers... talk to observers who ask questions and seem willing to have a peaceful discussion, but be wary of anyone who seems belligerent. Remember, this is a legal, non-violent protest.” Lynn Cothren was putting into action the training he received as an assistant to Coretta Scott King in service of the campaign against Cracker Barrel.⁴⁵

There was certainly common cause for black activists to become involved in the struggle against Cracker Barrel. Speaking to a rally, Cothren pointed to some of the ways in which “nostalgia” at Cracker Barrel meant racism as well as homophobia and sexism. Holding up a “mammy doll” he purchased in store, he demanded: “stop selling your mammy dolls, stop selling confederate flags and Sambo memorabilia, hire gays and lesbians back now!” Meanwhile, under oath in a hearing to attempt to have trespassing charges against activists dropped later in the campaign, Queer Nation activists would raise the spectre of

⁴³ “Protests at Cracker Barrel continue” in *Etcetera* vol.7.14, April 5-11, 1991, in Box 6.7, Atlanta Lesbian and Gay History Thing papers and publications, MSS 773, AHC.

⁴⁴ “Protest barrels over eatery”, in *Etcetera* vol.7.20, May 17-23, 1991 in Box 6.7, MSS 773. AHC.

⁴⁵ “Protest Guidelines, 8-11-91” in Box 13.17, Southern Voice records, MSS 1016, AHC. Cothren was also building upon the legacy of Bayard Rustin, see: John D’Emilio, *Lost Prophet: The Life and Times of Bayard Rustin*, (Chicago: University of Chicago Press, 2003) p.230.

racism at the stores they were banned from and were able to draw some honest opinions from Cracker Barrel middle management. “In testimony, the manager of the Lithonia store told the court that as a person of color he found it difficult to uphold Cracker Barrel’s policies and admitted that the sale of these items was offensive.” Additionally, Jody Waller, Georgia regional manager for the company, “admitted that there were no people of color employed in positions ““above the store level.””⁴⁶

One of the biggest demonstrations staged by Queer Nation/Atlanta brought visibility to gay and lesbian families in the South. As noted earlier, Cheryl Summerville and her partner Sandra moved away from the city to Douglasville, a small town outside of Atlanta, to raise a family. Summerville worked alongside her sister and sister-in-law at the same Cracker Barrel Restaurant while she raised her son, Chris. It therefore made sense that, in the wake of the company determining that she and others did not represent traditional family values, Queer Nation would stage a protest at the store on Mother’s Day. Over 130 people attended, including 20 mothers as result of Queer Nation’s call to “Bring Your Own Mother” (BYOM). Protestors chanted, “We’re your family, not your enemy, someone you love is queer.” Mother’s Day protests and sit-ins were also held in other Southeastern cities including Nashville, Tennessee and Tallahassee, Florida.⁴⁷

The protests gained some support from outside Queer Nation’s activist base. Editorialising in the *Atlanta Journal/Atlanta Constitution* in March 1991, columnist Tom Teepeen announced that although he was a regular at Cracker Barrel restaurants usually, he would be joining the boycott of Cracker Barrel and urged his readers to do the same. In arguing why he would no longer eat there Teepeen was as skeptical as the protestors that the company had changed its policies: “Both the rationalization and the chairman’s comment suggest continuing prejudice, whatever the declared policy may now be. How in blazes, for

⁴⁶ “Dismissal motion filed” in *Etcetera* vol. 8.3, January 17-23, 1992 in in Box 7.6, MSS 773, AHC.

⁴⁷ “Taunts Greet Protest” in *The Lebanon Democrat*, Monday, August 12, 1991, Vol.103.158 in Box 13.17, Southern Voice records, MSS 1016, AHC. Also see: “Mother’s Day protest a success: Cracker Barrel threatens arrests” in *Etcetera* vol.7.21, May 24-30, 1991 p.13-14 in Box 14.5, MSS 991, AHC. Also see: “Atlanta”, in *Etcetera* vol.7.17, April 26 - May 2, 1991 in Box 6.7, MSS 773, AHC.

instance, could discrimination ever be ‘well-intentioned’?” Additionally, Teepan reiterated one of the central demands of the protestors, that the employees be rehired, and he posed the dispute in terms of American values in a similar way to how Jeffrey Sherrill posed his firing: “Perhaps the chain will do something that convincingly disavows its discrimination. A good start would be rehiring the folks it fired. Until then, there’s nothing for me to do but stay away. Simple fair play and common humanity require it.” He challenged his readers: “Those are still traditional American values, aren’t they?”⁴⁸

Two letters are illustrative of the response of the wider Atlanta community to the call for a boycott. On the one hand, some like Tom Bradford wrote to Teepan’s newspaper to support the fired workers. Bradford likened their struggle to that of the fight against racial discrimination still fresh in the minds of Southerners. He recalled, “refusing restaurant service because of skin color was ugly 30 years ago. Firing restaurant servers some perceive to lack ‘normal heterosexual values’ is just as ugly now.” Bradford, in a similar way to the Floridian columnist quoted at the start of this chapter who noted Cracker Barrel as emblematic of Southern bigotry, continued: “Apparently the New South management thinks updating Old South discrimination and prejudice is good for business. I join Tom Teepan in taking my business elsewhere – regrettably.”⁴⁹

On the other hand, one Redona M. Adamson from Suwannee, Georgia, wrote in the same issue, “Tom Teepan’s column concerning Cracker Barrel and the gays (nothing gay about them) was disgusting. I’m sure Cracker Barrel will not miss his business, as there will be many more Christian people eating there now, if they would stick to their former practice of not hiring homosexuals with their nasty, vile habits.” Adamson hints that there is more at stake than one company – that all homosexuals should be discriminated against. In doing so, she called for a counter boycott of the newspaper which had printed Teepan’s support for

⁴⁸ “Why it’s au revoir to Cracker Barrel”, by Tom Teepan, *The Atlanta Journal/ The Atlanta Constitution*, March 3, 1991 in Box 81.2, MSS 773, AHC.

⁴⁹ “Letters to the Editor”, *The Atlanta Journal/The Atlanta Constitution*, March 8, 1991 in Box 81.2, MSS 773, AHC.

the protestors. “This is one Gwinnett countian [sic] who will not be taking the Atlanta paper when my subscription is out because of people such as Tom Teepan who write for it.”⁵⁰

Adamson’s prediction that other Christians would join in supporting Cracker Barrel had some truth to it. On occasion some people did go out of their way to provide custom to a restaurant if they knew it was to be targeted by activists. One Tennessee newspaper reported from a demonstration that attracted over 100 activists that some patrons endured the long wait for tables occupied by protestors. Patricia Campbell, told the reporter that “her family usually eat after church at her hometown Cracker Barrel in Mount Juliet,” but this time “her family went to the Lebanon restaurant to show their support for the Cracker Barrel corporation.” The reporter also noted that “many of the customers leaving the restaurant were similarly sympathetic to the company and its hiring practices.”⁵¹

The suggestion that Christian people would support the chain’s discrimination points to an issue at stake in the history of sexuality in the South – the role of religion. It is important to note the involvement of churches within the coalition that formed to defend the sacked gay and lesbian employees. Due to the recent resistance of many churches to equal marriage amendments, it may be assumed that all churches in the 1990s were similarly homophobic, but in fact the history is far more nuanced.⁵² Indeed, while some like Adamson used religion to attack gays and lesbians, others used it to support them. For instance, in November, 1991, the Episcopal Diocese of Atlanta, which covers North Georgia, passed “a resolution introduced by a delegate from the Church of the Epiphany in Decatur call[ing] on member parishes to join the boycott of Cracker Barrel... The resolution said that the Diocese “deplores employment discrimination based on race, gender or sexual orientation,” and urged members to boycott companies, “such as Cracker Barrel, that practice such

⁵⁰ Ibid.

⁵¹ “100 march, sit at Cracker Barrel tables to blast gay firing policy” in *untitled Tennessee newspaper* at Box 13.17, Southern Voice records, MSS 1016, AHC.

⁵² See: Anthony M. Petro, *After the Wrath of God: AIDS, Sexuality, and American Religion* (Oxford: Oxford University Press, 2015).

discrimination.” The openly gay-orientated church, the Metropolitan Community Church (MCC), was also central to calling demonstrations throughout the South. Thus, religion was used both to support and denounce discrimination at Cracker Barrel.⁵³

Throughout the South, Queer Nation and other gay and lesbian activist groups began to emerge in locations where they had not previously organised. Groups formed where the chain opened new restaurants, including a Charleston, South Carolina, store open for just seven days when targeted by a recently founded chapter of Queer Nation. These activists employed the tactics of Queer Nation/Atlanta by occupying tables: “Once seated, activists removed outer clothing to reveal lesbian and gay identified T-shirts.”⁵⁴ Charleston thus joined other North and South Carolina cities targeted by activists angry at the lack of protections in employment for gays and lesbians – protests that attracted between thirty to forty demonstrators in both Charlotte and Greenville.⁵⁵

Aside from the physical protests, gay and lesbian organisations, including the Human Rights Campaign (HRC), also set up a hotline to prepare messages through Western Union to be sent to Cracker Barrel in protest of their policy: “Blast corporate homophobia, call the Cracker Barrel hotline, register your protest,” reads the leaflet. This was at a cost of \$7 to the sender, and though it may have had limited impact, it demonstrates how activists utilised technology available to them to extend the reach of their activism. In organising the Western Union drive, groups both national and local were able to use a simple template that could popularise the struggle amongst those who would not usually join a demonstration, as well as bombard the company with messages from across the country.⁵⁶

⁵³ “Episcopalians vote to boycott Cracker Barrel” in *Southern Voice*, December 5-18, 1991, MSS 991, AHC. For a history of the gay religious movement see Jim Downs, *Stand By Me*.

⁵⁴ “Charleston stages protest” in *Etcetera* vol.7.40, October 4-10, 1991 in Box 7.3, MSS 773, AHC.

⁵⁵ “South Carolina to join Cracker Barrel Protests” in *Triangle Times*, July 1991, Vol.II.II in Box 13.17, Southern Voice records, MSS 1016, AHC.

⁵⁶ “Blast corporate homophobia call the Cracker Barrel hotline, register your protest”, *Western Union* in Box 81.2, MSS 773, AHC.

In June, word reached gay and lesbian groups that in Mobile, Alabama, “three more Cracker Barrel employees were fired solely for being Gay.”⁵⁷ It therefore became clear to activists that the claim the chain’s national management was making – that it no longer had a discriminatory policy against gays and lesbians – was false. Although the company reversed its national policy after initial protests in January, clearly some managers continued the policy on a local level. They were able to do so because, although the company no longer fired gay men and lesbians it also did not protect them in its equal employment policy – something that activists would seize upon as a demand. In a call for a South-wide protest planned to take place in August 1991, gay and lesbian leaders spelled out what was at stake in the Cracker Barrel campaign: “If the Cracker Barrel policy stands without challenge, then other companies will have carte blanche to practice the same kind of vile bigotry.”⁵⁸ Over the winter from 1991 to 1992, the campaign continued to garner support across the country. In January, Rep. Barney Frank, one of only two openly gay congressmen, joined a demonstration of over 400 people who marched several blocks to the Lithonia restaurant in snowy conditions. He told the crowd, “we know when this many people show up on a cold Sunday, that this is a sign of commitment,” adding that the group’s protests would eventually force people “into the modern age.”⁵⁹ Later that month Oprah Winfrey invited Lynn Cothren and Cheryl Summerville to lead an exposé of Cracker Barrel on national television.⁶⁰

The movement made some gains in areas where activist groups were strongest. For instance, in Atlanta, activists won the support of the city council, which adopted a resolution stating: “The City of Atlanta believes in equal opportunity for all persons in all levels of

⁵⁷ “South Carolina to join Cracker Barrel Protests” in *Triangle Times*, July 1991, Vol.II.II in Box 13.17, Southern Voice records, MSS 1016, AHC.

⁵⁸ “Regional protest planned against anti-gay policy of Cracker Barrel restaurants, *National Gay and Lesbian Task Force*, press release July 25, 1991 in Box 13.17, Southern Voice records, MSS 1016, AHC.

⁵⁹ “Lawmaker condemns restaurant” in *Daily News*, January 20, 1992 in Box 81.2, MSS 773, AHC.

⁶⁰ “Cracker Barrel Briefs First Quarter 1992” in *Queer News*, May 1992, Vol. 1.1 in Box 81.2, MSS 773, AHC.

employment and therefore urges Cracker Barrel.... to end its discriminatory practices in hiring by adopting a policy stating, 'It is against the company's personnel policy to discriminate against any individual because of race, sex, sexual orientation, marital status, national origin, religion, color, creed and physical or mental disability.'" However, this small victory was limited in that the resolution only urged the company to reverse its position but did not join the boycott. Additionally, Cracker Barrel operated no stores which fell under the City Council's jurisdiction at the time so there was nothing the city council could practically do to stop the company. Nonetheless, the willingness to pass such a resolution in Atlanta suggested that attitudes regarding sexuality in the South were becoming more liberal.⁶¹

Queer Nation/Atlanta also began to reach out to other workers who had been dismissed due to their perceived or actual sexuality. Their newsletter read: "We all know there are many other companies besides Cracker Barrel that discriminate against lesbians and gays." They noted that Queer Nation was in constant receipt of complaints from lesbian and gay workers who were mistreated on the job. Recalling Cothren's work with Coretta Scott King, the newsletter continues: "Following the principles of non-violence and the six steps toward reconciliation, we research and gather information on the violators." The group noted it was "investigating" claims against Delta Airlines, the Boy Scouts, Domino's Pizza, Pizza Hut, Ruby Tuesdays, and the U.S. Post Office. However, they also applauded other companies who were beginning to shift towards protecting lesbian and gay employees, these included "Lotus, Levi Strauss, AT&T. And recently Fuddrucker's."⁶² Cothren predicted: "When we help Cracker Barrel get the proper employment policy on the books, we'll be looking around at other south-eastern companies and evaluating their policies. This is broader than one company. This is a precedent setting struggle."⁶³

⁶¹ "City Council adopts resolution" in *Etcetera* vol.7.35, August 30-Sept 5, 1991 in Box 7.2, MSS 773, AHC.

⁶² "Cracker Barrel Briefs First Quarter 1992" in *Queer News*, May 1992, Vol. 1.1 in Box 81.2, MSS 773, AHC.

⁶³ "Cracker Barrel protest #8: picket draws enthusiastic response" in *Etcetera* vol.7.23, Jul 7-13, 1991 p.10/12 in Box 14.5, MSS 991, AHC.

Nationally, the Human Rights Campaign (HRC) was using the firings at Cracker Barrel to galvanise activism and support behind the effort in Congress to pass an amendment to the Civil Rights Acts of 1964 and 1968 which would have “prohibit[ed] discrimination on the basis of affectional or sexual orientation.” The bill was introduced to the House on 13 March 1991 as ‘HR 1430’ just weeks after the firings had initially taken place. The HRC called on supporters to contact their representatives to hold meetings about the bill.⁶⁴

The bill was introduced by U.S. Rep. Ted Weiss, (D-NY). Weiss cited Cracker Barrel’s policy as one of the reasons the law was needed. A spokesman for the National Gay and Lesbian Task Force (NGLTF) noted that Cracker Barrel is the only business that has issued a written policy against homosexuals. “Gays and lesbians have been fired in the past for the[ir] sexuality,” Robert Bray said, “but usually the companies disguise the termination as something else.”⁶⁵ The bill was especially pertinent in the South, where unions have been historically weakened and labour laws offer only limited protection for workers. For instance, under North Carolina and South Carolina labour laws, “workers who don’t have an employment contract for a specific length of time are ‘employed at will,’ meaning they can be fired without notice or explanation.”⁶⁶ Hence why it was so easy for Cracker Barrel to fire Jeffrey Sherrill in Charlotte. Yet the bill was never passed and successive efforts for similar national legislation have failed to this day. Indeed, although workplace discrimination came to the fore of sexual politics in the mid-1990s as Democrat politicians sought the passage of the Employment Non-Discrimination Act (ENDA), lesbian and gay workplace rights were actually set back further when the Clinton Administration enshrined the discriminatory “Don’t Ask Don’t Tell” legislation that covered military employees, further legitimising second-class

⁶⁴ Letter from Human Rights Campaign to supporters regarding H.R. 1430, date unknown in Box 81.2, MSS 773, AHC.

⁶⁵ “Workers fired for being gay unprotected by law” in *The Charlotte Observer*, March 15, 1991 in Box 81.2, MSS 773, AHC.

⁶⁶ *Ibid.*

citizenship for lesbians and gay men. With the failure to pass ENDA, gay and lesbian activists focused more and more attention on winning rights within individual corporations rather than federal-wide protections. This will be explored further in this chapter with reference to Cracker Barrel, but also in subsequent chapters with reference to other major employers in the Sunbelt.

As Cracker Barrel expanded its reach across the United States, so too did the demonstrations and boycotts in protest of its homophobic employment policy. In Georgia and other Southern states where organised labour has been historically weaker than in the North, activists relied on civil rights tactics such as the “sip-ins” to pressure the company. In contrast, in cities with a long history of trade unionism (such as Detroit, Michigan), activists could call upon stronger union structures to quickly replicate the success of the civil rights coalition that had emerged in Atlanta and elsewhere. The local organising committee of Detroit’s Cracker Barrel Protest Coalition (CBPC), was “made up of over 20 AIDS, lesbian/gay, pro-choice, trade union and other groups.”⁶⁷ In October 1991, 300 people demonstrated at the newly opened Cracker Barrel in Detroit, Michigan. One report in the gay magazine, *Etcetera*, noted that while on the same day a demonstration in Charlotte, North Carolina could muster only enough activists to shut down a few tables, the Detroit action shut down the entire store “when they blockaded the street leading to the restaurant.” The following week a further 350 people demonstrated.⁶⁸

One of the key activists in Michigan was Ron Woods, an electrician at Chrysler who encouraged his United Auto Workers Local to support the protest of the opening of the first Cracker Barrel in the state by telling them that “they’re trying to keep the union out of Cracker Barrel.”⁶⁹ This action would force Woods out of the closet and later for his union to

⁶⁷ “Detroit group barrels over chain” in *Etcetera* vol.7.43, October 25-31, 1991 in Box 7.3, MSS 773, AHC.

⁶⁸ “300 rally in Detroit - Cracker Barrel protests continue”, *Etcetera* vol.7.42, October 18-24, 1991, p. 13-14 in Box 15.1, MSS 991, AHC. See also: “Detroit group barrels over chain” in *Etcetera* vol.7.43, October 25-31 1991 in Box 7.3, MSS 773, AHC.

⁶⁹ Don Lingar quoted in *Out at Work*.

defend him against homophobic co-workers. Miriam Frank notes in *Out in the Union: A Labor History of Queer America* that these incidents helped spark a union-wide debate in the UAW about the rights of sexual minorities.⁷⁰ Woods later recalled “I just read about Cracker Barrel coming to Michigan, and they had fired 12 people at the time for being gay and lesbian. I thought, ‘This is Michigan, home of the UAW, in some ways home of civil rights!’”⁷¹ He initiated the first meetings of the group which would later organise the Michigan protests.⁷²

Woods and other activists in the Midwest were in contact with Queer Nation/Atlanta and other groups battling Cracker Barrel in the South. Before the first demonstration in Michigan, Woods invited George Frisbie, a fired Cracker Barrel employee from Tallahassee, Florida to help raise the campaign’s profile in the Midwest. “I thought that was a very cost effective way to get publicity - to show a living, breathing human being [to the media] who was actually fired, that this wasn’t just some rumor, this was someone we flew up from Florida to say: I was a good employee... as soon as they found out I was gay I was fired.”⁷³ Following his experience of organising against Cracker Barrel, Woods would later be delegated to the 31st constitutional convention of the United Auto Workers in Anaheim, California, where he passionately called on his fellow workers to vote for a clause in all future contracts prohibiting discrimination on the basis of sexual orientation. The UAW Convention voted unanimously to do so. Unions moved to represent the specific interests of their lesbian and gay members in this era. However, this was of little comfort to workers in most Sunbelt states where union density remained low and employment rights nonexistent.⁷⁴

⁷⁰ Miriam Frank, *Out in the Union*, p.40.

⁷¹ Ron Woods quoted in *Out at Work*.

⁷² Ron Woods to Miriam Frank, Apr 27, 1995; *Out in the Union: Gays and Lesbians in the Labor Movement*, *Miriam Frank Oral History Collection*; OH 039; Drawer: 6 Cassette: 56-57; Tamiment Library/Robert F. Wagner Labor Archives, New York University.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

Demonstrations at Cracker Barrel restaurants were not without confrontation. Activists were subject to intimidation from customers, management, passers-by and police officers. While management videotaped the activists and threatened them with arrest, customers were more openly vitriolic in their approaches to intimidation. On occasions, customers threw food items at the demonstrators from their cars. In the most openly violent confrontation, a customer attacked Queer Nation/Atlanta activist Larry Pellegrini outside a store while he was videotaping the protest.⁷⁵ In Michigan, Ron Woods recalls that the biggest protest they staged which attracted around 500 people but this was also met with a sizeable opposition of a few hundred including: “people Seig Heil[ing], people with the Klan, confederate flags, [a] baptist there every weekend condemning homosexuality, we had all kinds of hate mongers on the other side.” He also notes that many on the opposition side “were just curious people coming out of the churches to watch the show.”⁷⁶

In November 1991, following a series of arrests at several stores, Queer Nation/Atlanta activists were issued with restraining orders banning them from Cracker Barrel premises. In the summons for the appearance of the activists in court, the prosecution argued that they had to be restrained because they were forcing the business to lose money.⁷⁷ Key activists, including Cothren and Summerville, continued to be repeatedly arrested at demonstrations and the company became more successful applying for restraining and banning orders to be served upon the leaders of the movement. As a result, it became harder to maintain the movement’s momentum on the ground.⁷⁸

It is important to note that the tense atmosphere around the ongoing AIDS crisis played an important role in both activist and broader responses to discrimination at Cracker Barrel. Queer Nation had been formed from the remnants of other gay and lesbian activist

⁷⁵ “QN member attacked by customer” in *Southern Voice*, December 5-18, 1991 in MSS 991, AHC.

⁷⁶ *Out at Work*.

⁷⁷ Circuit Court Summons, State of Tennessee - vs. Lynn Cothren et al., November 21, 1991 in Box 13.17, *Southern Voice* records, MSS 1016, AHC. See also: *Burwell v. Hobby Lobby*, 573 U.S. (2014).

⁷⁸ “QN member attacked by customer” in *Southern Voice*, December 5-18, 1991 in MSS 991, AHC.

groups that emerged during the 1980s to demand government action in tackling the AIDS crisis. Direct action groups such as the AIDS Coalition to Unleash Power (ACT UP) were particularly well-organised in Atlanta, where the Centers for Disease Control and Prevention (CDC), which oversaw the federal government's response to the epidemic, are based.

This atmosphere provided background to the discrimination at Cracker Barrel. On numerous occasions activists were also subjected to jibes about their possible HIV/AIDS status. This also pervaded more general responses to the activism. One person told protestors that they did not want gay men or lesbians near their food for "sanitary" reasons. A retired chiropractor visiting the Lebanon restaurant on the day of a protest stated, "a man who owns a place of business should be able to choose who he wants to work for him." He then added that he would "rather not" have a homosexual serve his food because of "decency and sanitation."⁷⁹ As such, these customers linked the corporation's right to hire or fire workers based on their sexuality with the perception that gays and lesbians were diseased. In contrast, at the same time another Southern restaurant chain was actively protecting rights for its employees who contracted HIV. In its newsletter, *Queer Nation/Atlanta* applauded the San Antonio-based hamburger chain, Fuddruckers "for also making a special announcement that they "value all their employees" and are especially supportive of their HIV-positive workers." In consequence fast food employment was a key battleground in the fight for lesbian and gay rights as well as rights for persons with HIV/AIDS.⁸⁰

Although the boycotts and demonstrations pulled together impressive coalitions in many cities throughout the South, Cracker Barrel's profits continued to grow, and the company continued its expansion to new regions. In August 1991 the company reported its profits for the first half of the year. The report recorded that "company profits grew by 42 percent, earnings by 41 percent, and customer traffic by five percent" with same-store sales

⁷⁹ "100 march, sit at Cracker Barrel tables to blast gay firing policy" in *untitled Tennessee newspaper* in Box 13.17, Southern Voice records, MSS 1016, AHC.

⁸⁰ "Cracker Barrel Briefs First Quarter 1992" in *Queer News*, May 1992, Vol. 1.1 in Box 81.2, MSS 773, AHC.

rising by eleven percent during the period in which the campaign against the company was at its height. Conversely, other chains across the country were struggling to report a profit in this period. In responding to a question about the activism by gay and lesbian activists, one Cracker Barrel official told a reporter, "It's a very painful time. But I'll tell you [the media coverage] hasn't hurt business." The company showed no signs of slowing its aggressive expansion either, intending to erect eighteen restaurants in 1991 and a further twenty-one in 1992 at a cost of \$2.15 million each.⁸¹

In responding to the profit report, Larry Pellegrini said, "We haven't tried to ruin them financially, we're just trying to make the point. And, we have been getting more attention and response every day." As firings abated, Queer Nation demonstrations, where protestors continued to demand the rehiring of the fired workers, began to dwindle in places where they had previously been massive, including Charlotte, North Carolina.⁸² Elsewhere it was also becoming difficult to turn out demonstrators as the weather shifted in the winter months. Though several hundred turned out at the demonstration in Atlanta to hear Barney Frank speak, inclement weather and the repeated arrests of key activists stifled the turnout at most others. Increasingly it became difficult to keep up the momentum of protests as organisers struggled to draw people out of the city. For instance, the closest protests to Atlanta were a forty-five minute drive from the closest public transportation (MARTA) stop to the Cracker Barrel location. On at least one occasion a rally took place in thick snow and one during the summer drew only half as many as expected due to searingly hot temperatures.⁸³ Likewise in Michigan, Ron Woods and others found it difficult to maintain momentum through the winter. Meanwhile, the police also made attending protests more difficult by establishing

⁸¹ Farkas, David, "Kings of the Road" in *Restaurant Hospitality*, August 1991 in Box 81.2, MSS 773, AHC.

⁸² "Cracker Barrel profits up: Queer Nation protests chain" in *Etcetera* vol.7.39, Sept 27-Oct 3, 1991 in Box 7.2, MSS 773, AHC.

⁸³ "Atlanta", in *Etcetera* vol.7.17, April 26 - May 2, 1991 in Box 6.7, MSS 773, AHC.

“barricades in a muddy field and [saying] anyone who went beyond onto the sidewalk would be arrested.”⁸⁴

Writing in June 1992, a gay activist based in Florida questioned: “Should we continue to boycott and protest Cracker Barrel restaurants? The boycott’s initial goal, to get the Company to repudiate its homophobic hiring policy, was achieved. To expect it to go any further would be unrealistic.” He also noted that the boycott would be hard to call off because Cracker Barrel represents all of Southern injustices around race, gender and sexuality, stating: “the fact that the Company thought nothing of issuing an antigay policy and firing its gay employees is indicative of the fact that antigay prejudice is an intrinsic part of Southern life. This is something that we must continue to fight, in Cracker Barrel Restaurants and in other embodiments of Southern civilization.”⁸⁵ While continuing to hold some protests on the ground, activists turned increasingly towards other strategies to win back jobs for those victimised, and began to demand protections for gay and lesbian workers in the company’s equal opportunity statement. These strategies included gaining more national media attention and a turn towards the corporation’s shareholders to influence the company’s board.

Corporate Activism

In the years that followed, tactics to force the company to rehire its gay and lesbian workers and to introduce anti-discrimination policies would diverge from grassroots direct action to more individualised, corporate activism. As Queer Nation groups fragmented and the reinstatement of the sacked workers became increasingly unlikely, activists relied on winning protections within Cracker Barrel by becoming shareholders and attempting to influence decision making. In doing so they took a step away from the focus of building unity

⁸⁴ Ron Woods to Miriam Frank, April 27, 1995.

⁸⁵ Jesse Monteagudo, “Cracks in the Barrel” by in *TWN-Florida*, June 10, 1992 in Box 81.2, MSS 773, AHC.

with other groups, including African Americans, as well as from demanding workers' rights. Focus became more solely directed at changing Cracker Barrel policy on sexual diversity than on challenging discrimination broadly throughout the fast-food and service industries, or on winning nationwide protections. Conversely, other industries, such as airlines, began to recognise the economic clout wealthy gays and lesbians held in their purchasing power and started to appeal to these constituencies through non-discrimination clauses and benefits.

The story of Carl Owens is illustrative of the corporate activism that came to the fore and the class divisions that emerged within gay economic activism. A Queer Nation/Atlanta activist, he suggested the tactic of buying shares in the Cracker Barrel business as a way to involve gays and lesbians across the United States in the protests. In the first instance activists in Queer Nation including Summerville and Cothren bought symbolic shares. Being shareholders, however, did not stop them from being barred from restaurants or being arrested for trespass during subsequent protests.⁸⁶ As protestors faced difficulty getting close to stores both legally and geographically, Owens' proposal began to seem more likely to succeed. In a letter to gay newspaper, *Alabama Forum*, he set out the reasoning behind the shareholder campaign and instructed how to go about it. He argued: "The 'Buy One' campaign can be a remarkable empowerment of our community. It can be a vivid example of our presence and power."⁸⁷ The move from a grassroots activism to shareholder activism highlighted the class stratification within lesbian and gay communities. While those who were already shareholders would be interested, Owens also called upon those who had never held shares before to get a broker as well: "Every gay and lesbian person needs to contact their stockbroker at the earliest moment and buy one share of Cracker Barrel Restaurants." So what began as a boycott of Cracker Barrel in effect became a buy in.⁸⁸

⁸⁶ Don Johnston, "QN changes Cracker Barrel tactics" in *Etcetera* vol.7.29, July 18-24, 1991 in Box 14.5, MSS 991, AHC.

⁸⁷ "Cracker Barrel protests continue in Alabama" in *Alabama Forum*, vol.15.3, March 1992, IMPACT Collection, Amistad Research Center, Tulane University.

⁸⁸ *Ibid.*

Owens' "Buy One" campaign was strengthened when the New York City Employees Retirement System (NYCERS) and a similar scheme in Pennsylvania, The Philadelphia Municipal Retirement System, entered the fight. These public pension pots had been partly invested in the Cracker Barrel chain and as such it was possible to exert shareholder pressure through these bodies, which were much larger than Owens' "buy one" gay and lesbian activists. In the early 1990s the custodianship of the New York City Employees Retirement System, "the nation's fifth largest pension system" including its 80,000 shares in Cracker Barrel, came under the remit of New York City Comptroller Elizabeth Holtzman.⁸⁹ The Comptroller, alongside a board of trustees, has the task of overseeing how the pension contributions of city employees are invested on the stock market and to eliminate risks to these investments.⁹⁰ Holtzman sent her representative, Patrick Doherty, to Cracker Barrel's 1991 annual shareholders meeting to table a resolution for the following year's meeting to vote on banning employment discrimination against gays and lesbians. However, rather than support gays and lesbians out of principle, these motions argued that discrimination was bad for profit:

We believe that employment discrimination on the basis of sexual orientation *deprives the corporation of the services of productive employees, leading to less efficient corporate operations which can have a negative impact on shareholder value.* Simply put, bias is bad business. And its impact is potentially compounded by public demonstrations, boycotts, and negative editorial and news coverage that have occurred concerning these dismissals, which can undermine consumer confidence and lead to a further loss of business revenue.⁹¹

Such rhetoric narrowed the movement's aims to those of "productive employees" within capitalism rather than battling for more expansive visions of equality and liberation. Urvashi Vaid, writing in the early 1990s, argued that this "mainstreaming" of the movement

⁸⁹ "New York pension trustees seek statement of Cracker Barrel policy" in *The News*, vol.VII, May 1991 in OS Box 1.203, MSS 773, AHC.

⁹⁰ "Pension/Investment Management" on *NYC City Comptroller* in <http://comptroller.nyc.gov/services/financial-matters/pension/overview> (accessed 30/09/2016).

⁹¹ "News from New York City Comptroller Elizabeth Holtzman" statement to Cracker Barrel general meeting, November 26, 1991 in Box 13.17, Southern Voice records, MSS 1016, AHC. Emphasis is my own.

would underpin a notion of "virtual equality," in which some sexual minorities felt they were accepted, due to class and social position, but in reality they still lacked the full rights and benefits that come with full citizenship.⁹² Fighting for rights within individual corporations also failed to challenge wider inequalities in US society, as will be more fully demonstrated in the next chapters. Although street protests did continue, these were focused toward helping to boost arguments put forward by the shareholder activists. In April 1992, hundreds of activists marched from New York City's World Trade Center to Wall Street as part of a week-long series of demonstrations to "Crack the Barrel." "There they brandished a blow-up of the pink slip Cracker Barrel gave Georgian Cheryl Summerville and chanted to the suit-and-tie clad onlookers 'Wall Street's got to know, homophobia's got to go.'"⁹³

Owens believed that his form of activism "could have a profound effect on Cracker Barrel financially."⁹⁴ Yet his and the pension funds' activism remained problematic. On the one hand Owens was keeping attention on the fight in the national media at a time when the protests were quietening. On the other, the imposition of New York and Philadelphia allowed Southerners to claim that they were attempting to instil liberal policies through corporate bullying. Arguably, the campaign strengthened the notion of regional inferiority among Southern business leaders, what historian Angie Maxwell - in assessing earlier periods - has posited as the "indicted South."⁹⁵ Additionally, using a neoliberal mechanism of plowing public funds into the private sector with the goal of furthering the interests of a minority group opened the movement for attacks from the left as well as the right.⁹⁶

⁹² Urvashi Vaid, *Virtual Equality*.

⁹³ "QN/NY stages Cracker Barrel demo on Wall Street" in *Southern Voice*, April 16-22, 1992 p.3 in OS 3.604, MSS 991, AHC.

⁹⁴ "South Carolina to join Cracker Barrel Protests" in *Triangle Times*, July 1991, Vol.II.II in Box 13.17, Southern Voice records, MSS 1016, AHC.

⁹⁵ Angie Maxwell, *The Indicted South: Public Criticism, Southern Inferiority, and the Politics of Whiteness*, (Chapel Hill: University of North Carolina Press, 2014).

⁹⁶ "QN/NY stages Cracker Barrel demo on Wall Street" in *Southern Voice*, April 16-22, 1992 p.3 in OS 3.604, MSS 991, AHC.

Cracker Barrel did not suffer a fall in profit or in share prices, and at no point did the New York pension fund actually withdraw its investment. In fact, the company's profits continued to climb and expand. In the five years before they reported their latest profits in August 1992 the company grew by an average of 49 percent a year, "through the first nine months of fiscal 1992, earnings were 53 percent better than for the same period the year before." Meanwhile, in a spurt which can be partly attributed to Owens' buy-one campaign, the company's common stock price "climbed from around \$14 in February to a close of \$32.50 in over-the-counter trading" in August. The company opened twenty-one new restaurants in the previous year and planned to open a further twenty-five during the next, rapidly expanding to the Midwest, where a marketing manager claimed "people's traits, work ethic, values and morals" are similar to those found in the Southeast." The company's expansion into the Midwest is emblematic of the rapid transform that the United States undertook in the second half of the twentieth century. As the Sunbelt solidified its position as the nation's economic powerhouse, its corporations would help to define national corporate cultures. Both the street protests and the focus on corporate activism seemed to be having a limited impact, if any at all. As one columnist claimed, "an aversion to homosexuals probably plays well with many Cracker Barrel customers." Lynn Cothren, on the other hand, countered the announcement by pointing to the broader issues at stake. "Racism and sexism have not been bad business in this country," Cothren said. "Homophobia can be too. That doesn't mean it's right."⁹⁷

In October 1993, Owens claimed a victory when the Securities and Exchange Commission (SEC) ruled that the company would have to allow his non-discrimination proposal to be tabled at future shareholder meetings. Owens initially suggested that "buy one" shareholders would donate their individual shares to the endowment of lesbian and gay

⁹⁷ "Profits not crumbling for restaurant" Charles Davidson in *Daily News*, August 23, 1992 in Box 81.2, MSS 773, AHC.

organisations like the Lambda Legal Defense Fund after they had won.⁹⁸ However, as part of the agreement with the SEC he was forced to present himself as a long term investor.

Cracker Barrel had previously “maintained that it could disqualify the proposal because Owens didn’t plan to be a long-term stockholder... excludable under SEC rules.”⁹⁹ The SEC overturned this when Owens released a statement promising to keep his stock on a long-term basis. Owens was therefore pulled further into the corporate sphere in order to try to bring about a shift in policy.

In March 1994, members of Queer Nation/Atlanta dissolved the group due to a “lack of interest in direct action.” An article announcing the group’s “death,” noted that “since the [Cracker Barrel] controversy died, the group has been virtually inactive. Former group members said they will continue to work on the Cracker Barrel issue, which has yet to reach a final resolution.”¹⁰⁰ However, this was clearly to be focused at the shareholder level. By 1996, the case had faded far from view of most people, though Carl Owens owned over a thousand-dollars of shares in Cracker Barrel and continued to push his resolution against discrimination at each year’s shareholder meeting.¹⁰¹

Although the dispute with Cracker Barrel was not resolved in the mid-1990s, and Queer Nation/Atlanta had folded, activists could take heart that attitudes in Georgia were apparently shifting, perhaps in part because of their activism. In April 1995 the Georgia Equality Project (GEP) released a poll showing support among Georgia voters for workplace protections for gays and lesbians. As a report into the poll notes, “73% of registered voters in the state agreed that “homosexuals should... have equal rights in terms of job opportunities.”

⁹⁸ “Cracker Barrel protests continue in Alabama” in *Alabama Forum*, vol.15.3, March 1992, IMPACT Collection, Amistad Research Center, Tulane University.

⁹⁹ Richard Shumate, “Victory over Cracker Barrel” in *Southern Voice*, October 7-October 13, 1993. p. 17, in Box 6, Ed W. Stansell papers, Emory University.

¹⁰⁰ “Queer Nation Atlanta Dies” in *Etcetera* vol.10.12, March 25, 1994, p.23 in Box 87.2, MSS 773, AHC.

¹⁰¹ Cracker Barrel Old Country Store, INC. *Notice of Annual Meeting with Resolutions*, November 26, 1996 in Box 13.17, Southern Voice records, MSS 1016, AHC.

That included 66% of those identifying as Republicans, 74% of independents, 77% of Democrats. Eighty-two percent of the respondents said it was wrong to fire an employee “just because he or she is thought to be homosexual.” The poll also destroyed a myth that perseveres today – that black people rather than whites are more likely to oppose gay and lesbian rights. “The Georgia poll also showed that black voters were more likely to support equal job opportunities than white voters, with 70% of white[s] in favor and 83% of blacks. Ninety-two percent of the black respondents said that an employee perceived to be gay should not be fired, compared with 79% of whites.”¹⁰² Activists could therefore see themselves as part of a majority who understood workplace non-discrimination on the basis of sexual orientation as a basic right in the South, a point which contradicted Cracker Barrel’s initial claims that it represented true southern values.

Conclusion

While the fired workers were never rehired, in 2002, a decade after the firings took place, the company finally passed policy on sexual discrimination when New York and its allies mustered fifty-eight percent of shareholders to persuade “Cracker Barrel’s board to vote unanimously to explicitly forbid antigay discrimination in its equal employment policy.”¹⁰³ It could therefore be argued that this model of corporate activism was eventually successful. However, in reality this activism was limited in impact. John Howard has suggested that the shift had more to do with the company’s growth than as a direct result of either street protest or shareholder activism. “With over 400 restaurants in 41 states, Cracker Barrel now operated in 11 of those jurisdictions” where some protections for gays and lesbians in employment were recognised.¹⁰⁴

¹⁰² “Poll shows that Georgians favour equal rights for gays and lesbians in the workplace” *Southern Voice*, April 6 1995 in Box 5, Ed W. Stansell papers, Emory University.

¹⁰³ “Danny Evins, Restaurant Founder and Focus of Controversy, Dies at 76” in *New York Times*, January 16, 2012.

¹⁰⁴ John Howard, “The Cracker Barrel Restaurants”, p.307.

Additionally, the decade of corporate activism failed to continue the impressive civil rights coalition that was formed in the early days of the campaign. Black, women's and labour organisations were seemingly left behind in this new corporate form of activism. Grassroots demands which called not only for the rehiring of individual workers but stood up to the company over its racist "nostalgia" were also lost, as were calls for unionisation. Indeed, in allying with the New York pension fund and others, gay and lesbian activists legitimised a neoliberal strategy of gambling public funds in private investments. In his work on gay male flight attendants, *Plane Queer*, Phil Tiemeyer demonstrates "how expanding gay civil rights via the private sector is fraught with danger." In his example - also in the 1990s - he notes that "just as gay flight attendants have attained parity with their straight peers, all of them have endured unprecedented pay cuts and the loss of collective bargaining power."¹⁰⁵ Similarly, because these private protections are not anchored by laws or constitutional rights they remain tenuous at best, especially in the fast food industry, where workplace organisations are weak and wages low.

In September 2004, only two years after the board was finally forced to add provisions to protect gays and lesbians against workplace discrimination, the company's so-called progressive turn was proved false. Cracker Barrel was forced to pay "\$8.7 million to settle allegations the restaurant chain mistreated black customers and discriminated against black employees" in response to a lawsuit based on the argument that the company violated the 1964 Civil Rights Act.¹⁰⁶ "More than 40 plaintiffs in 16 states alleged black people were denied service, assigned to segregated seating, subjected to racial slurs and served food taken from the trash. Also, about a dozen employees complained that blacks were segregated from white workers and generally received "'back of the house' assignments such as cook and dishwasher." This discrimination was surely unsurprising to anyone who

¹⁰⁵ Phil Tiemeyer, *Plane Queer*, p.12.

¹⁰⁶ Lloyd Vries, "Cracker Barrel Settles Bias Suit" May 3, 2004 in *CBS News* <http://www.cbsnews.com/news/cracker-barrel-settles-bias-suit/> (accessed 5/7/2016).

visited the chain and came across the racist imagery that Lynn Cothren decried in the mid-1990s. Yet if gay men and lesbians had been protected by the same laws barring discrimination against African-Americans, a movement on the streets would have been far more effective more quickly.¹⁰⁷

In the 1990s, the AIDS crisis continued to impact movements for workplace protections for sexual minorities more broadly as they contended with the privatised nature of health insurance and workplace benefits in the United States. This would lead to further demands for domestic partner benefits and same-sex marriage to access benefits and insurance of spouses, as will be discussed in Chapters 4 and 5 of this thesis. That the protections won by activists in North Carolina in 1989 were circumscribed by the restaurant industry, who later instituted more direct forms of discrimination against sexual minorities, points to the precarious nature of service sector work. Even with protections put in place against AIDS based discrimination, Cracker Barrel was still able to discriminate on the basis of sexuality due to the state's at-will employment law, the lack of federal protections, and the lack of union representation – wider issues with Sunbelt business structures that the movement needed to contend with but largely failed in an era of "mainstreaming."

The early civil rights community-based activism at Cracker Barrel thus highlighted the very best traditions of solidarity and the possibility of broadening the struggle for workplace equality across lines of race, gender and sexuality. In contrast, the later corporate struggle highlighted the very disappointing turns that movements predicated upon singular identity politics can take. Instead of fighting for rights more broadly, well-meaning activists were pulled behind a corporate, individualised action which sought to make gains in singular companies for singular constituencies. In doing so, it became emblematic of the neoliberal turn in activism within lesbian and gay communities as they entered the twenty-first century. The United States remained without federal protections for gays and lesbians, and activists

¹⁰⁷ "Restaurant chain settles race bias claims" in *NBCnews.com*, September 9, 2004 http://www.nbcnews.com/id/5955056/ns/us_news/t/restaurant-chain-settles-race-bias-claims/#.V3wPW7wlet8 (accessed 5/7/2016).

were left to continue to convince companies of their economic clout on a case by case basis. The next section of the thesis turns our attention to three of these cases: Apple Computer, Duke University, and ExxonMobil. The structures of the Sunbelt — anti-unionism, anti-state intervention, and conservatism — would all continue to shape activist strategies as they sought to win nondiscrimination protections and domestic partner benefits within these individual corporations, with varying degrees of success.

Part Two: Queering the Sunbelt Corporation

Chapter Four

Apple's Domestic Partner Benefits Under Attack in Williamson County, 1993

If Houston in 1985 was a case of city business elites hampering gay rights for fears that protections would drive away business, a case in 1993 in Williamson County, just outside Austin, provides a contrast. Apple Computer Inc., promised huge investment, jobs and growth, but were initially turned away by local politicians who threatened to derail their project in reaction to the company's provision of domestic partner benefits. In the ensuing battle, boosters would shift their rhetoric to argue that bias was in fact bad for business. Yet in doing so they sidelined arguments in favour of gay workplace rights and upheld their own homophobia. As will be demonstrated, this case evidenced the dangers of tying gay rights claims to singular companies, in this instance, Apple. This chapter also questions the extent to which conservative politics were challenged and renegotiated in response to claims for gay and lesbian workplace rights. In doing so it explores the extent to which questions of morality and profit challenged Sunbelt boosters. As the *Dallas Morning News* summarised: "In the controversy over tax breaks for Apple Computer, two key Republican tenets — family values and economic development — have come into conflict."¹ As such, this chapter evaluates how a split emerged in conservatism in the early 1990s with particular reference to sexuality.

Since its inception, Apple Computers Inc. has enjoyed a reputation of openness and liberal values. One of the first U.S. companies to enshrine sexual orientation non-discrimination measures as company policy, by 1993 Apple was leading the way in providing domestic partner benefits to the same-sex partners of employees. The company began providing "soft-cost" benefits such as bereavement leave and gym access in 1992, and

¹ "GOP centrists criticise leaders for vote on Apple tax issue", *Dallas Morning News*, December 7, 1983 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

followed this up with “hard-cost” benefits such as health care insurance from July 1993.² As explored earlier, domestic partner benefits became an important demand of gay and lesbian workers, who needed them to access their partner’s health insurance, gain access to hospital rooms where loved ones were being treated, and share pension benefits after death, an especially prescient demand during the AIDS crisis. An article in the business magazine *Personnel Journal* in 1991 summarised the growing demands for domestic partner benefits:

Earning health care benefits for their partners is the ultimate goal for lesbian and gay employees. They’re asking corporations to respect alternative families and recognize their benefit needs, and argue that the family partner of an unmarried employee is just as likely to need health insurance as the spouse of a married employee. Gays and lesbians are also asking for parental leave benefits when appropriate.³

Apple management did not shy away from their commitment to gay and lesbian employees. Apple CEO John Sculley marched in a 1992 gay pride parade where he made the announcement that the company would expand its domestic partner policy the following year. Although the company boasted a gay and lesbian employee association, Apple Lambda, there were nevertheless times when workers felt excluded. Software engineer and founding member of the group, Bennett Marks, recalls that he used to come out to co-workers selectively, but that the political atmosphere of the era propelled him to set up the organisation. When a California ballot initiative threatened to make HIV testing compulsory in 1986, Marks established Apple Lambda, explaining, “Prop 64 came along and I wanted to do something political. My lover and I were also in the process of buying a house. Everyone else around the office talked about buying a home and I wanted to be able to talk about it also.”⁴ This mixture of a claim to inclusion within the workplace, and the political necessity of

² “Corporate Notes”, *The Gay and Lesbian Corporate Newsletter*, Vol 2.1, Winter 1993 in Box 2.9, Brian R. McNaught papers, circa 1970-2004, Division of Rare and Manuscript Collections, Cornell University Library.

³ George K. Kronenberger, “Out of the Closet”, *Personnel Journal*, June 1991, in Box 2.12, Brian R. McNaught papers, Cornell University Library.

⁴ Ibid.

coming out spurred by the AIDS crisis became common among gay and lesbian workers in this era. It would spur the formation of gay and lesbian employee associations in hundreds of corporations. The National Gay and Lesbian Task Force (NGLTF) workplace coordinator, George Kronenberger, who worked with Apple and others, explained that for the company this was not simply about bias, but was also good business practice: “If I have a domestic partner for 10 years and I work for a corporation that doesn’t offer (the benefits), it isn’t equitable that my colleague who has been married for six months can get full insurance coverage for his wife.” Kronenberger and others pitched domestic partner benefits to companies in terms of recruiting and retaining the most productive employees.⁵

Domestic partner or “spousal equivalent” benefits became a key demand of the gay and lesbian movement in the 1990s. Through battles over nondiscrimination and the AIDS crisis during the 1980s it was continually demonstrated to activists that a key component of the way sexual oppression is structured in the United States is through a lack of access to the benefits and privileges afforded to married heterosexual couples. As noted earlier in this thesis, the United States is exceptional among developed nations in attaching social security to private employment and health care. As such, sexual dissidents sought access to benefits such as joint healthcare plans, pension plans and other entitlements, such as access to partners in hospitals, that their married heterosexual partners took for granted. Elizabeth Pleck has demonstrated how the discourse around domestic partner benefits was constructed in such a way as to suggest non-sexual, long-term commitment and monogamous connotations for the broader public. Nevertheless, social conservatives saw any such provision as opening the space for same-sex marriage, and therefore they sought not only to block domestic partner benefits but also roll them back in certain corporations. As liberal activists won the extension of partner benefits in individual corporations, and conservative activists pushed back against such provision, the private sphere became a

⁵ “Gay-couple benefits make their way into the mainstream of business”, *The Business Weekly*, December 13, 1993 in Box 1, in the Triangle Business and Professional Guild Records, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

more central battleground over the course of the 1990s with Sunbelt politics and corporate structures further ensnaring the workplace rights of sexual minorities.⁶

The early 1990s were marked by growing visibility of both the Sunbelt and sexual minorities. The 1992 Presidential election was contested by Sunbelt politicians on all sides. The Republican incumbent George H. W. Bush, who formerly represented Houston in Congress, was challenged in the primaries by Pat Buchanan. Buchanan famously made his “culture war” speech at the Republican National Convention in which he cited “homosexual rights” as part of a “war going on in our country for the soul of America.”⁷ Meanwhile, a third party candidate, the billionaire Ross Perot of Texas, sought to downplay social concerns over fiscal conservatism. On the Democratic side, Arkansas Governor Bill Clinton and his running mate, Al Gore, a Senator from Tennessee, represented a moderate side of the Sunbelt by meeting with activists and suggesting acceptance of sexual difference. In many ways the battle over domestic partner benefits crystallises the tensions surrounding sexuality, social and fiscal conservatism, and the “culture wars” of the 1990s. In 1993, conservatives seeking to understand how they lost to Clinton in the presidential election would begin to contend with these issues directly.

Opposition

The reaction to extended benefits emerged most dramatically in Williamson County, Texas. Some fifteen miles outside of Austin, its business and political elite usually sought to draw new industries away from their cosmopolitan neighbours to commuter suburbs and rural homesteads. The area saw rapid development in the second half of the twentieth century as it lured growing families away from Austin, the “San Francisco of Texas.” In 1993, Williamson County was almost 90 percent white and boasted a population of approximately

⁶ Elizabeth Pleck, *Not Just Roommates*, p.217. Miriam Frank also traces the growth of demands for domestic partner benefits within union structures, see references in: Miriam Frank, *Out in the Union*.

⁷ Patrick J. Buchanan, *1992 Republican National Convention Speech*, August 17, 1992. Available: https://buchanan.org/blog/1992-republican-national-convention-speech-148?doing_wp_cron=1478487975.2316689491271972656250 (accessed: 2/6/2019).

140,000 and only 3.5 percent unemployment. A *Houston Post* article noted that the county is divided “geographically by Interstate 35 and the Balcones Fault. It’s split politically between Republicans to the west and conservative rural democrats to the east.”⁸ The county witnessed rapid development over the course of the century from farmland to a technological hub that battled Austin for new investment. It became home to Dell Computer and sought to entice other high-tech companies.⁹ As one reporter recalled: “local leaders will do back flips to lure high-tech companies across the Travis County line,” including Apple.¹⁰

The contrast with Austin went further than investment: locals saw their suburban and rural county as a way of life: “Williamson County residents pride themselves on having a family atmosphere that contrasts with the more cosmopolitan lifestyle of neighboring Austin.”¹¹ In many ways the battle between Austin and Williamson County towns of Round Rock, Cedar Park and the county seat, Georgetown, followed the same dynamic as that between other cities and suburban towns. Clayton Howard has demonstrated how “postwar housing policies ultimately created a social and spatial closet around normative heterosexuality” in which the urban inner-city became understood as deviant but the suburb was constructed as safe and sanitised.¹² This was especially true of Austin and its surrounding counties. “In the 1980s, young families moved from Austin to Round Rock to avoid busing and to buy more house for the buck,” noted the *Houston Post*.¹³ “Round Rock leaders grease the skids for industry. They tout a relatively low crime rate, lower taxes — and a 16-mile commute for those who want to sample the ‘fleshpots’ of Austin,” the report

⁸ “Apple controversy goes to core of divided Williamson County”, *Houston Post*, December 5, 1993 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

⁹ “Texas county rejects Apple over benefits policy on gays”, *Los Angeles Times*, December 2, 1993.

¹⁰ “Apple controversy goes to core of divided Williamson County”, *Houston Post*, December 5, 1993.

¹¹ Dennis Chong and Anna-Maria Marshall, “When Morality and Economics Collide (or not) in a Texas Community”, *Political Behavior*, Vol.21.2, 1999.

¹² Clayton Howard, “Building a ‘Family-Friendly’ Metropolis”, p.935.

¹³ “Apple controversy goes to core of divided Williamson County”, *Houston Post*, December 5, 1993.

continued.¹⁴ Central to the way in which Williamson County advertised its towns and suburbs locally was to play up a wholesome family image, in direct contrast to the more liberal Austin, which boasted an increasingly visible gay and lesbian community that was gaining political clout in coalition with black and Latina/o groups.¹⁵

Apple's announcement that it intended to open a state-of-the-art customer service complex in Williamson County was initially widely welcomed both locally and statewide. The company planned an \$80million, 130-acre development near Round Rock with the promise of thousands of jobs and millions of dollars in local investment.¹⁶ However, as with other multinational companies moving South, they did so only when they were awarded significant tax incentives. The usually formulaic discussion around tax abatements took place at the same time that gay and lesbian rights, specifically domestic partner benefits, were being hotly debated throughout Texas. Gay community magazine, *This Week in Texas* notes that "the contrast between Austin and Round Rock became a two-edged sword after the Austin City Council extended benefits to unwed domestic partners."¹⁷ Like non-discrimination rights before, Austin was the first Texas city to offer such benefits to gay and lesbian workers.¹⁸ The wider battle between Austin and its surrounding counties was further exacerbated at this time. Not only was Austin "a liberal Democratic stronghold loaded with university students, anti-growth environmentalists and more endangered species than any major metropolitan area of the United States," it also boasted the state's first openly gay elected official, Glen Maxey, who was overwhelmingly re-elected in Travis County in 1992.¹⁹ As such the debate

¹⁴ Ibid.

¹⁵ Ibid. See also: Clayton Howard, *The Closet and the Cul de Sac*.

¹⁶ "Texas county rejects Apple over benefits policy on gays", *Los Angeles Times*, December 2, 1993; and "Apple's 'true grit' in Texas", *The Front Page*, November 12, 1993.

¹⁷ "Apple controversy goes to core of divided Williamson County", *Houston Post*, December 5, 1993.

¹⁸ *This Week in Texas*, December 31, 1993 - January 6, 1994, pp.61-62, available here: <http://www.houstonlgbthistory.org/Houston80s/TWT/1983/> (accessed 1 June 2018).

¹⁹ "Apple controversy goes to core of divided Williamson County", *Houston Post*, December 5, 1993.

around whether Apple should receive backing from local government in tax incentives became explosive at a time when gay and lesbian rights were being hotly contested.²⁰

In November 1993 the five Williamson County Commissioners tasked with green-lighting investment and infrastructure projects – Greg Boatright, Judge John Doerfler, David Hays, Mike Heiligenstein and Jerry Mehevec – met to discuss Apple’s proposed tax abatements. In their study of the behavioural science behind the decisions of the Williamson County commissioners, boosters and constituents, Dennis Chong and Anna-Maria Marshall note that at the meeting, “Mehevec casually mentioned that Apple had a domestic partners benefits policy that covered workers’ same-sex partners.” Further, he “warned that ‘these companies are destroying families as we know them in America.’”²¹ This new information led to a debate over the extent to which the commissioners should condone Apple’s policy towards gays and lesbians, with Boatright stating that Apple’s policy troubled him.²² Those who supported Apple also made clear their opposition to gay rights. For instance, John Doerfler told the press: “I am strongly opposed to homosexuality and same-sex marriages.” Doerfler balanced his opposition to gay rights with his beliefs in the free market: “But how far should county government go in interfering with a company and its policies? Does government of any land have the right to regulate morality?”²³

This dichotomy would come to define the battle between the two sides of the debate. To what extent should “family values” arguments against gay rights jeopardise other beliefs of laissez-faire government? Historian Bethany Moreton and others have demonstrated that

²⁰ “Outlook: The apple dumping gang”, *Frontiers*, December 17, 1993 in Texas, 1999-before, ONE Subject File collection, Coll2012-001, ONE; and see: “Apple controversy goes to core of divided Williamson County”, *Houston Post*, December 5, 1993.

²¹ Dennis Chong and Anna-Maria Marshall, “When Morality and Economics Collide (or not) in a Texas Community”, p.95.

²² *Ibid.*

²³ *Ibid.*

this was not limited to Williamson County.²⁴ Nevertheless, this particular case illuminates the extent to which battles over gay workplace protections and benefits disturbed Sunbelt conservatism in the years following the Reagan-Bush revolution. The *Los Angeles Times* quoted one commissioner's reasoning as follows: "It boiled down to weighing economics against moral and family issues,' said Boatright, 35. 'Common sense tells you (homosexuality) is a perverted lifestyle, it just goes against nature completely. I'm not going to vote for something that violates my conscience.'"²⁵ At the end of the meeting the commissioners voted 3-2 to deny Apple the tax inducement package, effectively turning the company away from investing locally due to homophobia. Robin Kane, a spokeswoman for the National Gay and Lesbian Task Force (NGLTF), noted the significance of the stance: "This is the first time to our knowledge that a government entity has used its power to punish a company because it treats its gay and lesbian employees fairly," she said.²⁶ Indeed, in contrast to Cracker Barrel, which was receiving pushback against its homophobic policies as it moved north, here Apple experienced resistance as it moved South due to its inclusivity.

The decision drew media attention to the area and quickly infuriated local economic developers and the Chamber of Commerce, as well as officials in Governor Ann Richards' office.²⁷ Chong and Marshall argue that both sides claimed the best interests of the community in their reasoning. Those opposed to Apple's abatements saw a threat to community cohesion in the fact that the company might attract workers unlike themselves, namely gays and lesbians for whom the domestic partner benefits were particularly attractive. Meanwhile, those in favour of Apple made their case on the basis of economics,

²⁴ Bethany Moreton, *To Serve God and Wal-Mart*. See also: Sean P. Cunningham, *American Politics in the Postwar Sunbelt*; Lisa McGirr, *Suburban Warriors*; Matthew Lassiter, *The Silent Majority*; and Nancy MacLean, *Freedom Is Not Enough*.

²⁵ "Texas county rejects Apple over benefits policy on gays", *Los Angeles Times*, December 2, 1993.

²⁶ "Gay-couple benefits make their way into the mainstream of business", *The Business Weekly*, December 13, 1993 in Box 1, in the Triangle Business and Professional Guild Records, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

²⁷ "Apple controversy goes to core of divided Williamson County", *Houston Post*, December 5, 1993.

citing the investment opportunities and benefit to the local community.²⁸ In the week after the first meeting about Apple, the commissioners received hundreds of letters and phone-calls supporting their decision to turn the company away. The commissioner who changed his vote was David Hays. After a week of lobbying by local residents, Hays, who the *Los Angeles Times* reported “had said earlier that the county had no business meddling with the policy of a private company,” changed his mind and voted against the abatements. “If I had voted yes,” Hays said, “I would have had to walk into my church with people saying, ‘There is the man who brought homosexuality to Williamson County.’”²⁹ This quote from Hays is particularly illustrative of the ways in which Sunbelt conservatives fought to uphold a perceived heterosexual/homosexual binary between the suburb and the city in this era, the like of which historian Clayton Howard has demonstrated never existed. Of course, gay men and lesbian women were already living in Williamson County but Hays’ belief that they were not already part of the fabric of local life points to the extent to which the local atmosphere effectively silenced them.³⁰

Local opposition to Apple focused on several strands of argument. First, were the oft-repeated moral arguments against gays and lesbians, linked to the uncertain legal status of sodomy in Texas. This was mobilised alongside fear of AIDS. Second, and strongly connected to the first strand, were arguments around the need to uphold the heterosexual composition of the county. Finally, the third major strand of opposition related less to gay rights and more to a wider rejection of Sunbelt boosterism altogether.

As had been the case in Houston in 1985, the episode in Williamson County in 1993 was precipitated by a statewide debate over sodomy laws that raised visibility of gay and lesbian rights. Penal Code 21.06 was again challenged in state courts in *Linda Morales et al*

²⁸ Dennis Chong and Anna-Maria Marshall, “When Morality and Economics Collide (or not) in a Texas Community.”

²⁹ “Texas county rejects Apple over benefits policy on gays”, *Los Angeles Times*, December 2, 1993.

³⁰ See: Clayton Howard, *The Closet and the Cul de Sac*, and see also: Clayton Howard, “Building a ‘Family-Friendly’ Metropolis,” pp.933-955.

v. Texas. The five petitioners used similar arguments to Donald Baker that the statute should be ruled unconstitutional as it was discriminatory towards homosexuals and threatened rights to privacy and equal protection. *This Week in Texas*' end of year roundup for 1993 recalled that: "While the state's high court considered the case, however, the Texas Senate took the matter of 21.06 into its own hands, voting down a proposal to keep the statute in a newly revised penal code that took effect this year." These actions temporarily suspended the sodomy law but also raised further tension and set the context in which the Williamson County commissioners operated. The decision drew reaction from groups across the state and especially angered conservatives reeling from the election of Democratic President Bill Clinton in the previous year.³¹ The suspension of 21.06 also led to confusion among Williamson County residents as to whether sodomy was in fact legal. In a feature that explored the divisions among residents, the *Houston Post* noted that those they interviewed in the town of Taylor argued that "the Apple issue is not one of jobs or tax breaks, it is homosexuality, which they believe to be illegal."³² Others echoed the sentiment of Commissioners Mehevec and Boatright. One representative soundbite came from "Tim Mikeska, of Mikeska's Barbecue," whom the *Houston Post* quoted as saying: "The commissioners took a good stand. It was necessary that somebody take a stand about what a family is and what defines it. This is a very conservative county."³³ Arguments surrounding family values and what constituted morally acceptable sexuality for Christian conservatives came to the fore of debate as sodomy laws were again relaxed.

The spectre of the AIDS crisis also continued to haunt claims for gay and lesbian rights in 1993. In responding to charges by boosters that they were putting vital investment

³¹ "21.06 retained in Texas Penal Code; State Supreme Court hearing case" in *This Week in Texas*, December 31, 1993 - January 6, 1994, pp.61-62, available here: <http://www.houstonlgbthistory.org/Houston80s/TWT/1983/> (accessed 1 June 2018). Ultimately the Texas Court of Appeals decided in January 1994 that the challenge was void as it could not rule on criminal matters where no petitioner had been charged, therefore again reinstating the 21.06 until the *Lawrence v. Texas* Supreme Court challenge in 2003.

³² "Apple controversy goes to core of divided Williamson County", *Houston Post*, December 5, 1993.

³³ *Ibid.*

at risk, the commissioners played up images that painted gays and lesbians as diseased transients. Chong and Marshall note that “the opposition foresaw a variety of economic costs that the pro-Apple side rarely mentioned.”³⁴ Most notably, Commissioner Jerry Mehevec “expounded that companies like Apple attract a ‘transit’ population that brings troubles to a community. Another recurring theme was that Apple would attract homosexuals who would bring AIDS to the community and saddle it with astronomical health care costs.”³⁵ These arguments overlooked several points of reality for Apple and Williamson County. On one hand the commissioners denied that gays and lesbians lived in the area even before Apple’s intentions were known. On the other hand, those who claimed same-sex domestic partner benefits at Apple and other companies were a minority for which costs would have increased only slightly. Nevertheless, these facts did not stop commissioners like Mehevec arguing alongside the moral issues at stake that “in terms of simple economic costs and benefits, many opponents of Apple denied that the decision to bring Apple to Williamson County was good business.”³⁶ Echoing the Houston boosters in 1985 they argued that, in fact, bias was good for business when it came to the threat of AIDS.

The County Commissioners were not alone in their stance. Inspired by the rejection of Apple, one town in the county, Cedar Park, passed their own resolution that “banned tax incentives for businesses providing benefits for partners of gay employees.” The town, which had benefited from a population increase of around thirty-percent over the previous three years, now made open claims for the exclusion of gay men and lesbian women. At a regular meeting the City Council, led by Mayor Dorthey Duckett, voted unanimously “to make the traditional family structure the one that is in accord with community standards, usually a

³⁴ Dennis Chong and Anna-Maria Marshall, “When Morality and Economics Collide (or not) in a Texas Community”, p.115.

³⁵ *Ibid.*

³⁶ *Ibid.* Here Chong and Marshall are paraphrasing Mehevec and others.

requirement for tax breaks.”³⁷ In more open ways than ever before suburban towns and representatives now sought to uphold the heterosexuality that they had always assumed to be homogenous. For them what was most galling was the perception that the cosmopolitanism in Austin that they sought to avoid now seemed to be heading their way. They sought to uphold the perceived heterosexuality of the suburbs both through denying Apple its specific tax break but also through enshrining in legislation an example of who Texan suburbs should and should not cater to on “moral grounds.” As noted above, Clayton Howard has demonstrated how the city and the suburb were demarcated into the heterosexual suburb and the sexually lewd urban inner-city during the post-war population boom and urban renewal. He elaborates how “federal and local policymakers crafted a set of incentives that rewarded Americans for marrying and penalized them for engaging in nonmarital relationships.”³⁸ Howard focuses on housing policy and the way that the suburban family home was idealised through the erasure of sexual dissidence. Considering this history, it is possible to understand the actions of Williamson County’s straight middle class as an extension of this attempt to uphold an imaginary binary between the sexualised city and the heteronormative suburb. They balked at the prospect of sexual “deviancy” entering their neighbourhood in the form of gay and lesbian Apple workers and their partners because they were sold an ideal of suburbia (away from Austin) that promised safe, family homes away from sexual dissidence. In Williamson County politicians sought to uphold a perceived, albeit false, demarcation between the homosexual city and the heterosexual suburb.³⁹

It is also illuminating to consider the economic arguments that were mobilised against Apple’s tax abatements. In local and national media at the time, in letters to the commissioners, and in later interviews with Chong and Marshall, some locals made clear

³⁷ “GOP resolution supports denial of tax break to Apple”, *Fort Worth Star-Telegram*, December 5, 1993 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

³⁸ See: Clayton Howard, “Building a ‘Family-Friendly’ Metropolis”, p.934.

³⁹ Ibid.

that they supported the commissioners' stance against Apple not just because of anti-gay sentiment but also because they viewed boosterism unfavourably. A number of locals demonstrated open resentment toward boosterism and the outside workers that certain jobs attracted. On one hand, some like Dorthey Duckett, the Mayor of Cedar Park, argued that the immediate economic dividend would be negligible because those jobs would be taken by those working at Apple's temporary centres in Austin. Duckett viewed the city as a place of deviancy, and therefore even Texan workers who migrated would threaten the heterosexual suburb. On the other hand, others noted an opposition to a northern liberal elite of which gays and lesbians seemed to be part. Still further, some locals mobilised arguments that supported individual politicians, while others argued explicitly against gays and lesbians, and a few pitched their arguments against boosterism in general. A 71-year-old retail clerk told the *Houston Post* that she was unfazed by the threat of homosexuals entering the county. "To each his own, I guess. (Apple) would be good for the community — unless they bring everybody from up North. We have local people who need those jobs."⁴⁰ A similar sentiment was found in Jerry Mehevec's district. "One official said: 'People in Taylor tend to feel they're neglected. They think the west side ignores them and shortchanges them.'"⁴¹ Here the mysticism of the Sunbelt was unravelling for local workers who began to resent boosterism because the jobs it created necessarily brought workers from out of state who they saw as competitors. The domestic partner issue intersected with this as locals pushed back against tax inducements and found a compelling scapegoat after decades of political vitriol around so-called "family values."

Those who felt neglected by development were not alone in the Sunbelt. James Cobb has demonstrated the ways in which tax incentives and low non-union wages shortchanged the residents for whom industry was supposed to benefit. Cobb notes: "As promoters emphasized cheap labor and low taxes, they neglected to explain that

⁴⁰ "Apple controversy goes to core of divided Williamson County", *Houston Post*, December 5, 1993.

⁴¹ *Ibid.*

maintaining these advantages for industry helped to perpetuate less than advantageous living conditions for southerners at large.”⁴² These issues were particularly evident in times of economic crisis. Cobb notes that “although Texas led the nation in the creation of new jobs during the 1990-91 recession, the number of Texans living in poverty increased by nearly 20 percent during the 1980s.”⁴³ It is therefore no surprise that locals who felt left out from the benefits of economic growth would use the political fissures of the Apple episode to further their own arguments against boosterism. The ambivalence of local workers to the arguments of boosters was further demonstrated by Kenneth Collins, a beer-truck driver. “I don’t know why they (Apple) didn’t just move down the road 100 yards and they would have been in Travis County.”⁴⁴

For boosters, including Round Rock Chamber of Commerce president Phil Brewer, Collins’ logic was exactly the opposite of what they continued to work for. Fighting for years to peel industry away from urban Austin, they saw a major threat to future investments if Apple was rejected for providing domestic partner benefits. To overturn the decision of the commissioners, the Chamber and other local boosters sought to remove the issue of sexuality from the debate and instead focused upon the economic benefits associated with Apple’s proposed development. Brewer called upon other local influencers to counter the pressure placed on the commissioners by those who initially won out with moral arguments: “We’re trying to rally the business community to call and write the commissioners to reconsider and reverse their decision,” reported Brewer.⁴⁵ The Chamber of Commerce also worked with statewide boosters and the Governor’s office to draw up a new plan to bring Apple to Texas. In doing so, the rights of gay and lesbian workers at Apple and locally were sidelined as boosters balanced upholding the status quo of local bigotry while at the same

⁴² James C. Cobb, *The Selling of the South*, p.264.

⁴³ Ibid. p.275.

⁴⁴ “Apple controversy goes to core of divided Williamson County”, *Houston Post*, December 5, 1993.

⁴⁵ “Texas county rejects Apple over benefits policy on gays”, *Los Angeles Times*, December 2, 1993.

time securing economic development for the region. These supporters contributed to the denied existence of gays and lesbians in Williamson County as also practiced by Apple's opponents.

This erasure was most effectively demonstrated in the reasoning of Mike Heiligenstein, a commissioner who supported Apple's tax break. He "specifically advised homosexual rights activists to stay out of the fight so that the issue would not be seen to be about gay rights," as Chong and Marshall note. He recalled fears that a demonstration by gay rights activists in the county would have derailed his efforts to overturn conservative intransigence and bring investment. Heiligenstein recounted his reasoning: "If it had become a gay rights kind of thing, then it would not have been turned around. Because there were a lot of people that I was dealing with that don't buy into a separate set of rights for the gay community."⁴⁶ Demands for domestic partner benefits by gay and lesbian activists therefore were silenced in favour of economic arguments to bring investment to Williamson County. In doing so even those who fought for Apple to come to the community degraded gay and lesbian rights and portrayed domestic partner benefits as being a "special privilege" in the same way that affirmative action for women and African Americans was derided in this era. As Chong and Marshall concluded, for supporters of Apple: "It was not enough to receive those same economic benefits indirectly if it appeared that they were motivated by an unpopular social cause."⁴⁷ While a pro-Apple demonstration was held in Austin and community newspapers decried the action of the commissioners, gay and lesbian rights were relegated from the campaign in Williamson County. No mainstream media outlets interviewed gay or lesbian Apple workers themselves. Yet local gays and lesbians were vocal in drawing support for Apple and pushing for their rights. In a letter to *This Week in Texas*, Ron Ozio in Houston called on readers to support Apple by sending letters to the

⁴⁶ Dennis Chong and Anna-Maria Marshall, "When Morality and Economics Collide (or not) in a Texas Community", p.101.

⁴⁷ Ibid. p.100.

company: “It is important that our community offer support to companies that stand up for human rights. One way we can do that is by sending words of encouragement to Apple Computer for the company’s admirable stand in the Williamson County matter.”⁴⁸

Boosters therefore did not show a clear break from the argument that bias was good for business. However, cracks were beginning to appear in the rhetoric of those who claimed to represent the so-called conservative “Silent Majority” at the fault lines of moral politics and economics. Chong and Marshall note the division between Commissioner Brewer on one side, arguing that economic security would bring family security, and Commissioner Boatright on the other, arguing for the opposite. They summarise the tension that was forcing rural and suburban Sunbelt communities to renegotiate their conservatism at this time:

The Brewer-Boatright debate symbolizes the tension, in spite of the broad conservative economic and moral consensus in Williamson County, between the newer, more urban, secular, educated professional and business class and the older, more rural, traditional, fundamentalist community, over which group best represents present-day Williamson County's values and its priorities for the future. Whereas the traditionalists worry about newcomers' disrupting the community, their more cosmopolitan counterparts feel that the major threat to harmony is more likely to emanate from internal intolerance than from external contamination.⁴⁹

The position of the County Commissioners in rejecting investment may seem like an anomaly in the history of boosterism. Yet a closer look demonstrates that it fits within a wider pattern of southerners voting against their own economic interests when it seemed that their moral concerns were under threat. The attacks by local politicians and boosters on gay and lesbian rights in the 1980s and 1990s followed a similar pattern to those employed by boosters and politicians earlier in the century. In the 1940s and 1950s boosters turned away industry for fears that particular companies would threaten racial segregation, and in the 1960s, 1970s and 1980s they turned away industry that threatened the anti-union character

⁴⁸ “Officials in central Texas county reverse prior veto of tax breaks for apple plant”, *This Week in Texas*, December 10-16, 1993 in Folder 17, Box 531, Resource Center LGBT Collection, UNT.

⁴⁹ Dennis Chong and Anna-Maria Marshall, “When Morality and Economics Collide (or not) in a Texas Community”, p.104.

of local business. James Cobb notes that boosters regularly turned away industry that they feared would disrupt local customs, whether it be racialised segregation or the threat of unionisation. Cobb notes for example that “many of North Carolina’s local industrial developers were as committed to keeping out unions as to bringing in industry.” Among notable examples he uses to illustrate the point, Cobb recalls how the Person County Economic Development Commission in 1977 turned away a beer bottle plant that would have brought hundreds of jobs for fear they would be unionised.⁵⁰ In Williamson County homophobic prejudice may have replaced racialised and anti-union bias but the commissioners stood in a long tradition of Sunbelt boosters who were willing to turn away business if it threatened to upset the cohesion of a low-paid, homogenous community.

The historical similarities aside, the dispute in Texas erupted, with conservative politicians and boosters fundamentally disagreeing with each other. For example, a poll conducted by the *Austin American-Statesman* of locals after the commissioners’ first vote to deny Apple tax abatements suggested that the politicians’ claims to represent a “silent majority” were not necessarily true. The poll reported: “51 percent of respondents believe denial of Apple’s request would deter other businesses from relocating to the county,” while only “37 percent disagreed and felt the commissioner’s decision was right.”⁵¹ Local support for Apple outside of the Chamber of Commerce focused on shifting the position of David Hays, the commissioner who had demonstrated himself to be in support of Apple initially but had bowed under pressure from local residents, and claimed he voted no on religious grounds.⁵² Now some in his district countered the pressure from those opposed to Apple by circulating a petition calling for Hays to reconsider his vote.⁵³

⁵⁰ James C. Cobb, *The Selling of the South*, p.255. See also: Bruce Schulman, *From Cotton Belt to Sunbelt* pp.78-81; and pp.162-165.

⁵¹ "Texas commissioners reverse vote on Apple decision", *Frontiers*, January 14, 1994 in Texas, 1999-before, ONE Subject File collection, Coll2012-001, ONE.

⁵² "Apple controversy goes to core of divided Williamson County", *Houston Post*, December 5, 1993.

⁵³ *Ibid.*

The Williamson County Commissioners received backing from the Texas Republican Party in a unanimous vote by the executive committee. They commended the commissioners “for standing up for values that the Republican Party supports — by denying special tax treatment for a company that condones behavior that many residents of Williamson County and the state of Texas find immoral.” Ernest Angelo Jr., the GOP committee member who congratulated the commissioners, added that they should not feel like the last line of defense but “they maybe instead are the first part of an offensive effort to restore basic values to Texas and America.” Commissioner Greg Boatright especially welcomed the support of the GOP as he became concerned that the involvement of Democratic Texas Governor, Ann Richards, would “threaten his attempts to uphold the decision at a future meeting.” Boatright’s fears were not unfounded. as the *Fort-Worth Star-Telegram* reported: “The GOP’s resolution came as officials from Gov. Ann Richards’ office, Williamson County and local cities were discussing a possible new incentive program to keep Apple interested.” Democrats joined other Apple supporters in shifting focus away from gay rights and instead focused on the impact on jobs: “State Democratic Party Executive Director Ed Martin said the Republicans’ motion was ‘pretty bizarre.’” Adding, “Frankly, I’m shocked that the Republicans would praise people for taking actions that could cost our state jobs and could hurt our economy.” Bill Cryer, the Governor’s press secretary, struck an optimistic tone suggesting that a new deal was in the works: “I think everyone in Williamson County would like to get those jobs and the economic benefit it will bring to the county, and I think Apple would like to move into the facilities it has planned up there.”⁵⁴

This was also the era in which the Log Cabin Republicans formed and found particular relevance in Texas. For their part the gay and lesbian group challenged the GOP’s support for the Williamson County Commissioners. Seeing an opportunity to shape local conservatism, and provided with a platform in local media that they had not experienced

⁵⁴ “GOP resolution supports denial of tax break to Apple”, *Fort Worth Star-Telegram*, December 5, 1993 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

before, the Log Cabin Republicans launched a statement calling for “Republicans across the state to disassociate themselves from the committee’s resolution and to begin efforts aimed at replacing those GOP officials who put their personal prejudices above the economic well-being of Texas.”⁵⁵ The group went further than most Democrats by specifically challenging the homophobia of the commissioners and their GOP backers. Texas Log Cabin Republicans president Paul von Wupperfeld stated that the Texas Republicans had “shown that they are willing to jeopardize the long-term economic health of our state for the sake of taking a cheap slap at Texas’ hard-working gay and lesbian citizens.”⁵⁶ Further, von Wupperfeld contributed to the debate among conservatives at this time as to their priorities in terms of morality and economics. He alleged: “By attempting to inject themselves into the issue of a company’s internal personnel policies, the Republican Executive Committee shows just how far they have strayed from the traditional Republican concept of limiting government interference in private lives and businesses.”⁵⁷ Days later, more prominent Republican activists echoed von Wupperfeld’s sentiments and put further pressure on the Williamson County Commissioners. Leaders of several coalitions of Republican politicians and businesses held a joint press conference in front of the Travis County Courthouse in Austin where they criticised both the commissioners and the Texas GOP’s leadership for supporting them.⁵⁸ Gilbert Martinez, founder of the Republican Business and Professional Leadership Club, stated: “We are concerned that some officers of the Republican Party have become so distracted by controversial social issues that they have forgotten to promote one of the major goals of the Republican Party — economic growth.”⁵⁹

⁵⁵ “Log Cabin denounces Texas GOP resolution supporting denial of tax breaks to Apple Computer”, *The Lone Star, Newsletter of the Log Cabin Republicans of Texas*, Vol.2.6, December 1993 in Folder 1, Box 531, Resource Center LGBT Collection, UNT.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ “GOP groups say Republicans losing their focus”, *Austin American-Statesman*, December 8, 1993 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

⁵⁹ *Ibid.*

Whereas the Houston dispute in 1985 poured heat on liberal coalitions, the Williamson County episode divided conservatives - new dividing lines appeared between the supposedly united Christian and libertarian conservatives who helped to form Reagan's "Silent Majority" base of the 1980s. Following the election of Bill Clinton in 1992, a battle erupted over the kind of Republican Party needed for the 1990s. Key to this fight was the extent to which "moral issues" such as gay and lesbian rights were to be central to the party's focus in the gubernatorial election year.⁶⁰ Andy Smith, a spokesman for "Take It Back, an organization of moderate Republicans," referring to the Texas GOP supporting the commissioners, stated: "The Republican Party, if it is going to win, has to be a broad-based party focusing on lower taxes, lower government spending and responsible government," he said. "What the party did this past weekend totally wiped all that out."⁶¹ In response, Ernest Angelo defended the decision stating that it would shore up support over "moral values."⁶² It is therefore no surprise that the Williamson County episode sparked a fierce battle between conservatives in 1993. At the time, *The Dallas Morning News* summarised the battle within the Republican Party by noting: "Conservatives have sought to make moral issues a fundamental part of the party's message, while moderates favor emphasizing economic issues."⁶³ Yet in their later study Chong and Marshall argue that "many in Williamson County did not want to choose sides in a dispute between economics and morals, and they were appalled that the issue was being defined so crudely."⁶⁴ They concluded that "in general, practically everyone [in Williamson County] believes in economic growth and traditional values; business interests and conservative morality are seen to go hand in hand and

⁶⁰ "GOP centrists criticise leaders for vote on Apple tax issue", *Dallas Morning News*, December 7, 1983 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Dennis Chong and Anna-Maria Marshall, "When Morality and Economics Collide (or not) in a Texas Community", p.98.

people are loath to tamper with this consensus.”⁶⁵ As such the specific issues of domestic partner benefits at Apple gave rise to a divisive yet important debate within the Republican Party.

The Turnaround

For their part Apple played hardball by suggesting that they were willing to move elsewhere should the tax incentive not come through. “Our position is firm,’ said Bill Keegan, Apple’s spokesman. ‘I think one of the reasons that Apple is a great company is that we do spend a lot of time and effort taking care of our employees.” He added: “Extending benefits to same-sex partners certainly falls within those benefits that we provide, and our response to the folks in the Austin area is that we remain committed to that policy, we’re not going to change that.”⁶⁶ *The San Antonio Express-News* noted that “dozens of cities across the country [were trying to] lure Apple.”⁶⁷

The threat to take investment out of state, alongside Gov. Ann Richards’ mediation and pressure by local constituents, eventually won out. Commissioner David Hays switched his position again at the next meeting, securing a new 3-2 majority among the commissioners in favour of Apple.⁶⁸ Hays immediately sought to qualify his new stance as not in support of gay and lesbian rights. He stated: “Last week I was asked to vote to use taxpayer money to subsidize, and therefore, tacitly endorse a benefits policy with which I disagree. Today’s vote does nothing of the kind,’ he said.”⁶⁹ This was because the new deal would see Apple receive the same level of \$750,000 tax incentive to relocate to Williamson

⁶⁵ Ibid. p.97.

⁶⁶ “Apple’s ‘true grit’ in Texas”, *The Front Page*, November 12, 1993.

⁶⁷ “Leaders in GOP raked for nod on Apple vote”, *San Antonio Express-News*, December 7, 1993 in Folder 13, Box 531, Resource Center LGBT Collection, UNT.

⁶⁸ “Officials in central Texas county reverse prior veto of tax breaks for Apple plant”, *This Week in Texas*, December 10-16, 1993 in Folder 17, Box 531, Resource Center LGBT Collection, UNT; see also: “Texas capital ends benefits for partners”, *New York Times*, May 9, 1994.

⁶⁹ “Texas commissioners reverse vote on Apple decision”, *Frontiers*, January 14, 1994.

County but in a different form. “The difference is that the amount would be paid by Apple, then reimbursed; an abatement would be a reduction in taxes in the first place.”⁷⁰ The commissioners could claim that public money would not be used up front to induce a controversial company but they would repay Apple their own taxes back at a later stage. Hays’ statements at the time of the reversal suggest that he struggled to reconcile the two strands of conservatism at conflict in this case. On the one hand he “said in a prepared statement that his vote did not represent a switch in his values.”⁷¹ Yet Hays was later quoted by the Lesbian/Gay Rights Lobby of Texas saying that: “Apple is a fine company... I don’t question their right to reward lifestyles as they see fit. It’s a win-win economic situation.”⁷² This is interesting when considered with the rhetoric from both sides of the debate who sidelined gay rights throughout the battle. Not only was a commissioner now willing to switch sides to secure Apple’s investment, but he implicitly supported domestic partner benefits at the company. Here was a businessman and politician seeking to find an appropriate response that did not jeopardise his moral, political and social beliefs, comprising limited government intervention, corporate rights and the right to privacy.

Apple welcomed the decision by the commissioners, with spokeswoman Lisa Byrne stating that “as far as we can see, the project will move forward... We’re very pleased with the vote today.”⁷³ The reversal by the commissioners was also immediately welcomed by gay and lesbian activists across Texas and the United States. “This situation demonstrated loud and clear that bigotry and discrimination are bad for business” remarked Paul von Wupperfeld, though this pronouncement was premature considering even Hays and the other commissioners remained firmly committed to “family values.” Nevertheless activists

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² *Workplace Activism: A guide to on-the-job organizing*, The Lesbian/Gay Rights Lobby of Texas, Undated, in Folder 70, Box, 35, Resource Center LGBT Collection, UNT.

⁷³ “Texas commissioners reverse vote on Apple decision”, *Frontiers*, January 14, 1994.

nationally sought to build on the reversal in Williamson County.⁷⁴ David Smith, Director of Public Information for the National Gay and Lesbian Task Force (NGLTF) who attended the vote in Williamson County stated: “This battle is a perfect example of the type of discrimination gay and lesbian people face every day.” He continued:

This time it was an entire corporation. Apple has been absolutely heroic throughout this debate and has never wavered in support of its domestic partnership policy and treating its gay and lesbian employees fairly... This vote should send a positive signal to other companies that are considering implementing domestic partner policies.⁷⁵

Houston Gay and Lesbian Political Caucus board member, Keith McGee applauded Apple for not backing down but argued that the company should have rejected Williamson County in response to its homophobia. “Apple should have taken its toys and gone a few miles south to Travis County,” he said.⁷⁶ Similarly, Southern California based *Frontiers* magazine editorialised that Apple should use its clout and decline Williamson County, writing before the final decision was announced the editors stated: “We wholeheartedly support Apple’s efforts to find a favorable community environment for their complex, and fervently hope that the company will abandon Williamson County even if the vote is eventually overturned; it is painfully evident that any reconsideration on the part of the commission would be disingenuous and money-driven.” Echoing McGee they called for Apple to build their site in the city of Austin or “even better would be to find a site in a state that does not have a sodomy law. Such an action would send a conspicuous message that the cost of discrimination is high indeed.”⁷⁷ As we will see, such characterisations of Austin and Travis County were misjudged.

⁷⁴ “Officials in central Texas county reverse prior veto of tax breaks for Apple plant”, *This Week in Texas*, December 10-16, 1993.

⁷⁵ Ibid.

⁷⁶ “Texas commissioners reverse vote on Apple decision”, *Frontiers*, January 14, 1994.

⁷⁷ “Outlook: The apple dumping gang”, *Frontiers*, December 17, 1993.

For conservatives, especially among organised Christians, the episode highlighted the need for engagement with the strategies that lesbian and gay activists were beginning to mobilise more frequently. As the southern workplace became more embattled in terms of gay and lesbian rights it would need a greater response from Christian conservatives. The reversal of the Williamson County commissioners angered Christian conservatives, especially those who also had interests in the burgeoning industries of computing and information technology. One such person, a subscriber describing themselves as an “elder in Christ’s Church,” wrote to the *Christian Computing* magazine in March 1994. He challenged the decision in Texas and posed the possibility of a boycott of Apple products in retaliation.⁷⁸ Demonstrating the difficulties that Christian conservatives were beginning to face with the strategies employed by the NGLTF and others, the *Christian Computing* editor set out the problems with such a strategy: “Apple is just one of many companies that have a ‘domestic partners’ policy providing health, life and other benefits to their employees who are gay and lesbian and wish their partners to be covered.” He also pointed out that “a few other companies that have similar policies would include Lotus, Adobe Systems, Microsoft, Oracle Systems, and Sun Microsystems (to name a few).”⁷⁹ He concluded that their options in the face of such challenges to Christianity were limited, arguing:

The question for Christians is the same we have faced before. Where do we take a stand, and where should we be careful we don’t take a stand that hurts us more than it hinders our enemies. In this issue you will see a comparison review of eight Bible study programs for the Macintosh (so their machines can certainly be used for the Lord’s work). If we say we should boycott Apple, what do we do with Microsoft? It would be pretty hard to run an IBM PC without DOS or Windows.⁸⁰

True to the fears of these Christian conservatives in the aftermath of the turnaround, local gay and lesbian activists went on the offensive by encouraging others to organise to

⁷⁸ “Apple and the Gay Agenda”, *Christian Computing*, March 1994 in Folder 32, Box 16, Maria Helena Dolan Papers, W134, Archives for Research on Women and Gender. Special Collections and Archives, Georgia State University, Atlanta.

⁷⁹ Ibid.

⁸⁰ Ibid.

win rights within their workplaces. The Lesbian/Gay Rights Lobby of Texas prepared a pamphlet to assist Texas workers in winning nondiscrimination protections, domestic partner benefits and other rights. Even after the Texas sodomy law, section 21.06 of the penal code, was reinstated in 1994 they noted it “has not stood in the way of other Texas employers [including Apple] who provide benefits to same-sex partners... Although 21.06 technically remains on the books, if an employer uses it to deny employment, housing, custody or health care funding, they can be sued and will probably lose.” Drawing on lessons from the rhetoric and outcomes of the Apple episode they noted: “The conservative right is opposing the extension of partnership benefits to public employees on the ground that taxpayers (who apparently do not include gays and lesbians) should not have to ‘subsidize immoral lifestyles.’” They also provided readers with counterarguments so that gay and lesbian workers could navigate these debates within their own workplaces.⁸¹

More immediately, both local and national activists set their sights on Williamson County’s biggest employer, Dell Computers. Dell bucked the trend of high-tech companies offering domestic partner benefits or non-discrimination for gay and lesbian employees, an issue highlighted by Williamson County’s focus on Apple’s policies. The National Gay and Lesbian Task Force (NGLTF) made Dell a key priority in their 1990s’ focus on shifting policies within corporations to be gay and lesbian friendly. NGLTF workplace co-ordinator, George Kronenberger noted that “one who we’re particularly interested in is Dell Computer, which ... don’t even have an EEO (equal employment opportunity) clause that includes sexual orientation.”⁸² He made clear that Dell would become a key focus in the organisation’s shift towards tackling corporate policy over the next decade. Summarising their strategy, Kronenberger told *The Business Weekly* at the height of the Apple debacle: “domestic-partners packages like Apple’s are becoming an ‘industry standard’ for high-tech

⁸¹ *Workplace Activism: A guide to on-the-job organizing*, The Lesbian/Gay Rights Lobby of Texas, Undated.

⁸² “Gay-couple benefits make their way into the mainstream of business”, *The Business Weekly*, December 13, 1993 in Box 1, in the Triangle Business and Professional Guild Records, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

companies. Without them, many such companies are afraid they will lose employees or prospective workers to their rivals, Kronenberger said. 'It's become a competition issue.'⁸³ Yet the strategic focus on individual corporations such as Apple and Dell ignored the fact that city and state protections for gay and lesbian workers remained generally absent and tenuous at best while the federal Employment Non-Discrimination Act (ENDA) was only beginning to be debated. This fact became strikingly obvious in the months immediately following the Williamson County episode when the city of Austin voted in May 1994 to repeal the domestic partner benefits that had been introduced the previous year, and just months after the *Frontiers* magazine editorial had placed Austin in what it called "decidedly the most liberal county in Texas."⁸⁴

In a move that recalled the referendum to reverse Houston's non-discrimination policy in 1985, Austin voters rejected the city's provision for domestic partner benefits. In an almost 2-1 vote in favour of Proposition 22, "voters... repealed a policy providing health insurance benefits to the live-in partners of homosexual and other unmarried city employees," noted a *New York Times* reporter. As such, "Austin became the first city to repeal a domestic partners benefit policy." The vote meant that health insurance and other benefits would again only be available to the married partners of city employees. Therefore, benefits were immediately withdrawn for 98 unmarried couples who had taken advantage of the policy since its adoption by the City Council in September.⁸⁵

Right-wing Christian groups mobilised several arguments to reverse the council decision. Echoing the arguments of opponents to Apple in the previous year, these included the need to uphold family values, the costliness of the benefits, and the possibility that such provisions could be abused.⁸⁶ Pointing to a key sticking point with the concept of domestic

⁸³ Ibid.

⁸⁴ "Outlook: The apple dumping gang", *Frontiers*, December 17, 1993.

⁸⁵ "Texas capital ends benefits for partners", *New York Times*, May 9, 1994.

⁸⁶ Ibid.

partner benefits, some voters said that they rejected the benefits because they were also available to unmarried heterosexuals. Though this was often used as a selling point for heterosexual colleagues by gay and lesbian activists — to expand their workplace rights claims by stating that they benefited everyone — in this instance it was used as another way to challenge their legitimacy. Voters stated that “they were less concerned about benefits going to homosexuals than they were about heterosexuals who were nothing more than friends taking advantage of the program.” Indeed, *The New York Times* noted that the benefits were more popular among heterosexuals than homosexuals: “of the 98 employees who have registered their partners, 29 have listed same-sex partners.” Yet those supportive of partner benefits continually denied that such issues were of concern. Hugh Strange, a spokesman for the Mainstream Austin Coalition said: “It takes more information to register as a domestic partner than it does to apply for a marriage license,’ he said. People could be prosecuted for perjury or lose their city jobs if they lied about their partners.” Nevertheless, the argument was mobilised in a compelling way for Texans through religious rhetoric that called on voters to reject what they saw as an attack on the traditional family, in many ways foreshadowing similar arguments over same-sex marriage later in the decade.⁸⁷

The New York Times report also noted that voters’ “support of the measure did not mean that they were condemning homosexuals. With a recent property-tax increase on their minds, they said the vote was simply a way to save \$104,000, the city's estimate of the annual cost of providing the extra insurance.” This highlighted the dangers of focusing upon a strategy that sidelined gay and lesbian rights claims in favour of financial incentives for localities, as had been in the case in Williamson County. The arguments mobilised in support for Apple were reversed in Austin: “I don't believe it's gay bashing at all,’ said Marty Guarino, a retired printer. ‘I don't care how some people want to live, but I just don't want to pay for it.” The argument that Apple’s rights as a corporation should not be challenged regardless of how unpopular their provisions for gays and lesbians were, worked in reverse when locals

⁸⁷ Ibid.

could claim a stake (regardless of how little) in the benefits that were paid to those in public employment. While local lesbian and gay groups could only decry the move as “vivid proof of anti-gay bias in a city known as the most liberal in Texas,” the Christian right suggested that they would now go on the offensive. As such, “Christian groups that backed the measure said they would push repeal efforts in other cities with similar policies.”⁸⁸

Besides claims that the benefits could be abused, and were too costly, the main reasoning given for removing them was immorality. One group, Concerned Texans, argued that “the benefits represented a perversion of traditional family values.” The president of Concerned Texans, Rev. Charles Bullock, pastor of the Christ Memorial Baptist Church told *The New York Times* that “the grass roots are bypassing their leaders and saying we're going to vote and we're going to vote conservative.” *The Times* suggested that: “the Austin vote demonstrated a strong if not always vocal majority opposed to what [Bullock] called irresponsible spending and morals.” This consequently demonstrated that battles over family rights and claims to a “moral majority” would not abate in the face of Apple’s success in Williamson County. In fact, the reversal of domestic partner benefits in Austin represented in many ways a more significant victory for the religious right than the reversal in Williamson County for gay and lesbian liberals. Christian conservatives actually managed to roll back the rights of gay and lesbian workers, not simply turn away a corporation with whom they disagreed.⁸⁹

The falsity in the comparison between the ‘liberal’ Austin and ‘conservative’ Williamson County should not have been so shocking to activists when Austin reacted against domestic partner benefits. Chong and Marshall note that the polls against Apple were as strong in Austin as they were in other parts of the area. “Although community leaders accurately perceived the extent to which county residents disapproved of homosexuality (and therefore the importance of keeping it either on or off the agenda,

⁸⁸ Ibid.

⁸⁹ Ibid.

depending on one's purpose), they tended to magnify regional differences of opinion on the Apple issue.” However, Chong and Marshall note that “they tended to overestimate the amount of agreement in their constituencies with their own opinions. The sharp regional differences described by the commissioners are not borne out by the public opinion data. Regarding the first vote, disapproval-approval ratios by town were similar: 51-34 in Georgetown; 50-39 in Round Rock; 54-32 in Austin.”⁹⁰ Austin was comparatively similar in residents’ stances on the Apple situation, which demonstrates the necessity of viewing the urban and suburban as being in dialectical relationship rather than one of hard borders of conservatism or liberalism.

Conclusion

In the end, Apple never built its new customer service and telecommunications facility in the region. Chong and Marshall note that “in February 1995, the company shelved its plan, citing a need to expand production capacity at computer plants in other cities. In July 1997, Apple put its 129-acre Williamson County site up for sale.”⁹¹ On one hand, the Williamson County episode raised the profile of gay and lesbian workers in Texas. However, on the other hand, the issue of gay rights was demobilised by the economic forces who sought to bring Apple to the area. The fact that Apple never opened the campus in Williamson County cooled local fears and allowed the spectre of gay employment rights to return to the background for the majority of Texans. In some ways gays and lesbians lost more through the increase in visibility in Texas than they won. For instance, this episode helped to reinforce an unfounded notion that gays and lesbians were seeking special privileges and rights through domestic partner benefits. This misconception has been systematically destroyed by economist M. V. Lee Badgett, among others, yet by focusing on

⁹⁰ Dennis Chong and Anna-Maria Marshall, “When Morality and Economics Collide (or not) in a Texas Community”, p.98.

⁹¹ Ibid.

the rights of those who appeared to be upwardly mobile rather than fighting to win gay rights more broadly, boosters managed to scapegoat gay and lesbian workers against working class constituents who were disillusioned by Sunbelt boosterism.⁹²

The focus on gay and lesbian rights also obscured the important dynamic of increasing anti-union legislation that made Texas so enticing to companies like Apple and Dell. The Williamson County episode and the roll back of rights in Austin took place at the same time that labour organisations in Texas faced new setbacks as the state of Texas reaffirmed longstanding right-to-work laws which limited the extent that unions could play a role in either dispute.⁹³ Indeed, the business of shunning industry due to its provisions for gay and lesbian workers was not unlike the way the Sunbelt boosters in other states had protected their local anti-union environment through carefully selected investment. This was demonstrated in Williamson County as the local community debated whether it should shun Apple Computers Inc. promise of 1,700 jobs and \$80million of investment. This case also demonstrated wider animosity among local workers towards boosterism that had largely passed them by and threatened to do so again. Cobb notes that over the course of the 1980s poverty increased in Texas as elites brought investment but at the expense of taxes that could ease the effects of this poverty through social welfare programs.⁹⁴

In Williamson County these contradictions were brought to the fore in a battle over gay rights in which boosters demanding tax inducements for Apple clashed with local politicians and voters who wanted to shun the progressive stance taken by the company. Caught in the middle were gay and lesbian white-collar workers who enjoyed numerous hard-won benefits at the company which threatened a local anti-gay atmosphere. As such, gay and lesbian Apple workers were again portrayed as a “special privileged class” as John

⁹² See: M.V. Lee Badgett, “Beyond Biased Samples: Challenging the Myths on the Economic Status of Lesbians and Gay Men” in *Homo economics*, Amy Gluckman and Betsy Reed, eds.

⁹³ Texas Labor Code: Title 3. *Employer-Employee Relations*, Chapter 101. Labor Organizations. Enacted: Sept. 1, 1993. Available: <https://statutes.capitol.texas.gov/Docs/LA/htm/LA.101.htm> (accessed October 2018).

⁹⁴ James C. Cobb, *The Selling of the South*, p.275.

Goodner and Louie Welch had forewarned in Houston some eight years before. Here again was a case of the convergence of contradictory arguments surrounding sexuality, boosterism, conservatism and southern identity that came about at the same time that Texas was reeling from an economic downturn as well as an increase in gay and lesbian visibility resulting from another challenge to the state's anti-sodomy law. For the second time in the course of a decade, gay and lesbian workers in Texas were scapegoats used by the state's business elite as they sought to improve economic conditions whilst limiting the extent to which outside investment would impact localised beliefs concerning sexuality.

This episode demonstrates that the focus on changing one company's sexual orientation and gender nonconformity policies did not necessarily affect the wider communities in which those companies operated. Apple's domestic partnership policy became redundant in Williamson County when the company packed up shop. Similarly, down the road in Austin, where the company had several operations, those domestic partners became a privileged few when the city-wide provision was repealed not long after the situation with Apple was resolved in Williamson. This episode demonstrates the necessity of a strategy for workplace protections and equality that reaches beyond individual workplaces and seeks to shift statewide and national politics.

The focus on the conservative and rural Williamson County's supposedly obvious stance of homophobia obscured the fact that ruptures were appearing in even the most liberal of southern cities in this era, namely Austin. The Republican Party shifted its focus in opposition and gay rights issues became more visible as a middle-class concern after the AIDS crisis outed business executives and others. For gay and lesbian activists in Texas, faced with increasing hostility to organised labour and the prospect of friendly northern businesses investing, it seemed sensible to continue focusing attention on winning their rights within singular companies from above rather than through union contracts or city-wide ordinances. The Austin referendum suggested a more fruitful focus could be found by attracting companies like Apple to the area while anticipating that securing city, state or

nationwide protection in the law would be a long way off. As such, class stratification among gay and lesbian communities would continue to grow. While some gay men and lesbian women in executive positions enjoyed benefits, millions of others struggled to earn a decent living and were forced to remain in the closet.

Predicting a turn in the tide for corporate gay and lesbian rights in the 1990s, Robin Kane from NGLTF argued that: “The trend in companies is that they are exploring implementing the policies. I think Williamson County will find that the bigotry they have exhibited will be highly unprofitable in the future.”⁹⁵ While in the short term, the setback in Austin suggested that Kane was overly optimistic, this prediction would later come to fruition. Though battles would continue throughout the 1990s and beyond with varying results, the wider limitation of successes for domestic partner and workplace non-discrimination was a clear result of the Sunbelt’s historic connection to anti-union legislation, limited taxation and family values. The next chapter turns our attention to how battles over domestic partner benefits were expanded through public and private higher education institutions. It will provide a contrast to the limited successes of activists in Texas by examining the achievement of faculty and students in gaining their rights on campus and then broadening their struggles beyond the ivory towers.

⁹⁵ “Gay-couple benefits make their way into the mainstream of business”, *The Business Weekly*, December 13, 1993.

Chapter Five

Employment Rights on the Sunbelt Campus

Two aspects present in the Apple episode in Texas were especially pertinent to discourses surrounding rights for gay, lesbian, bisexual and transgender (LGBT) people at college and university campuses throughout the Sunbelt. First, gay and lesbian academics attempted to set curriculum in the context of an overwhelmingly hostile conservative political climate. At the same time, demands for domestic partner benefits and non-discrimination ordinances continued to emerge at universities across the region. Historically universities were important sites in the development of the Sunbelt. Government defence research contracts, GI Bill entitlements and pork-barrel politics created a proliferation of campus development in the second half of the twentieth century. Scholars including James Cobb and Elizabeth Shermer have examined the rise of the university in the South and Southwest.¹ Campus activists followed a similar pattern of fighting for workplace rights and benefits of those in the corporate world. They sought to win rights at individual institutions while also attempting to generalise their campaigns and victories to other campuses in the South, as well as beyond the ivory towers. The battles that took place for domestic partner benefits in the North Carolina Research Triangle, as well as in Georgia, are particularly illustrative of these processes. At Duke and Emory, activists found success in arguing for increased benefits and protections by asserting the need to stay competitive with other private institutions in the North and in California. In contrast, activists at UNC-Chapel Hill and the University of Georgia found difficulty in fighting for those same rights at southern public institutions which relied upon state legislatures for funding. Nevertheless, activists shared ideas and found some success in winning workplace protections in each of these instances.

¹ See: James C. Cobb, *The Selling of the South*; and: Elizabeth Tandy Shermer, "A Fraught Partnership: Business and the Public University Since the Second World War" in Richard R. John and Kim Phillips-Fein, (eds.) *Capital Gains: Business and Politics in Twentieth-Century America* (Philadelphia: University of Pennsylvania Press, 2017).

The battle against homophobia and for widened rights on southern campuses did not take place in a vacuum. These campaigns built upon the successful mobilisation of students in campaigns at Cracker Barrel and elsewhere. The political backlash that emerged in the early 1990s also proved a useful foil for conservatives seeking to roll back the rights and visibility of sexual minorities in the classroom. The southern campus became a battleground for the culture wars through debates on curriculum. Sodomy laws, and the notion that same-sex intimacy was illegal, continued to play a hugely important role in limiting nondiscrimination protections, as well as denying claims to domestic partner benefits at public universities across the region. At the same time gay rights activists shifted their struggle for recognition out of the classroom and into wider debates over the economic rights of employees, a move prompted by the need to win domestic partner benefits for student teaching assistants in the North Carolina Research Triangle.

Over the course of the 1970s and 1980s students and faculty did battle with university administrators and local politicians across the South and Southwest to receive institutional legitimacy and funding for groups and support services for LGBT people on campus. In cases involving institutions across the region, gay and lesbian students pushed for and won the right to the same provision of services as other students, such as funding for groups, dedicated counselling, and meeting spaces. In doing so, they built upon the civil rights campus activism of black and other minority students. The few histories written about LGBT people on campuses have tended to focus on students rather than faculty as the main agents for change.² Yet the struggles gay and lesbian students waged on campuses in these eras intersected with those of faculty and staff. This chapter seeks to add to our understanding of how workplace concerns of gay and lesbian faculty and staff intersected

² For examples of history focused on student organisation in the South, see: Kathryn Staley, "Gay Liberation Comes to Appalachian State University (1969-1979)" in *Appalachian Journal*, Vol. 39, No. 1/2 (Fall 2011/Winter 2012), pp. 72-91. See also: "Campus Activism" in *OutHistory*. Available: <http://outhistory.org/exhibits/show/nc-lgbt> (accessed: 1/12/2018). Also see: Jonathan S. Coley, *Gay on God's Campus: Mobilizing for LGBT Equality at Christian Colleges and Universities* (Chapel Hill: University of North Carolina Press, 2018). For notable exceptions that prioritise examination of faculty and staff see: Karen L. Graves, *And They Were Wonderful Teachers*; but see also individual campuses discussed in: John Howard, *Men Like That*.

with students' battles for their rights in the 1990s. To do so the focus of this chapter is upon the university as an employer. As with other forms of work in the United States, workplaces are key to all manner of social provision due to the privatised nature of the social safety net where benefits are tied to employment and personal relationships are regulated. Paying attention to college campuses allows us to better understand the impact of these dynamics in a range of settings as well as the possibility for sexual minorities to expand the employers' narrow conceptualisation of who is deserving of access to benefits.

Although student groups and faculty associations were established on campuses from the early-1970s onwards, it was only in the 1990s that the majority began to receive administrative support. Increased visibility on campuses led to demands that went beyond non-discrimination, calling for domestic partner benefits for both full-time staff and faculty as well as graduate student teachers and other adjunct teachers. Queer politics left the streets and entered college discourse as queer theory, and courses began to offer classes exploring sexuality. This was not without controversy, however, as Christian conservatives made the campus a key battleground to push back against LGBT rights in the era of the culture wars. Though gay and lesbian activists would eventually win out, both in terms of academic freedom in course content and in expanding rights, these victories were hard won and remained uneven across the South for much of the period. As one campus received benefits, another nearby lagged. Activists' attempts to generalise their victories were more successful at private universities, where they could make claims to the need to remain competitive with their private competitors. In contrast, those at public institutions, which relied upon budget approval from state legislatures, were less successful when faced with increased political pressure from conservative opponents who sought to uphold the closet on campus. While workers at Apple were successful in winning domestic partner benefits, workers in the South had little access to them when the company scrapped its plans for investment. In contrast, universities offered important opportunities for winning domestic partner benefits in both the public and private sectors. To do so however, university

administrations were forced to conceptualise a narrow vision of who should and should not be entitled to expanded benefits and nondiscrimination protections in ways that would uphold heteronormative assumptions.³

The continuing push for domestic partner benefits in the 1990s marked a shift in the battle for rights and visibility for sexual minorities in the Sunbelt. Claims to nondiscrimination, such as those detailed in part one of this thesis, rested upon the notion that sexuality was a private matter for a citizen in which neither the state nor their employer should take an interest. In comparison, claims to domestic partner benefits pushed forward a public claim upon employers in which sexual minorities demanded a section of entitlements that they had previously been excluded from. In doing so, activists made claims as private employees rather than as citizens, by placing demands upon their employer rather than the state. Yet the two strands of activism are undeniably entwined due to the structure of the social safety net. Sexual minorities had to make claims as employees because it is through employment that healthcare, insurance, and retirement benefits, among many other entitlements are disseminated in the United States.⁴

North Carolina Research Triangle

Perhaps no state benefited more from the post-1945 government-funded education boom than North Carolina, which saw its private and public institutions grow exponentially. As James Cobb details in *Selling of the South*, the “desire to attract higher quality, more sophisticated industries to the South bore its most impressive fruit in North Carolina. The

³ For examination of the Culture Wars and the specific importance of university curriculum, see: Andrew Hartman, *A War for the Soul of America: A History of the Culture Wars* (Chicago: The University of Chicago Press, 2015). But see also: James Davison Hunter, *Culture Wars: The Struggle to Define America* (New York: Basic Books, 1991) pp.211-224. And also see: Jonathan Zimmerman, *Whose America? Culture Wars in the Public Schools* (Cambridge, MA: Harvard University Press, 2002). On the emergence of queer politics and theory with reference to higher education in this period see: Lisa Duggan, “Making it Perfectly Queer,” *Socialist Review* vol.22.1 (1992), pp.11-31; see also: Jeffrey Escoffier, “Inside the Ivory Closet: The Challenges Facing Lesbian and Gay Studies.” *Out/Look* vol.10 (1990), pp.40-48.

⁴ On the broader limits of the American welfare system, and its reliance upon the private sector see: Jennifer Klein, *For All These Rights*, pp.258-275.

Raleigh-Durham-Chapel Hill area was particularly blessed with research facilities because it was home to three major universities, Duke University, the University of North Carolina, and North Carolina State College, all situated within fifteen miles of each other.”⁵ To attract intellectuals and liberal executives as well as engineers and medical researchers, regional boosters including Governor Luther Hodges, “assured industrialists that North Carolina was more advanced socially and culturally than other southern states, and he received the cooperation of university officials in dealing with individual prospects.”⁶

The town of Carrboro, adjacent to Chapel Hill, witnessed a spectacular shift in demographics and politics in the closing decades of the twentieth-century. As Chapel Hill real estate prices began to spiral, Carrboro attracted more and more university workers: “young faculty members and professionals began fixing up Carrboro’s old mill houses. Suddenly a portion of the university’s intelligentsia began arriving,” recalled a profile in the *Charlotte Observer* in 1995. Next came new apartment complexes and students. “Lately,” the article continues, “new subdivisions have drawn ‘outsiders’ who work at the Research Triangle Park, and have made Carrboro a bedroom community so their children can enroll in the progressive Chapel Hill—Carrboro schools.”⁷ By the 1990s, Triangle Area towns were seen as some of the most liberal in the South. Carrboro and Chapel Hill were the first in the state to pass nondiscrimination ordinances and allow domestic partner benefits. In October 1994, Mike Nelson, an openly gay alderman in Carrboro, helped to steer domestic partner registration for that town and the adjoining Chapel Hill, yet this was largely symbolic as health insurance was left out of the benefits. Nelson, who would later be elected Mayor of Carrboro, moved to the area in 1982 to enrol at UNC-Chapel Hill. With his connection to the university, sexuality and liberal politics, Nelson was seen as the face of a Carrboro that was

⁵ James Cobb, *The Selling of the South*, p.171.

⁶ *Ibid.*

⁷ “Old town, new image”, *Charlotte Observer*, November 18, 1995.

changing demographically and politically due to the long-term trends brought about by Sunbelt development strategies.⁸

However, Carrboro and Chapel Hill were anomalous to other North Carolina towns and cities in their recognition of gay and lesbian rights. The leading voices for change were faculty members, staff and students at the area's universities, who put pressure on their institutions to lead the way in recognition, with varying degrees of success. This chapter will now turn to the battles on the private campus of Duke University to understand why victories for sexual minorities were possible there, before examining how this strategy was less successful at UNC-Chapel Hill. Staff and students at Duke were more successful in gaining recognition and benefits, which suggests that it was easier to win these rights at private institutions than at public ones. Yet this chapter will also demonstrate the ways in which the private insurance system and boards of trustees limited the expansion of these victories in both the private and public spheres. At Duke, the insurance provider stalled the extension of domestic partner benefits, while at public universities including UNC and the University of Georgia, boards of trustees and university management, who relied upon state legislatures for funding and support, used state anti-sodomy laws to limit the provision of benefits and protections on publicly funded campuses.

Duke University

Duke University, a private college, largely avoided culture wars disputes that hampered curriculum development at public institutions in this period.⁹ As the University was not reliant upon the state funding used to create courses at public institutions, their faculty were shielded from the worst of conservative backlash during the culture wars. One example

⁸ Ibid.

⁹ For example, James Sears at the University of South Carolina faced a vitriolic campaign to have him removed from his position when Christian Right activists discovered he, an openly gay man, taught a class on religion. See: "USC faculty leaders back course on Christian right" in *The State*, June 5, 1993, Gay Press Clipping folder, James T. Sears Southern Studies Collection: South Carolina, Stonewall Archives.

of this was the Program in Sexuality Studies (with the acronym PiSS) that students could minor in at Duke by the mid-1990s. Not only individual classes but whole programs were created. This is not to suggest that life on the private campus was easy. Activists recall physical attacks and blackmailing took place against students who were caught having sex in Duke's public toilets. Conservatism was also a constant reality for LGBT students and Faculty. Far-right students published the *Duke Review*, a conservative magazine that published a list of radical and progressive faculty and staff and called for their dismissal.¹⁰

The 1990s battle for domestic partner benefits at Duke University was built on the successes of gay and lesbian staff and students organising over the preceding decades to gain visibility and recognition on campus. Various groups and alliances were formed from the 1970s onwards, including the Carolina Gay Association (CGA) and Duke Gay Alliance (DGA).¹¹ In 1988 campus activists won institutional protection when University trustees passed an anti-discrimination clause in December which included sexual orientation. Openly gay classics professor John Younger noted that the protections went beyond the symbolic: "This means too that freshman orientation, resident advisors and faculty residents all are told that discrimination against Lesbians and Gay Men and Bisexuals, like discrimination against Afro-Americans, Asian-Americans, et al., will not be tolerated here."¹² In Younger's opinion, the administration "actively pursued this policy of tolerance."¹³ In evidence that homophobic discrimination was taken seriously at Duke after the instalment of the 1988 policy, a top administrator was sanctioned after it emerged he made disparaging comments about a job

¹⁰ "A Queer Center? Institutional Limits and Possibilities in Higher Education", unpublished presentation notes, Queer Center seminar, 2001 in Box.1, John Howard Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University. (Hereafter cited as "Howard-Duke Papers").

¹¹ For specific histories of LGBT students and off-campus activism in the Research Triangle see this collection of student research papers: "LGBT Identities, Communities, and Resistance in North Carolina, 1945-2012", *OutHistory*. Available: <http://outhistory.org/exhibits/show/nc-lgbt> (accessed: 1/12/2018).

¹² John Younger email to unknown, 7/18/95 in Alliance of Queer Undergraduates at Duke (AQUADuke) Records, Duke University Archives, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

¹³ Ibid.

applicant whom he assumed was gay. Larry Nelson, the assistant vice chancellor for health affairs and planning, received a one-month suspension without pay in 1991.¹⁴ Duke employees and students had clearly gained the attention of University leadership.

Regardless of these new protections, North Carolina's "Crimes Against Nature" anti-sodomy statute limited immediate further victories at Duke. In 1990, for instance, the University considered making available student housing usually reserved for married couples to same-sex couples. This followed Stanford and the University of Oregon, which had both allowed cohabitation among same-sex couples who entered a contract that "established long-term domestic partnership with a mutual commitment similar to that of marriage." Duke reviewed their policy but found "North Carolina's present housing and habitation laws prohibit such domestic partnerships. The law states that 'if any man and woman, not being married to each other shall lewdly and lasciviously associate, bed and cohabit together, they shall be guilty of a misdemeanor.'" A report in the University's newspaper, *The Chronicle*, noted that "this misdemeanor is punishable by a fine not to exceed \$500 or six months in jail."¹⁵ The extension of access to the housing section for married couples to same-sex couples would break North Carolina laws, some suggested, because although they were similar in relation to other apartments on campus, these differed because they offered a double bed.¹⁶ Dean of Student Affairs, Richard Cox clarified that Duke would not extend housing access to unmarried and same-sex couples. In doing so he "named the state laws as the reason why the University is not following the new housing trend. 'We are not exactly in a hot bed of liberalism here,' he said." The report suggested one way out of the situation: "The elimination of the laws would put same sex couples on equal footing with married couples by opening privileges such as special housing and

¹⁴ "Top administrator suspended for alleged discrimination", *The Chronicle*, February 21, 1991 in John G. Younger Papers, Duke University Archives, David M. Rubenstein Rare Book & Manuscript Library, Duke University. Hereafter cited as: "Younger Papers-Duke."

¹⁵ "Housing limited to married couples", *The Chronicle*, September 26, 1990 in Younger Papers-Duke.

¹⁶ *Ibid.*

insurance.” The law also referred directly to unmarried heterosexual couples rather than same-sex intimacy. *The Chronicle* noted that “most landlords in the state simply will not rent to an unmarried couple because inquiring into a person’s sexual practices infringes on privacy rights. Another deterrent to new housing considerations is the fact that North Carolina does not recognize contractual relationships.”¹⁷ This suggested that straight couples who did not want to marry would also gain rights from a campaign to scrap the law that oppressed sexual minorities. Yet in the early 1990s it appeared that same-sex rights in North Carolina would remain limited. Duke University administrators could, and did, argue that their hands were effectively tied by the state law even as they began to make slow progress towards commitment to nondiscrimination and benefits such as housing and healthcare.

John Younger, the Classics professor, organised a meeting later that semester in November 1990 to discuss creating a campaign to fight for the extension of benefits to “unmarried partners (significant others, same-sex, etc.) of Duke employees.”¹⁸ The resulting petition, signed by faculty including emerging queer scholars Janice Radway and Eve Kosofsky Sedgwick, urged Duke President Keith Brodie to form a task force to “investigate the ramifications of the antidiscrimination policy on the benefits and utilization of University facilities by Lesbian and Gay faculty and employees.”¹⁹ When Brodie agreed to the formation of the committee in the 1992-1993 school year they created a mechanism that would later deliver domestic partner benefits.²⁰ The resulting report of the task force found: “In spite of the University’s best intentions, areas do exist in which gay and lesbian people experience

¹⁷ Ibid.

¹⁸ Letter from John Younger to: “All people interested in urging Duke to offer benefits to unmarried partners (significant others, same-sex, etc.) of Duke employees.” October 10, 1990 in Younger Papers-Duke.

¹⁹ Letter to President H. Keith H. Brodie from John Younger et al, November 26, 1990 in Younger Papers-Duke.

²⁰ “Duke studying benefits for gays”, *The News and Observer*, May 19, 1994.

discrimination in the workplace and in the policies and benefits of the University.”²¹ It found that the most obvious and important way that gay and lesbian faculty and staff faced discrimination “is in the University’s recognition of heterosexual marriages and traditional familial structures while providing no process by which alternative familial structures maintained by gay and lesbian people can be recognized and supported.”²²

Though straight couples faced discrimination too, when not married, the report suggested a narrower focus for partner benefits — only open to same-sex partners. “Many of the issues addressed by the Committee might also be taken to apply to permanent heterosexual relationships of nonmarried members of the Duke Community,” they noted. “The Committee recognizes the similarities between such relationships and same-sex partnerships but limits the purview of its recommendations to domestic partnerships of same-sex couples.” In doing so they argued that although similarly inhibited, heterosexual couples were able to attain their rights through marriage unlike same-sex partners who had no such legal option. “Because homosexual couples, unlike heterosexual couples, have no recourse to a formal means of recognition of their relationship equivalent to marriage, the benefits to legal spouses is discriminatory to homosexual couples.” For this reason, the committee suggested that “a new category of ‘spousal equivalents’ be established to recognize homosexual relationships.”²³ As such, the committee pitched the need for rights in terms of a sexual binary of heterosexual/homosexual rather than commit to challenging that binary altogether. It also opened the door to further demands for marriage equality, as the need for these benefits would disappear with the extension of marriage, even though at this time, with sodomy laws in place, marriage seemed too unlikely to succeed to be an immediate demand. This narrower focus of benefits extension gave the administration an option to remedy the unequal treatment of gay and lesbian staff, while ignoring their

²¹ “Report A: Policy discrimination in benefits and access, excluding health and insurance benefits”, The [Duke] University Committee on Nondiscrimination, February 1, 1992 in Younger Papers-Duke.

²² Ibid.

²³ Ibid.

heterosexual counterparts. This argument appealed to Duke leadership as it was a less costly option than if every unmarried couple were granted the same rights. These debates were not limited to Duke – as demonstrated in the previous chapter, voters in Austin, Texas in 1994 voted to repeal domestic partner benefits for municipal employees specifically because more heterosexual couples were applying than same-sex ones. As such the Duke committee’s recommendation did have some foresight. In fighting for domestic partner benefits, Duke employees confronted the messy ways in which the social safety net is wholly entwined with employment and the private sector in the United States. Whereas the nondiscrimination protections provided some security, it largely remained a private matter. Sexual minorities need not necessarily “come out” to enjoy the protections of nondiscrimination, but could remain closeted until it became necessary for protection against discrimination. On the other hand, claims to domestic partner benefits pushed the movement forward in staking a claim to the public, group rights and privileges that were afforded to citizens through the private workplace as well as through marriage in the United States.

Even with the recommendation of various committees, the enactment of domestic partner benefits was not forthcoming. It took until the end of 1994 and the new presidency of Nannerl Keohane for action to be taken on the recommendations, including domestic partner benefits and the creation of a “Center for Lesbian, Gay and Bisexual Life.” Keohane’s initial response was to discourage attempts to implement the University Committee on Nondiscrimination’s proposal for domestic partner benefits. The chair of the committee, Dale Martin, noted in a memo that he received a response from Keohane and her special assistant Judith White stating: “There is clearly more opposition here to recognizing lesbian and gay partners and their children as ‘families’ than at some institutions which have recently instituted domestic partner benefits.” Pointing to disquiet at the notion that different-sex couples would be excluded, Keohane suggested, “without such recognition, there is less

general acceptance of the discriminatory nature of offering benefits to some partners/families and not others.”²⁴

Yet in November 1994, Keohane not only supported the extension of domestic partner benefits to the partners of faculty, but she also agreed with the committee’s narrow vision of benefits and cautioned against extending them any further (to students and straight employees). She wrote to one activist: “The Faculty Compensation Committee has returned our policy with the recommendation to extend benefits to partners of all kinds. This to me appears to stem from a different and less clear cut moral impulse, and it would have financial consequences that are much more difficult to predict.... I believe we are on the right track for extending benefits to gay and lesbian partners.”²⁵ Therefore a key concern for administrators in supporting the extension of benefits was to limit the extent to which straight colleagues would also be entitled both due to fears of spiralling costs and so as not to challenge heteronormative marriage.²⁶ Keohane pitched the need for benefits as a nondiscrimination issue, refusing to extend the benefits to straight couples “since they have the option” of gaining those benefits through marriage whereas same-sex partners did not.²⁷

Keohane’s Special Assistant, Judith White, argued that competition was also at the heart of their decision: “There is a utilitarian side to the proposal. Many of the universities that Duke competes with for faculty and administrators already have such policies.” Keohane had previously witnessed the creation of domestic partner benefits while she was president of Wellesley College.²⁸ The mix of a new president arriving to lead the University from a liberal, northern institution, the pressure of grassroots activism, and the fact that it was a

²⁴ Dale B. Martin, Chair, University Committee on Nondiscrimination, Memo, November 4, 1992 in Box 2, University Task Force on Lesbian, Gay & Bisexual Matters Records, Duke University Archives.

²⁵ Letter to Seth J. Persily from Nannerl O. Keohane, November 22, 1994 in Alliance of Queer Undergraduates at Duke (AQUADuke) Records.

²⁶ “Duke studying benefits for gays”, *The News and Observer*, May 19, 1994.

²⁷ “Duke offers benefits to partners of lesbians, gays”, *The News and Observer*, January 7, 1995.

²⁸ “Duke studying benefits for gays”, *The News and Observer*, May 19, 1994.

private university aware of the need to stay competitive created a perfect storm at Duke, unlike other campuses in the South, public or private. Duke thus used a form of boosterism (concerned with faculty recruitment) to explain its reasoning for the need for domestic partner benefits. Given its sizeable endowment and its position, at that time, as the largest employer in the Triangle Area, the university was in a singular position to be able to do so. Other campuses, such as North Carolina State University (NCSU), North Carolina Central University (NCCU) and the University of North Carolina (UNC) system were not as willing nor as in as good a financial position to offer such benefits.

Duke approved domestic partner benefits for staff, known as same-sex spousal equivalent (SSSE) benefits on 6 January 1995. Over half a decade of activism both within and outside of the official structures of the University had delivered an important victory. Duke was not the first company in the Research Triangle to offer domestic partner benefits. Canadian-owned Northern Telecom had already announced their plans to extend benefits including healthcare. Unlike Duke, however, Northern Telecom did not restrict its partners policy to same-sex couples.²⁹ Yet the Duke victory was limited in scope. First, it was limited to employees and faculty while overlooking graduate student employees, and second, it excluded heterosexual couples. In doing so the University upheld paternalistic practices that saw graduate student workers' partners as undeserving at the same time that it also upheld a traditional view of marriage. Therefore, it expanded access to benefits for some at the same time that it limited and excluded others. Duke would hold out expanding it any further than same-sex faculty and staff partners for several years, encouraging the development of new campaigns on campus to win this extension.

With the creation of domestic partner benefits at Duke, closeted gays and lesbians faced new questions as to whether they should "come out." Raleigh's *News and Observer* noted: "The new policy requires that employees and their partners sign an affidavit certifying their mutual commitment and financial responsibility. In other words, by taking the benefits,

²⁹ Ibid.

some employees may open themselves up to harassment or discrimination.”³⁰ Robin Burkhe, coordinator of Duke’s lesbian, gay and bisexual services and sexuality programming, feared that gay and lesbian employees could face issues with both colleagues and future job prospects if they signed an affidavit. “‘I’m not ready to say that everyone should come out,’ she said. ‘What good does it do if they are harassed out of a job?’”³¹ Donna Giles, a staff member voiced similar concerns: “This is going to be a dilemma for some people... Once you sign a piece of paper and put it in your personnel file, then that signed statement becomes available. There will be people who will have a second thought about applying for the benefits.”³² Though most activists saw visibility as an important factor in winning equality on campus, others did not feel so confident. Yet this is understandable when considering the long history of marginalisation and exclusion that sexual minorities have experienced. Margot Canaday argues that: “The closet, after all, was a deliberate state strategy that became increasingly explicit toward the end of the century. Its brilliance was in inviting people to pass and then suggesting they suffered no harm because they could hide.”³³ This dynamic is demonstrated above very clearly. Workers at Duke who had won both nondiscrimination protections and domestic partner benefits in their private workplace nevertheless still felt it dangerous to expose themselves by coming out. Activists had not yet had similar success off campus in overturning the state’s anti-sodomy statute so workers would be wary of exposing their sexual identity away from Duke. Duke workers therefore experienced "virtual equality", as Urvashi Vaid theorised during this period. Some gays and lesbians enjoyed limited access to some privileges without the necessary confidence to claim them due to the lack of statewide and federal protections, and the fear of backlash.³⁴

³⁰ "Coming out for benefits carries risk", *The News and Observer*, January 15, 1995.

³¹ Ibid.

³² Ibid.

³³ Margot Canaday, *The Straight State*, p.256.

³⁴ Urvashi Vaid, *Virtual Equality*.

Duke Center for LGBT Life and Graduate Students Organise

With nondiscrimination protections and domestic partner benefits secured for staff and faculty, Duke activists now set their sights on securing the same rights for graduate student workers. In 1996, an administration report revealed that “more than 80% of lesbian, gay and bisexual undergraduates at Duke have been physically or verbally harassed during their time here.” And that “fewer than 15 gay professors feel it safe enough to come out and serve as role models.” In response, the University’s Task Force on Lesbian, Gay & Bisexual Matters argued that “Duke has proven to be a stifling and homophobic atmosphere for us all. It is time for us to say enough is enough!”³⁵ They supported the call for the expansion of domestic partner benefits to graduate students as one part of remedying this situation. Graduate student workers offer a particularly interesting case study due to their position both as students and as staff who hold a peculiar position within higher education establishments. They tend to be enrolled on campuses for longer periods than undergraduates so they can bridge the gap in organisational knowledge between cohorts. Likewise, they create a bridge between tenured and non-tenured faculty, administrative staff and all students through their particular roles as teaching and research assistants. As they tend to work on campuses for longer periods, graduate students offer continuity and memory of activism between cohorts of four-year undergraduates, allowing them to play important roles in spurring on new waves of protest.

When same-sex spousal equivalent benefits were created for staff and faculty in January 1995, it was expected that they would quickly be extended to graduate student workers. This was not the case, and two years later they were still fighting to be heard. In doing so they utilised the newly established Center for LGBT Life, the email list it moderated, and the support of its inaugural director, John Howard. Howard arrived at Duke in 1996 as

³⁵ “Enough is enough!” Task Force on Lesbian, Gay & Bisexual Matters advert, February 7, 1996 in Box 1, University Task Force on Lesbian, Gay & Bisexual Matters Records, Duke University Archives.

director of the Center tasked with also teaching one class. Previously a student activist himself, Howard set about creating a radical vision for the Center:

At an elite private university endowed by a greedy tobacco baron, we attempted to create a humanitarian and egalitarian environment attuned to the needs and interests of queer constituents. Amidst the neo-gothic architecture and multi-million dollar facilities, we struggled with inadequate funding in our dingy set of mildewed offices. Attempting to transform the tenor of broader community discourse, we claimed the moral high ground as we reappropriated the language found on campus statuary honoring the university's fat-cat founder and would-be patriot. It was we queers, not Washington Duke and progeny, who were — to use the phrase we adopted as our motto — 'animated by lofty principles.'³⁶

In doing so Howard and others sought to break down the barriers between the campus and the local area. He suggested in 2001 that: "We wanted it to reach beyond the students and the campus. We hoped the high walls, real and metaphorical, separating campus and local community would somehow be surmounted, despite Duke's elitist reputation." To do this Howard recalls that they "adopted a policy, always advertised, that all programming would be free of charge and open to the public. And in response to a historical gay white male dominance in queer organizing — exacerbated in this case by my subject position — we committed ourselves to racial diversity and gender equality in programming."³⁷ Such commitments were both noble and necessary. North Carolina still outlawed "Crimes Against Nature" and hate crimes continued at a higher rate than most other states. At the time of the Center's establishment "the 1995 report *Homophobia and Human Rights in North Carolina* documented two murders and 200 other hate crimes fueled by homophobia in our state in a single year," notes Howard. As such the role of the Center in providing an actual "safe space" was a key part of its functioning as well as supporting those doing the same off campus.³⁸

There were plenty of issues still to be rectified on campus. Battles emerged to allow same-sex marriages in the Duke Chapel and, later, against the administration's

³⁶ John Howard, "A Queer Center?", 2001.

³⁷ Ibid.

³⁸ Ibid.

whitewashing of pro-LGBT graffiti from campus. Gay and lesbian students and faculty at Duke reported that they sensed “a thawing of the traditionally chilly climate they’ve faced on campus” with the creation of an LGBT center and the appointment of John Howard as director.³⁹ In welcoming Howard to Duke, student Michael Tino wrote about some of the challenges that faced them, namely the continued discrimination at the Chapel and graduate student exclusion from Same-Sex Spousal Equivalent (SSSE) benefits. “You can never assume that your interpretation is the same as the University’s,” Tino argued, “Consider the non-discrimination clause. Seven years ago, the University added to its statement of non-discrimination the words ‘sexual orientation.’ To some, it would then follow that openly discriminatory University policies would be changed. This is not so.” He informed Howard that although “the University’s policy is groundbreaking and courageous—extending full benefits to same-sex life partners of faculty and staff,” it did not extend to students. Tino noted that “the Graduate and Professional Student Council’s efforts to change this have repeatedly run into a political brick wall, as our fair-minded and brave administration does not have the fortitude to push a necessary policy to its logical end.”⁴⁰

Howard was well aware of the need to fight to retain Duke’s nondiscrimination protections and to fight for other employment rights such as domestic partner benefits as he himself had been the victim of workplace discrimination because of his sexuality.⁴¹ While he was active at Auburn University as the president of the Gay/Lesbian Alliance, Howard was fired from his job at the Gulf States Paper Corporation where he worked as a tour guide for the large, private art collection held at company headquarters.⁴² Howard was approached by his immediate supervisor, who asked him “if he were gay, and if he were a member of an

³⁹ “Duke gay organizations taking more direct approaches”, *The Herald-Sun* (Durham, N.C.), April 20, 1997.

⁴⁰ Michael Tino, “New director must take unwritten rules into account”, *The Chronicle*, September 18, 1996 in Box 3, Student Organizations Reference Collection, Duke University Archives, David M. Rubenstein Rare Book & Manuscript Library, Duke University. Hereafter cited as SORC-Duke.

⁴¹ John Howard, “A Queer Center?”, 2001.

⁴² “Alabama man fired for being gay”, *Southern Voice*, June 20, 1991 in Box.1, Howard Papers-Duke.

organization,” and was fired after he had confirmed both were true.⁴³ In reporting the case *Southern Voice* noted the similarities with discrimination at Cracker Barrel. “It’s like Cracker Barrel does art” said one visitor to another in a cartoon used to illustrate the report.⁴⁴

While no more came of Howard’s firing at Gulf States, activism at Cracker Barrel stores across the country mobilised many gay and lesbian students and their allies for the first time. As demonstrated at Duke, they took the momentum of that activism and the lessons they gained from it back onto campus.⁴⁵ In 1995, students protested at a Durham KFC after the company nationally was accused of homophobic discrimination.⁴⁶ Howard’s vision for the Center extended beyond employment rights on campus to include raising awareness of national issues such as Employment Non-Discrimination Act (ENDA).

By 1996 the number of corporations and other organisations that were extending domestic partner benefits was “skyrocketing,” noted one gay and lesbian employee group newsletter, “employers offering these benefits have nearly doubled to 428 from 230.”⁴⁷ Debates on both the national and state level continued to impact campus demands. In June 1996 the North Carolina Assembly passed a ban prohibiting same sex marriages and denied the recognition in law of same sex marriages performed in other states.⁴⁸ The bill passed 98 votes to 10, reinforcing claims of the need for domestic partner benefits on campus. In September 1996, this decision was supported by the United States Senate when it passed (85-14) the Defense of Marriage Act (DOMA) that defined marriage in federal law as a legal

⁴³ Ibid.

⁴⁴ “Seen and Heard’s ‘kiss off’ draws supporters, protestors”, *The Crimson White*, vol.98.95, February 17, 1992 in Box.1, Howard Papers-Duke.

⁴⁵ “Alabama man fired for being gay”, *Southern Voice*, June 20, 1991.

⁴⁶ “Help wanted: homosexuals need not apply”, Duke Gay, Bisexual and Lesbian Association leaflet, [1995] in AQUADuke Records.

⁴⁷ “Domestic Partner Benefits ...On the Increase”, *National Organization Of Gay And Lesbian Scientists And Technical Professionals (NOGLSTP) Bulletin* - Winter 1996. Available: <https://www.noglstp.org/publications-documents/noglstp-bulletin/> (accessed: 2/2/2019). See also: Nicole C. Raeburn, *Changing Corporate America from Inside Out*.

⁴⁸ “NC Assembly passes marriage ban”, *The Front Page*, June 21, 1996.

union between one man and one woman. On the same day the Senate also voted down the Employment Non-Discrimination Act (ENDA) that would have made sexual orientation a protected characteristic nationally at a time when only nine states had enacted laws that prevented workplace discrimination against sexual minorities. Local LGBT activists noted that: “Religious Right leaders also worked hard, calling the ENDA itself ‘discriminatory’ because they said it would prevent employers from making employment decisions based on their religious objection to homosexuality.”⁴⁹ Both North Carolina Senators, Jesse Helms and Lauch Faircloth, voted against the measure.⁵⁰ ENDA would remain in the background to much Duke activism along with DOMA and Don’t Ask Don’t Tell (DADT), Clinton’s compromise that excluded openly gay and lesbian people from serving in the military. Students were at the forefront of resistance to the Clinton era measures that were being put in place to appease a conservative Congress. In October 1997, under Howard’s guidance, the Duke Center for LGBT Life hosted a second day of events specifically to discuss workplace discrimination entitled: “Ending Discrimination: ENDA and Queer Worker Rights”, the press release for which pointed out North Carolina residents’ own precarious position in a state without employment protections, and used the example of Cheryl Summerville’s firing from Cracker Barrel to demonstrate the need for protections.⁵¹

The battle for ENDA formed a backdrop to renewed focus on the extension of partner benefits for students. A petition circulated in early 1997 pointed to anger felt among gay and lesbian graduate students that the benefits extended to faculty, and enjoyed by their fellow, married heterosexual colleagues, had not similarly been extended to them. “We, the undersigned, are deeply disturbed by President Keohane’s failure to extend same-sex spousal equivalent benefits to Duke students.” It continued: “The strength of commitment

⁴⁹ “DOMA passes, ENDA fails”, *The Front Page*, Sept. 13, 1996.

⁵⁰ *Ibid.*

⁵¹ “Local and National activists fight job discrimination based on sexual orientation”, Press Release, Duke University Center for Lesbian, Gay, Bisexual & Transgender Life, October 2, 1997 in Box.2, Howard Papers-Duke.

and depth of love between Duke students and their same-sex partners is no less valid or significant than that shared by their married peers. Yet the university fails to recognize students' same-sex relationships, and denies their same-sex partners the benefits enjoyed by married students' spouses." Further, the petition pointed out the hypocrisy and uneven implementation of the university's non-discrimination protections. "The denial of these benefits reflects very poorly on the university's professed commitment to fostering diversity and establishing institutional equity at Duke. The administration blatantly ignores Duke's non-discrimination clause by maintaining policies that discriminate against students on the basis of sexual orientation or preference." They also mobilised a similar tactic used by faculty and staff when they also centred discussion on competitiveness as well as non-discrimination. "We cannot expect to maintain Duke's reputation as one of the nation's top universities without respecting the university's basic pledge of institutional equity," the petition argued, "especially not when such schools as Harvard, Stanford, Yale, the University of Chicago, and the University of Pennsylvania back up their non-discrimination statements with SSSE benefits for their graduate and professional students." The petition ended with a clear demand:

Since the university instituted its SSSE benefits policy for all non-student Duke employees in 1995, Duke students have sought a similar policy that would recognize their same-sex relationships and grant their same-sex partners the same benefits enjoyed by married students' spouses. They have had to wait far too long. As members of the Duke community, we now demand that Duke University extend same-sex spousal benefits to students without further delay.⁵²

The main drivers of the campaign to extend benefits to graduate students were, unsurprisingly, graduate students themselves. A group called the Duke University Graduate and Professional Lesbian, Gay, and Bisexual Association was formed. They initiated the above petition and sent out action alerts and leaflets detailing the history of the campaign as well as their demands. The action alert included information about specific privileges in

⁵² Student SSSE Petitions, [circa 1997] in Box 1, Lisa Hazirjian Papers, David M. Rubenstein Rare Book & Manuscript Library, Duke University. Hereafter cited as Hazirjian Papers-Duke.

which same-sex spouses were unfairly treated. These included: “the ability to purchase the family plan of the Duke Student Health Insurance Policy.” Although married partners and families could be added to this policy, domestic partners could not and needed to “purchase a non-Duke-affiliated individual health insurance plan.” But individuals could be turned away by insurance companies or subject to crippling premiums that were the norm for non-group plans.⁵³ Other privileges at stake included access to Duke’s recreational facilities, sporting events and library privileges, as well as access to student housing on campus and in Duke owned townhouses.⁵⁴

The extension of SSSE coverage for graduate students was supported within the official structures of Duke and beyond. “The Student Health Insurance Committee, chaired by Dr. William Christmas, the head of Student Health, has unanimously recommended the addition of SSSE coverage to the Duke Student Health Insurance Policy for three consecutive years,” noted one leaflet.⁵⁵ In addition, both the Duke University Graduate and Professional Student Council (GPSC) and the National Association of Graduate-Professional Students (NAGPS), as well as “graduate student governments at more than a dozen colleges and universities around the country” lent their support to benefits for student employees.⁵⁶ The response of University leadership did not reassure the Duke activists; a leaflet noted that President Keohane’s office “issued a statement claiming that equivalent insurance benefits already exist, a falsehood, and offering the possibility that a ‘broader benefits class’ will be created,” in which some soft-cost benefits, such as library access, would be expanded but not more costly benefits such as health insurance. The activists

⁵³ “Action alert: student same-sex Partner Benefits”, Duke University Graduate and Professional Lesbian, Gay and Bisexual Association, petition, undated [circa 1997] in Box 1, Hazirjian Papers-Duke.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

argued that this would be "a blatantly homophobic move which will hurt student spouses by restricting their gym access and which will not address the issue of health insurance."⁵⁷

On June 4, 1997, the members of the Task Force on Lesbian, Gay, and Bisexual Matters sent a letter to Nan Keohane imploring her to extend the benefits. "The members of our group are quite concerned that the University administration's reluctance and inaction on this issue are having a negative impact on the campus climate. We would like to offer you whatever support is necessary to extend these benefits swiftly and easily."⁵⁸ Again the Task Force pitched their demands for benefits through the lens of recruitment and competition. "We are convinced that the current stance creates obstacles to Duke's future recruitment and admission of qualified students, particularly as the policy relates to the employment of graduate teaching assistants and graduate research personnel."⁵⁹ As such, activists on the University's official committees sought to repeat their earlier success for staff and faculty through claims of competition with other private universities. Using Keohane's own statements to demonstrate the hypocrisy present in denying benefits to student employees, the Task Force reminded the President that when she "took the bold step of extending spousal benefits to same-sex partners of faculty, employees, and staff" in 1995, she had:

Defined the issue as one of discrimination, and indeed of compliance with the University's policy of non-discrimination... Since your administration supported the extension of these benefits to same sex spousal equivalents of faculty, staff, and employees, and since there exist rather substantial requirements for qualification for these benefits (e.g.: proof of financial interdependence, and other indicators of personal commitment), we encourage you to grant the same opportunities to students with the same needs and qualifications.⁶⁰

Similarly, students sent their own letters to implore the University administration to extend benefits. Noting the various ways in which lesbian and gay students' domestic

⁵⁷ Ibid.

⁵⁸ Letter to President Nannerl O. Keohane from University Task Force on Lesbian, Gay, and Bisexual Matters members, June 4, 1997 in Box 1, Hazirjian Papers-Duke.

⁵⁹ Ibid.

⁶⁰ Ibid.

partners faced financial disparities when compared to their straight counterparts, and the domestic partners of faculty and other staff, Lisa Hazirjian argued that it was the symbolic undervaluing of her relationship with another woman that was more important. “Money aside, for us at least,” she wrote, “it’s about respect and about the utter lack of validation of our relationship that we receive from Duke as an institution.”⁶¹

Another lesbian student also wrote to Keohane and noted how fortunate she felt because she and her same-sex partner could rely on each other. “My partner of eight years is a full-time Duke employee. She is covered fully by Duke’s phenomenal health insurance plan. She has the option to take Duke’s classes. She also has access to Duke’s recreational facilities and library. We both enjoy much of the best Duke has to offer its faculty, employees, and students.” The author then continued with the ways in which they would be adversely affected if the partner did not work at Duke. “We would be in a very different situation,” she wrote, “she might not have a job with such good benefits, and graduate fellowships and part-time jobs certainly do not provide the kind of funds necessary to support LGB students’ long-term partners or our children.”⁶² The author of the letter then returned again to Duke’s nondiscrimination policy by pointing to the hypocritical stance the administration was taking. Noting that extension of benefits to faculty had been a brave move by Keohane, the writer implored her not to overlook the positive feedback which had been received too. “I am sure you had to work hard and convince many people in order to obtain passage of that measure. Of course, there was also vocal support for the measure — the kind of support, both financial and emotional, that should not be forgotten when we speak of those who are opposed to the equitable provision of benefits to unpopular minorities.”⁶³

When they perceived that they were being ignored, students and staff engaged in other forms of direct action to highlight the need for benefits. The escalation of the campaign

⁶¹ Email from Lisa Hazirjian to dukelgb, 4/16/97, “SSSE Benefits” in Box 3, SORC-Duke.

⁶² Letter from Diana M. Swancutt to President Nannerl O. Keohane, undated [1997] in Box 1, Hazirjian Papers-Duke.

⁶³ *Ibid.*

included petitioning fellow students, employees and trustees, and leafletting factsheets about the ease with which benefits could and should be extended. They also continued to send letters to — and demanded meetings with — President Keohane and other senior administrators.⁶⁴ In advertising campaign meetings Michael Tino and others demanded the support of the wider Duke community beyond graduate students. “Please note that this is not just a student effort. This effort should involve alumni, faculty, staff, and employees (esp. the latter three, for whose partners’ benefits students fought very hard in 1994).”⁶⁵ The most visible action in the campaign to extend partner benefits took place at the groundbreaking ceremony for a new recreation centre. Around 70 students and supporters interrupted the ceremony “to protest that their same-sex partners can’t use the \$19 million facility.”⁶⁶ One protestor held a sign that said: “No more discrimination, That would be groundbreaking.”⁶⁷ The protest at the gym intersected with the focus of the University administration on remaining competitive with other elite universities. “A recent study showed that Duke ranked in the bottom 5 percent of colleges based on access to recreational facilities,” noted the *Durham Herald-Sun*.⁶⁸ As such a key concern of the administration was in improving conditions to keep Duke competitive with other institutions nationwide. Seizing the opportunity to demonstrate the centrality of domestic partner benefits to that aim seemed like a good idea to activists. John Howard, who remained a bystander at the protest, was quoted in the report, saying: “It strikes me that the university is probably in violation of its own nondiscrimination policy,’ he said. ‘So I appreciate the graduate students here are

⁶⁴ Email from Michael James Tino to dukelgb, April 16, 1997, “SSSE Organizing Meeting” in Box 3, SORC-Duke.

⁶⁵ Ibid.

⁶⁶ “Protest interrupts center groundbreaking” *The Herald-Sun* (Durham, N.C), May 3, 1997 in Box.2, Howard Papers-Duke.

⁶⁷ Box 1, Hazirjian Papers-Duke.

⁶⁸ “Protest interrupts center groundbreaking” *The Herald-Sun* (Durham, N.C), May 3, 1997.

making us aware of this and offering solutions to correct this embarrassing state of affairs.”⁶⁹

Following the protest, which received local media attention, Keohane was forced to clarify her position publicly. She told the *Durham Herald-Sun* that a decision on the extension would be made in the fall semester, and the benefits were delayed, “she explained, so that the impact of same-sex employee and faculty partners could be adequately gauged”⁷⁰ The administration’s concern, therefore, eschewed a genuine commitment to equality and nondiscrimination by focusing on concerns of cost and competitiveness. The newspaper reported that “about 40 of Duke’s more than 20,000 employees have signed up their same-sex partners for university benefits in the past two years,” suggesting that the cost to the University was actually minimal. Further, protest organiser Michael Tino estimated that only “10 to 12 students would sign up if allowed.” He “and the other protestors said they were unimpressed by Keohane’s promise” a reporter noted, “‘I’ll believe it when my partner gets health insurance from Duke,’ said Lisa Hazirjian, a history graduate student.”⁷¹ As with other cases, such as in HIV/AIDS activism and the Apple episode, activists argued that cost to employers was not as big an issue as their need to access to equal rights.

In an oral history interview in 2003, Michael Tino shed light on some of the behind the scenes tactics that he and Lisa Hazirjian, his housemate of the time, used to fight the campaign. Tino believes that Keohane genuinely did want to change the policy but “the Board of Trustees at Duke was very against it... it was actually hard enough to get it for faculty and staff, they were very against it for students... So she needed to make it

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

something politically that she could do.”⁷² Tino revealed that another way that they exerted influence on the university leadership was to get supporters on the Board of Trustees:

Since I had a voice in the graduate student government, I could get someone invited to that kind of thing [a lunch between trustees and students that Duke facilitated]. So I got my friend Ted invited to this lunch... with the trustees. And he sat himself down next to Melinda French Gates, um, Bill Gates’ wife, who’s on the Duke Board of Trustees, and proceeded to tell her how horrible it was that Duke didn’t offer these benefits... to students, and she agreed with him. [laughs] And when your richest alumna agrees with the queer grads, you can be sure that change is going to happen soon. And so she actually went to the Board of Trustees and... was very forceful in expressing her displeasure with the university not extending these benefits.⁷³

Activists found numerous ways to use official channels as well as protests and grassroots action to win support. The fact that corporations such as Microsoft and Apple had extended these benefits to their employees earlier in the decade (in competition with each other) enabled the executives of those companies to exert their influence in higher education.

Meanwhile, queer student protest at Duke continued to escalate. In October 1997 a bridge on campus was decorated in pro-LGBT graffiti to celebrate National Coming Out Day in a campus tradition used by other campus groups and fraternities. When the graffiti was completely removed, whitewashed by the administration, protests were again sparked. John Howard later linked “the bridge incident” and Keohane’s refusal to apologise on behalf of the administration to the ongoing battle over domestic partner benefits. “The president was dragging her feet on the extension of same-sex spousal equivalent benefits; for years she had ignored the recommendations of her own committee on the subject. And she now had failed to respond to two urgent appeals by her own Presidential Task Force on LGBT Concerns.”⁷⁴ Howard landed himself in trouble when he took the microphone at one of the protests: “I vented much of this community fury at my employer... I felt ‘emboldened by the Gothic Queers to say to the president of this university: You are not doing your job well.’

⁷² Michael Tino interview transcript by Nick Shepard, April 24, 2003 in Box 7, Rainbow Oral Triangle Oral History Collection, Duke University Archives, David M. Rubenstein Rare Book & Manuscript Library, Duke University. p.42.

⁷³ Ibid.

⁷⁴ John Howard, “A Queer Center?”, 2001.

These off-the-cuff remarks were printed verbatim, of course, in the regional press.”⁷⁵ Howard was called to a meeting with President Keohane, recalling that it was actually the first time he had met her. “This too enraged community members. Why hadn’t she taken the symbolically crucial step of welcoming me personally to the university over a year ago?” He suggests that this pointed to the wider issue of marginalisation still present on Duke campus even as it led the way in nondiscrimination protections and queer programming: “Why should I be dressed down for ‘distancing’ myself from the university administration when I — like the student protestors — never had been properly made to feel a part of it?” Howard suggests that Keohane reminded him of his own precarious employment when she said that “criticisms like mine she would expect from a faculty member or alumnus, but not from an administrator...Though she recognized that I also served on the faculty, she implicitly pointed up my institutional insecurity. Like most all administrators, I was not tenured. I was not even on the tenure-track.”⁷⁶ This internal disagreement among faculty, administrators and university management therefore further reflected the “virtual equality” that precarious workers on Duke’s campus experienced.

Having risked his own position, Howard became deflated when the student protestors refused to follow his suggestion of moving the protests from the bridge and into the road itself. “Cutting the main traffic artery would assure attention to the issues and might bring action on their now growing list of demands,” he had argued. Eventually the student activists agreed to meet Keohane and “in the end, the protests succumbed to inertia.” Howard left Duke soon after to take a position as a historian at the University of York. “*The Duke Review*, a conservative journal which along with *The Dartmouth Review* enjoyed the support of America’s wealthiest right-wing ideologues, claimed another casualty on its annual ‘liberal hit-list,’” he later recalled.⁷⁷

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

When John Howard arrived at Duke, he suggested that the staff and students sought to create a bastion of queer culture within the private university, and they achieved this to an extent. Yet with students disbanding their protests in fear of retribution and the departure of Howard to the UK, Duke LGBT activism suffered a similar setback present in most histories of campus activism — the demobilisation of movements because of the transitory nature of study. Undergraduates create cultures and organisations on campuses, but these can disappear when they graduate. Similarly, staff, especially those non-tenured like Howard at this time, also tend to be on campus for a limited amount of time before finding permanent work elsewhere. In contrast, graduate students provide a link between these groups during their more extended studies. It therefore makes sense that these were the main proponents of fighting for domestic partner benefits for both faculty and students: not only did they stand to gain the most, they were in a position of power to achieve the victory that they eventually won.

Student SSSE Extension

Though the peak of grassroots activism, the bridge protests, seemed to lead nowhere, soon after students finally celebrated the extension of benefits in December 1997. Students could now enrol their partners in the same insurance system rather than in separate and unequal plans as before. *The Chronicle* noted that students also won their other demands: “In addition, access to recreational, library and Central Campus apartments will be facilitated for partners.”⁷⁸ In the same way that faculty and staff had to, students also needed to sign an affidavit to confirm their commitment and shared financial responsibility.⁷⁹ The paper editorialised its support for same-sex couples by reiterating the same points made by activists. First, their lack of access to the benefits of marriage needed to be rectified, as “unlike heterosexual couples, gay couples cannot legally marry and thereby

⁷⁸ “Better late than never”, *The Chronicle* [Duke], September 10, 1997 in Box 2, Howard Papers-Duke.

⁷⁹ *Ibid.*

prove their dedication to one another and dependents.” Further *The Chronicle* noted the need for a support system that had been made clear by the HIV/AIDS crisis: “There is no telling when one could lose his job, take a sabbatical for the other’s benefit or become too ill to work.”⁸⁰ But the paper also echoed the administration’s competition reasoning to allay any concerns that those not in support of queerness might have: “As more and more universities nationwide adopt such a policy — particularly our northern neighbors — the University needs to do likewise, if for no other reason than to compete for the most highly qualified applicants to its graduate and professional schools.” *The Chronicle* suggested, “Admissions councils will now see the full breadth of applicants rather than only those who could somehow afford other plans or were willing to sacrifice such benefits for their partner’s good.”⁸¹ Duke undergraduates remained excluded from the extension “because the university does not recognize their financial independence from parents or guardians.”⁸² The timeline for implementation of the policies still concerned activists. Though the new policy was due to take effect on January 15, 1998, that would only bring about the on-campus “soft” benefits of library and recreational facility access.⁸³ Judith White “explained that the University’s current carrier for students — Blue Cross/Blue Shield of North Carolina — ‘has not offered [SSSE coverage] in our earlier negotiations, but we have not asked them,’” she told *The Chronicle*, “because the policy is up for review this year, the earliest the plan could be amended is next August.”⁸⁴

Even after the success of graduate students in winning the extension of benefits, they still had to continue battling with university and insurance administrators. Health

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² “Duke gives benefits to grad students’ same sex partners”, *The Herald-Sun*, Durham, N.C., undated in Box 1, Hazirjian Papers-Duke.

⁸³ “Blue Cross offers coverage to students’ SSSEs”, *The Chronicle*, April 5, 1998 in Box 1, Hazirjian Papers-Duke.

⁸⁴ “University offers benefits to same- sex partners”, *The Chronicle*, December 10, 1997 in Box 2, Howard Papers-Duke.

insurance was widely viewed as the most important benefit extension, yet it was last to be added in August 1998 when Blue Cross/Blue Shield of North Carolina accepted the extension. Lisa Hazirjian, who sat on Duke's Student Health Advisory Committee, told *The Chronicle*: "It makes a big difference in offering excellent health-care options for graduate and professional students." She added that she believed that Duke's announcement in December 1997 swayed the provider. "Blue Cross/Blue Shield did not want to undertake making the determination of who qualified as a same-sex partner," she said. "With the University's decision, they felt they were in a position to do this."⁸⁵ It was possible because they already had the SSSE criteria that they used for staff. However, Dan Hill, a financial service representative who worked with Duke, "noted that the insurance company has not offered this benefit extension to any other school in the state."⁸⁶ *The Chronicle* editorial argued that this lack of extension to other campuses and non-education staff was frustrating but it was also "a step in the right direction." It continued: "Perhaps more than any other concern, health coverage is an essential component for security in everyday life. This is particularly true among graduate-students, most of whom spend several years stretching every last dollar as far as it can go."⁸⁷ Duke therefore became an island of nondiscrimination and benefits for gay, lesbian, bisexual people within an otherwise hostile state.

Nevertheless, there was still trouble ahead for Duke students. The North Carolina Department of Insurance announced that it would block Blue Cross/Blue Shield's decision to extend benefits. In an interesting turn of events, "the state insurance regulators said the Blue Cross/Blue Shield plan was discriminatory because it offers benefits to long-term partners of lesbians or gays but not to unmarried heterosexuals."⁸⁸ The state was therefore able to

⁸⁵ "Blue Cross offers coverage to students' SSSEs", *The Chronicle*, April 5, 1998.

⁸⁶ *Ibid.*

⁸⁷ "Shielding everyone: company makes exception, insures SSSEs", *The Chronicle*, April 8, 1988 in Box 1, Hazirjian Papers-Duke.

⁸⁸ "State permits student carrier to offer SSSEs", *The Chronicle*, October 20, 1998 in Box 1, Hazirjian Papers-Duke.

place a block in front of Duke's benefits expansion exactly because it was so narrow. Rather than push for Blue Cross/Blue Shield to expand access to unmarried partners in different-sex relationships, Duke allowed the insurer to avoid responsibility through a regressive loophole. It emerged that Blue Cross/Blue Shield was in fact exempt from the state's nondiscrimination requirement. "Unlike all other insurance companies in North Carolina," Jennifer Gullette, a spokesperson for the NC Department of Insurance said, "Blue Cross/Blue Shield is classified as a 'Hospital and Dental Service Corporation' and therefore, according to Chapter 58, article 6, section 1 of the N.C. General Statutes, 'exempt from all other provisions of the insurance laws of this State.'"⁸⁹ The department suggested that "recent media attention prompted their reconsideration and had 'no further objection to allowing coverage for same-sex domestic partners.'"⁹⁰ The broader implications of this decision are unsettling. Through expansion to gay, lesbian and bisexual couples the insurer found that it was able to avoid North Carolina's (limited) anti-discrimination laws as a private company, and therefore able to exclude unmarried straight couples. This hinted that minorities could also be excluded from other forms of health care insurance at the whim of the company.

Indeed, the decision also had limited effects on other same-sex couples in the state: "Other non-profit insurance companies will not be exempt from the statute," reported *The Chronicle*, "and will therefore remain barred from offering SSSE benefits."⁹¹ In examining gay rights activist claims to private rather than universal health care coverage in the 1980s, Jonathan Bell argues that the "battle over health care access presaged later struggles over questions of gay marriage and its attendant economic benefits," and that in doing so it "underlined the robust relationship between notions of legal equality and the market."⁹² This

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Jonathan Bell, "Between Private and Public", pp.1–25.

dynamic was even more evident in the continuing struggle for domestic partner benefits and health care in the 1990s at Duke. The victory of Duke staff, students and faculty did not build into a wider campaign to call for universal coverage, or challenge the heteronormative marriage ideal, as it only increased the disparity between public and private sector educationists.

The expansion of domestic partner benefits to Duke graduate students was in itself limited. At the time of the decision only one student, Lisa Hazirjian, had enrolled their partner in the health insurance scheme.⁹³ Judith White, the special assistant to President Keohane, told press that “This is not going to be a big issue for us as far as practical implications” because the cost was low due to so few couples actually applying. Though Hazirjian and her partner Jay Holloway said “the reversal is important to them because Blue Cross/Blue Shield offers better care than Holloway’s alternate provider,” they also voiced their concern for others.⁹⁴ *The Chronicle* reported that “Hazirjian said her happiness at the ruling is somewhat tempered because it only applies to one company and does not reject the previous interpretation of the statute.” She told the newspaper that: “I still feel, and I know many other people share my opinion, that they should make available to same-sex couples the same kind of benefits offered to heterosexual couples through getting married,’ she said.”⁹⁵

By gaining the support of Duke Administration, staff and students were able to secure their rights to domestic partner benefits on campus, and gained a powerful ally to lobby the insurance companies and state government that sought to hold back the implementation of these rights. Blue Cross/Blue Shield agreed to provide health coverage for students’ partners, yet they noted that this was to be an exception. Similarly, the State of North Carolina agreed that they would permit the extension of benefits, but again, this was only for Duke University faculty and students. The state said that it would not extend the right nor the

⁹³ “State permits student carrier to offer SSSEs”, *The Chronicle*, October 20, 1998.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

benefits to all residents. In battling within an already restrictive insurance system while not concurrently attempting to redefine and extend it to become one of universal coverage, LGBT activists in this era implicitly upheld class and racialised inequality in the university and beyond. As Elizabeth Pleck has demonstrated, this also became the case with the movement for marriage equality that was concurrently emerging. Lesbian activists such as Paula Ettelbrick, the Lambda legal director, argued that the movement should prioritise fighting for universal health coverage rather than same-sex marriage “which would benefit the largest number of people, whatever their sexual orientation.” Pleck notes that Ettelbrick “disliked putting before the public the least threatening gay couples, the committed white middle-class homeowners who were raising children and just wanted their rights.” This was because she “also feared that gay marriage would generate a huge backlash, which would drain resources for other fights.”⁹⁶ As will be demonstrated in the concluding chapters of this thesis, the movement largely went in the opposite direction to Ettelbrick's suggestion and with many of the consequences that she foresaw. Like the fight for marriage equality, which would soon emerge on a state-by-state basis, the success that Duke staff and students had in achieving domestic partner benefits created an island within the state of North Carolina with its “Crime Against Nature” law and conservative legislature. Try as they might to widen access to rights off campus, Duke staff and students largely failed to achieve such a goal in the 1990s.

In a paper detailing the history of Rainbow Triangle, the LGBT oral history project he established with John Howard, Ian Lekus notes the racial and class disparities at Duke. “Duke University, not dependent upon the North Carolina General Assembly for its budget,” he argues, “has developed a reputation as a gay-friendly institution.” This was crafted through the 1988 nondiscrimination commitment, the creation of the LGBT Center, “support for queer studies” and latterly the “extension of domestic partner benefits to staff, faculty, and graduate and professional students.” Lekus notes that these victories were still limited in

⁹⁶ Elizabeth Pleck, *Not Just Roommates*, p.224.

their application to other groups of oppressed minorities, especially those employed at-will as informal workers. He argues that:

Duke's profit margin is built upon its near-monopolization of the labor market. Jim Crow policies may no longer officially bar African Americans from certain Duke jobs, but the division of labor on campus remains heavily racialized for African Americans regardless of sexual orientation. The extension of domestic partner benefits offers nothing to workers (black, white, or, increasingly, Latino) who have no benefits to begin with.⁹⁷

Considering the way in which battles for domestic partner benefits and protections against employment discrimination remained classed and racialised during the 1990s through attachment to corporate, private sector executive inducement packages, Lekus argues that the: "Community goodwill" fostered by the administration at Duke "is strongest among those mostly white, middle- and upper-class populations who benefit the most from the local academic-medical corporate culture dominated by Duke Medical Center and major pharmaceutical corporations such as Glaxo Wellcome."⁹⁸ In reflection of his time at Duke, John Howard similarly noted the difficulty in harnessing the radical potential that queer activism initially offered in the 1990s. He recalls: "I do worry at times that the Center at Duke, that all LGBT campus resource centers as they've become known, functioned primarily as establishment mechanisms of containment." He elaborates on this dynamic by arguing:

Good liberals could ease their consciences and hardened bureaucrats could forestall any upheaval by making only minimal concessions to cultural outgroups, by adopting a tacit policy of placating minorities. That certainly seemed the case at Duke and generally in the United States during the 1990s, when students and others were forced into pitched battles to secure the simple creation of these centers.⁹⁹

As Howard suggests, the impact of this dynamic spread out beyond campus. On one hand, activists at all levels of the Duke community used any tools and arguments to win protections and the extension of benefits to help ameliorate their position as sexual

⁹⁷ Ian Lekus, "Rainbow Triangle Community Oral History Project: A preliminary, select timeline of LGBT history in the Triangle" in Box 8, Rainbow Oral Triangle Oral History Collection, Duke University Archives, David M. Rubenstein Rare Book & Manuscript Library, Duke University. p.5.

⁹⁸ Ibid.

⁹⁹ John Howard, "A Queer Center?", 2001.

dissidents in North Carolina. Yet, in doing so, the extension of these rights and benefits became limited. Rather than challenge anti-sodomy laws that were used to marginalise workers throughout the state, Duke activists obtained limited rights for themselves without gaining similar rights and benefits for their unmarried straight colleagues that could have fostered better mutual support. As a result, the Duke administration held down costs by limiting the extension of benefits and upheld marriage as a heteronormative ideal. University management, their insurance provider, and the state, in the form of the NC Department of Insurance, further helped facilitate an exclusionary vision of corporate rights that allowed even limited state nondiscrimination protections to be sidelined. The North Carolina anti-sodomy law remained in place and no statewide employment protections introduced. John Howard wrote in 2001 that: “As I see it, the threat of the loss of livelihood is the most significant deterrent to coming out and to mobilizing politically.”¹⁰⁰ This remains the case.

Over a ten-year period beginning in 1988, Duke staff and students won nondiscrimination protections and the extension of domestic partner benefits. However, these victories were predicated on a rhetoric of competition and cost-effectiveness that echoed conservative boosters who sought to bring the best and brightest workers to the South in new industries. Intentionally or not, the compromises negotiated at Duke upheld a supposed heterosexual/homosexual binary that prioritised claims to heteronormativity through marriage. Though the competition rhetoric won out on the private campus, it had far less success at public institutions.

Comparative Campaigns on Public Campuses

At most points through the 1990s and early 2000s UNC-Chapel Hill appears to have been one step behind their private neighbour, Duke, in supporting LGBT staff and students. While Duke installed nondiscrimination on the basis on sexual orientation in 1988, a battle raged in Chapel Hill over whether the Carolina Gay and Lesbian Association (CGLA) should

¹⁰⁰ Ibid.

be publicly funded.¹⁰¹ UNC-CH instituted its nondiscrimination policy in 1990 at a time when Duke was establishing its dedicated Task Force on Lesbian, Gay and Bisexual Matters.¹⁰² Whereas Duke provided domestic partner benefits for same-sex partners of staff and faculty in 1995 the UNC system still had not done so in 1997 while Duke student employees were winning their benefits.¹⁰³ In 2000 UNC was still without an LGBT Resource Center like the one established at Duke in the mid-1990s, and which played a vital role in facilitating discussion and activism around domestic partner benefits.¹⁰⁴

In September 1990, UNC-Chapel Hill revised its nondiscrimination policy to include sexual orientation. Therefore, just two years after Duke updated its nondiscrimination policy, the other major university employer in the Triangle Area did the same. Chancellor Paul Hardin issued notice to UNC faculty that “It is the policy of the University of North Carolina at Chapel Hill that an individual’s sexual orientation be treated in the same manner” as race, sex, religion and national origin.¹⁰⁵ This policy was limited to Chapel Hill and did not affect the other campuses in the UNC system. The Carolina Gay and Lesbian Association (CGLA) welcomed the policy change and called for it to be expanded to private companies that recruit on the Chapel Hill campus. CGLA Chairman Patrick Rothwell told the *Daily Tar Heel*: “This is a very good step towards ending discrimination... I would also like the University to be more forthright and active in changing discriminatory hiring practices of outside

¹⁰¹ "Chapel Hill march supports CGLA", *The Front Page*, February 16, 1988 in Box 4, Donaldson Wells King papers, Manuscript Collections, J. Murrey Atkins Library Special Collections and University Archive, UNC Charlotte Repository.

¹⁰² "Duke University Task Force on Lesbian, Gay & Bisexual Matters", 1991-1992 Report in Box 1, University Task Force on Lesbian, Gay & Bisexual Matters Records, Duke University Archives.

¹⁰³ "Resolution to extend campus-based benefits to domestic partners of university employees", Resolution to Faculty Welfare Committee, April 18, 1997 in Box 1, in the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Center of the University of North Carolina at Chapel Hill Records #40433, University Archives, The Wilson Library, University of North Carolina at Chapel Hill. Hereafter cited as "LGBTQ Center Records, UNC-CH."

¹⁰⁴ Letter to Chancellor Moeser, from School of Public Health Student Union Board, April 17, 2000 in Box 1, LGBTQ Center Records, UNC-CH.

¹⁰⁵ "Policy forbids discrimination on basis of sexual orientation", *The Daily Tar Heel*, September 18, 1990 in Box 2, LGBTQ Center Records, UNC-CH.

organizations which recruit on campus.”¹⁰⁶ As such, and in similar methods as those used at Duke, activists in Chapel Hill attempted to use the non-discrimination policy to impact beyond campus.

However, installation of domestic partner benefits was much slower at UNC’s Chapel Hill campus. At the same time that Duke was beginning provision of SSSE benefits, UNC-CH faculty and administration were just beginning the conversation. In April 1995, a committee formed of faculty, employees and students was tasked with studying whether UNC-CH ought to extend benefits that were at that time only available for married couples. The report noted that while some benefits, such as access to library and recreational facilities, could be extended easily, others could not. Unlike Duke as a private institution, UNC was limited through law as to what it could and could not offer students as a public institution. “In the current political climate, everybody is walking on thin ice with anything that could be considered as controversial,” law student Doug Ferguson told the reporters. “Legislators are looking for any excuse to cut the budget.”¹⁰⁷ That political climate was influenced by the national debates such as DOMA, DADT and ENDA, but also local debates such as those around the extension of benefits and protections in nearby Carrboro and Chapel Hill.

In October 1995 UNC-Chapel Hill announced that they would extend benefits to domestic partners of employees. These benefits were limited in comparison to Duke. Extended were those “soft” benefits such as gym and library access but not health insurance.¹⁰⁸ It is unsurprising that UNC would not immediately offer health insurance to domestic partners: after all, the localities adjacent to the campus which had extended benefits, Carrboro and Chapel Hill, limited their benefits in similar ways. As mentioned above, elected officials in Carrboro and Chapel Hill, where many UNC workers and students

¹⁰⁶ Ibid.

¹⁰⁷ “UNC committee to study partner benefits”, *The Front Page*, June 9, 1995.

¹⁰⁸ “UNC-CH to offer partnership benefits”, *The Front Page*, October 27, 1995.

reside, voted in 1995 to allow domestic partners to register their relationships in order to receive benefits. A report in an activist newspaper notes that this was “largely ceremonial,” although it did carry some benefits: “Town policy now allows partners to take sick and medical leave to care for each other,” noted the report, “in addition, the council agreed to extend the use of the sick and medical leave provisions to care for the children of a couple registered with the city.”¹⁰⁹ Health care insurance was similarly absent at UNC: “Issues such as extension of health care, disability and pension plans would require changing of regulations governing all state employees,” argued Laurie Charest, the associate vice chancellor for human resources at UNC.¹¹⁰ Unlike Duke administrators who were able to argue for rights as a private institution, and Blue Cross/Blue Shield as a corporate health care provider, such loopholes were unavailable to UNC.

By the early 2000s policy on sexual orientation nondiscrimination remained patchy throughout the UNC system. Chapel Hill delegates to the UNC Board of Governors pushed for a system wide policy in 2001 and 2002, also seeking to outlaw age and disability discrimination.¹¹¹ Though some ten of sixteen UNC campuses had passed nondiscrimination policies, these could be scrapped at any moment. “Some of the policies, including UNC-CH’s, are subject to change with leadership,” suggested one writer, “under present legislation, Chancellor Paul Hardin’s replacement would have the opportunity to change Hardin’s nondiscriminatory policy.”¹¹² Without protections across the UNC system, rights for LGBT people remained precarious and at risk of removal, even at campuses, including Chapel Hill, seen as particularly accepting. Fearful of breaching North Carolina’s anti-sodomy statute, the university system avoided extending the nondiscrimination protections

¹⁰⁹ Matt Lynch, “Chapel Hill’s Council votes to allow domestic partnership registration,” *Outlines: Newsletter of the Duke Gay, Lesbian and Bisexual Association*, Volume 1.1, May 1995 in AQUADuke Records.

¹¹⁰ “UNC committee to study partner benefits”, *The Front Page*, June 9, 1995.

¹¹¹ “BOG vote on discrimination bill delayed”, unknown, undated [ca.2001-2] in Box 2, LGBTQ Center Records, UNC-CH.

¹¹² *Ibid.*

and benefits that Chapel Hill and others offered. When UNC-Chapel Hill did finally extend domestic partner benefits to staff and students, these continued to appear only tenuously secure in a system that is contingent on legislative scrutiny. For instance, domestic benefits of UNC employees were called into question as recently as 2012 when North Carolina voters approved Amendment 1, which barred the state from recognising same-sex marriages and civil unions.¹¹³

Although there were attempts at nearby North Carolina State University (NCSU) to extend benefits and to offer nondiscrimination protections to staff, these were continually rejected by bodies including the Staff Senate, which voted not to provide endorsement.¹¹⁴ NCSU workers were stalled in their attempts because they relied upon the state's conservative lawmakers to approve funding. Both NCSU and UNC workers would need a broader movement off campus to effect change not just for university workers but all state employees. NCSU's LGBT employees, faculty and students were not protected by a non-discrimination clause until 2003 when "Sexual Orientation was added to the university's Equal Opportunity and Non-Discrimination Policy Statement" (transgender people were not protected until 2005).¹¹⁵ Again, the prevalence of the state's anti-sodomy law, Crimes Against Nature, provided university leaders with a convincing argument to withhold rights.

The public/private dynamic of success on campuses was not limited to the North Carolina Research Triangle. It was also evident in Georgia, where the disparity in provisions was clear between workers at the public University of Georgia and the private Emory University. In much the same ways as Duke University, Emory led the way in providing

¹¹³ "UNC: Local governments can offer domestic partner benefits" *Indy Week*, July 11, 2012. Available: <https://indyweek.com/news/northcarolina/unc-local-governments-can-offer-domestic-partner-benefits/> (accessed 2/12/2018).

¹¹⁴ "NCSU votes NO on domestic partner benefits", *Community Works*, March/April 1997 in Box 1, Triangle Community Works Records, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

¹¹⁵ "GLBT Community" in *Historical State Timelines*, NCSU Libraries, available: <https://historicalstate.lib.ncsu.edu/timelines/lgbt> (accessed 1 December 2018).

nondiscrimination and domestic partner benefits throughout the 1990s, long before the University of Georgia.¹¹⁶

In August 1994, University of Georgia, Athens faculty member, Annette Hatton organised a meeting that formed a new group to campaign for rights. UGA Gay, Lesbian, or Bisexual Employees and Supporters (or “GLOBES”) launched its campaign by learning from the successful ways in which Emory activists had won their rights.¹¹⁷ Though they were still fighting for both nondiscrimination and domestic partner benefits in 2002, UGA workers learned from the slow 1990s battles of the need to coordinate campaigns across all campuses at once and fight for all public employees. Alongside GLOBES, activists formed the Domestic Partnership Coalition of the University System of Georgia, “a group that includes employees throughout Georgia’s 34 public colleges and universities.” The organisation sought to convince the University of Georgia’s “Board of Regents, which oversees the university system, to approve domestic partner benefits for university employees who are gay, as well as a non-discrimination policy protecting sexual orientation.”¹¹⁸

Similar to UNC-Chapel Hill, the activists first won the institutional backing of University of Georgia, Athens, the state’s largest campus, for their demands, which included support for domestic partner benefits. In September 2002 “UGA made a request that the regents offer a domestic partner plan to the university’s faculty and staff.” At that point however, Regents were unwilling to do so. They specifically pointed to questions of legality

¹¹⁶ “Emory University celebrates 20 years of LGBT activism, inclusion” in *Georgia Voice*, March 3, 2012. Available: <https://thegavoice.com/news/atlanta/emory-university-celebrates-20-years-of-lgbt-activism-inclusion/> (accessed 2/1/2019).

¹¹⁷ “LGB Faculty and Staff Group”, Minutes, August 10, 1994 in LGBT Resource Center records, UA17-009, University of Georgia Archives, Hargrett Rare Book and Manuscript Library, The University of Georgia Libraries.

¹¹⁸ “Gays petition for benefits access from universities”, *Athens-Banner Herald*, December 15, 2002 in LGBT Resource Center records, UA17-009, University of Georgia Archives, Hargrett Rare Book and Manuscript Library, The University of Georgia Libraries.

around sodomy laws and tight state budgets.¹¹⁹ A survey by the Human Rights Campaign in 2002, one year before the outlaw of anti-sodomy laws, found that 177 colleges and universities were offering some form of spousal benefit. “Of the 177 schools with domestic partner benefits, 29 are in the South and none is located in Mississippi or Alabama.”¹²⁰

Throughout the 1990s and into the early 2000s the spectre of state anti-sodomy laws was continually mobilised to limit campaigns for LGBT employment rights. At the height of a campaign by Christian conservatives to remove him from teaching in this period, James Sears set out the ways in which the South Carolina statute, as well as those elsewhere were mobilised to marginalise and discriminate against LGBT people:

Sexual expression between two consenting adults *should* be a private matter. The sodomy statute transforms the private into the public criminalizing many Southerners. The state’s power to define and delimit appropriate sexual behaviors further legitimizes the discrimination and harassment faced everyday by lesbians and gay men. This archaic section of criminal code helps to justify job and housing discrimination and to foster intolerance and hatred. As a symbol, the statute creates sexual outlaws. As a law, it is an ever present threat to an emerging segment of the Southerners.¹²¹

Even as activists at Duke, Emory, UNC-Chapel Hill, and in the towns of Carrboro, Chapel Hill and Durham began to win nondiscrimination protections and benefits, they failed to sweep away the respective anti-sodomy laws in each state. Indeed, the presence of these laws allowed politicians, university administrators and insurers to find ways of limiting activist victories to select groups of workers and students. Writing in 2001, John Howard suggested that “to liberate queer sex and to celebrate queer sex, you must first decriminalize queer sex.” He argued that “the repeal of sodomy laws... should take precedence over gay marriage and gays in the military.”¹²² The experience of activists in public as well as private universities in the Carolinas as well as Georgia demonstrate some of the ways anti-sodomy

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ James T. Sears, “Privatizing Sexuality”, *Southern Voice*, June 18, 1992 in Box. 2, Howard Papers-Duke.

¹²² John Howard, “A Queer Center?”, 2001.

laws limited rights claims. Indeed, the rhetoric of administrators at public universities such as UNC, NCSU and UGA suggested that the “legality” of sexuality was the key sticking point in providing nondiscrimination protections and domestic partner benefits. Clearly, the repeal of sodomy laws was an important stepping stone towards gaining equality on the campus.

When the US Supreme Court finally did outlaw anti-sodomy laws in its 2003 *Lawrence vs. Texas* decision, it unlocked a door that campus activists had been pushing at for over a decade. Now public university and college systems did finally begin to update nondiscrimination policies and started to provide at least some benefits. In 2006, for instance, the University of Georgia finally included sexual orientation in the nondiscrimination policy and extended some ‘soft’ benefits to domestic partners.¹²³ The success of Duke faculty, staff and students in winning their rights and benefits on the private campus echoed victories at other corporations based in the Sunbelt, as LGBT Southerners sought ways for their employers to remedy their subordinate position in the region. The next chapter turns our attention to the fight against discrimination at ExxonMobil to examine how some corporations remained staunchly opposed to claims for rights at the same time that the tide of corporate cooperation and acceptance was turning. In doing so the chapter will link this episode to the actions of oil company executives to examine the shift in corporate culture in the late 1990s and early 2000s, and the continuing relevance of the Sunbelt region to these struggles.

¹²³ "Sexual orientation put in UGA policy", *Athens Banner-Herald*, April 26, 2006 in Box 9, GLOBES material, UA12-022, University Archives, Hargrett Rare Book and Manuscript Library, The University of Georgia Libraries.

Chapter Six

ExxonMobil and the persistence of the Corporate Closet

In examining the Cracker Barrel case, John Howard argues that the company was forced to remove its opposition to non-discrimination policies because: “expansion had taken the company into areas... less receptive to employment discrimination.”¹ While that may have been the case for Cracker Barrel, other corporations continued to demonstrate that it was still possible to ignore calls for those policies as long as the federal government did not, or could not, intervene on behalf of sexual minorities. This was demonstrated nowhere more clearly than at the oil giant ExxonMobil. Whereas Mobil did protect its workers on the basis of sexual orientation non-discrimination, Exxon did not. When the two companies merged in 1999, Exxon removed those protections from Mobil employees. Whereas other oil companies, such as ConocoPhillips, also removed protections during this era of massive corporate mergers, they would quickly reinstate the lost protections. In contrast, ExxonMobil would later again rescind benefits and protections for LGBT workers when it merged with XTO in 2009. The case study of ExxonMobil provides a unique insight into how Sunbelt corporations resisted demands to provide nondiscrimination protections, and domestic partner benefits until very recently.

Exxon has long exhibited a strong management culture that is emblematic of other Sunbelt corporations. As one of the biggest oil companies in the world, it has resisted outside intervention in its operations, displaying open hostility towards union organisation and state regulation. The strength of this management culture, as well as its high profit yield, meant that the company could persist in refusing to implement nondiscrimination protections and benefits when other companies did so. This points to the continued vitality of right-to-work company management in the Sunbelt South. As demonstrated throughout this chapter, ExxonMobil executives used the notion of “free enterprise” as a synonym for the supremacy of the CEO and the Board over the interests of its workers, the environment, or the US

¹ John Howard, “The Cracker Barrel Restaurants”, p.307.

population more broadly. The company did not intend to fire people, like Cracker Barrel did in 1991; ExxonMobil simply did not want to allow anyone to influence corporate policy outside of its most senior executives. This case study draws our attention to wider forms of internal corporate control and the creation of a workplace closet, in which sexual dissidents were allowed to work, but were denied the rights granted to married heterosexuals. Instead, executives mobilised an argument that activists should focus their attention on winning rights from the government rather than the private sphere. They made such assertions during the George W. Bush presidency because they knew that such a strategy, while relieving pressure on the corporation would not yield the rights activists desired, either statewide in the Sunbelt or federally. As the LGBT movement shifted its focus away from employment, and more explicitly towards winning marriage equality during the Bush era, it led to a blindspot in which economic inequalities and fragmented citizenship would persist, even as corporations such as ExxonMobil eventually relented to demands. Unlike other Sunbelt companies, such as airlines, which implemented nondiscrimination and/or domestic partner benefits in this era, ExxonMobil could afford to hold out for longer due to the company's enormous size and power. In contrast, airlines were economically more volatile by the turn of the century, especially after the September 11th, 2001 terrorist attacks, and so were more amenable to consumer pressure when demands were placed upon them. This chapter will trace the corporate activism that emerged to pressure ExxonMobil to change its policies. It will also discuss the political and cultural background in which these discussions took place, and demonstrate why and how ExxonMobil was able to counter activist advances for so long. In doing so it will further establish the extent to which activist focus upon winning protections in individual corporations, as well as their focus on gaining marriage equality, failed to challenge wider forms of workplace inequality.

The Supreme Court decision in *Lawrence v. Texas* in 2003 ruled anti-sodomy laws unconstitutional. This opened the door for increased demands for anti-discrimination protections and marriage equality on behalf of sexual minorities. Yet even as the South and

Southwest came into line with the rest of the country in terms of the legality of same-sex sexual practices, it remained behind in terms of state and local non-discrimination policies. While the Supreme Court later extended marriage to same-sex partners, those in the South and Southwest could find themselves married on Sunday and fired on Monday. This unevenness in rights has been characterised by political scientist, Stephen Engel as that of “fragmented citizenship.”² This chapter will therefore use the case study of the Sunbelt oil industry to examine how this unequal application of rights has been experienced and contested in recent years.

By the beginning of the twenty-first century, the corporate terrain for homophobia had shifted dramatically since Houston boosters had argued that bias was more profitable than non-discrimination in 1984. Most Fortune 500 companies now implemented non-discrimination protections, and some boasted domestic partner benefits. The strategy by the New York City Employee Retirement System (NYCERS) and others to focus on shifting individual corporations towards non-discrimination to initiate a domino effect appeared to be working. However, the Sunbelt remained a battleground. As oil executive and evangelical Christian George W. Bush gained the presidency, corporations once again felt empowered to refuse to extend benefits to same-sex couples. One such company, ExxonMobil, pushed back against activists demanding a change in their corporate protections, instead hypocritically pointing to the need for federal protections, which they knew seemed far from attainable during Bush’s tenure as president. ExxonMobil was largely exceptional in refusing to relent to demands by groups demanding nondiscrimination clauses and domestic partner benefits in this era.

This chapter will first trace the recalcitrance of ExxonMobil before examining how the company shifted policy in response to federal and Supreme Court decisions during the Obama era. It will examine the arguments the company used to defer expanding rights for sexual minorities. First, they argued that any social justice campaign should be ignored so

² Stephen M. Engel, *Fragmented Citizens*.

as not to give others a precedent. This was particularly important to Exxon as it faced constant criticism by environmentalist groups. Second, they argued for the intervention of the federal government and the judiciary in terms of shaping marriage equality and domestic partner benefits in relation to the Defense of Marriage Act. By placing emphasis upon the federal government as the arbiter of nondiscrimination and domestic partner benefits, ExxonMobil drew upon a tactic well-rehearsed by southern businesses happy to defer to government intervention on racial and social issues because they could then place blame upon the government for having to implement it.³ The chapter will therefore also demonstrate the impact of Supreme Court decisions on ExxonMobil's actions.

As noted in Chapter Two concerning the homophobia of Houston boosters, the oil industry has been central to the growth of the Sunbelt. In terms of extraction, refinement, sales, petrochemicals and much else, the industry has helped to fuel the development of the region into the nation's economic and political powerhouse. As a major Sunbelt industry, and one whose executives have played an outsized role in the politics of the region, it is unsurprising that it would also provide a battleground for corporate homophobia in the latter part of the twentieth century.

Exxon, and later ExxonMobil, is one of the most representative corporations of Sunbelt growth and culture. The company is a descendent of John D. Rockefeller's Standard Oil and was for many years headquartered in New York City. In the mid-1980s, when the company sought a new headquarters, they set their sights firmly upon a location in the Sunbelt. Exxon moved from New York to Texas in the late 1980s. "The Dallas area offered the best combination of factors from the standpoint of our employees' personal and professional lives and from an overall business standpoint," said Exxon Chairman, Lawrence G. Rawl in the *New York Times*.⁴ Steve Coll notes in his history of the company, *Private*

³ See: Timothy J. Minchin, "Federal Policy and the Racial Integration of Southern Industry, 1961–1980." *Journal of Policy History*, vol. 11. 2 (1999) pp.147–78.

⁴ James Barron, "Exxon Will Move Its Headquarters To Texas", *New York Times*, October 27, 1989. Available: <https://www.nytimes.com/1989/10/27/nyregion/exxon-will-move-its-headquarters-to-texas.html> (accessed 9/3/2019).

Empire, that executives “ultimately settled on Dallas because it was easy to reach from around the world and would keep the headquarters away from the oil provincialism of Houston, where Exxon already had a large presence.”⁵ The town of Irving, located just outside of Dallas, lured the company with promise of much reduced rent, almost \$60million a year cheaper than their former Manhattan location.⁶ Coll suggests that the move made sense in terms of recruiting and retaining its skilled workforce. “Exxon recruited heavily from the petroleum engineering departments of public universities of America’s South, Southwest, and Midwest. By locating its headquarters in Texas, the corporation placed itself in the landscape to which many of its long-tenured American employees belonged.”⁷ As such many of these top employees shared a sense of culture and belonging that the company sought to foster. This culture has been understood as secretive and guarded, as well as masculine. The company’s Texas headquarters is seen as representative of this culture, described by some employees as “The Death Star,” due to its huge black architecture, hidden behind steel gates, fences and trees.⁸

By the turn of the Millennium gay and lesbian activists had become very successful in arguing that bias was bad for business. In doing so they convinced an increasing number of corporations and organisations to extend non-discrimination to include sexual orientation, and to consider providing domestic partner benefits. Sociologist Nicole Raeburn notes that they had been more successful in shaping the corporate sphere than the legislative. From 1997 onwards “the Fortune 500 has averaged 28 new adopters per year,” reports Raeburn, “While many of these had faced pressure from gay employee networks, it is telling that some

⁵ Steve Coll, *Private Empire: ExxonMobil and American Power* (New York: Penguin Books, 2013) p. 37.

⁶ James Barron, “Exxon Will Move Its Headquarters To Texas”, *New York Times*, October 27, 1989.

⁷ Steve Coll, *Private Empire*, pp.37-38.

⁸ Antonia Juhasz, “What’s Wrong With Exxon?”, *The Advocate*, September 3, 2013. Available: <https://www.advocate.com/print-issue/current-issue/2013/09/03/whats-wrong-exxon?page=0,0> (accessed: 1/5/2019).

apparently changed their policies without any internal prodding.”⁹ This suggests that outside activism of the sort NYCERS and others were mobilising was having some impact. By January 2003, 301 Fortune 500 companies had enshrined sexual orientation in non-discrimination policies and offered domestic partner benefits. The companies included many of ExxonMobil’s industry competitors, which included BP, ChevronTexaco and Shell Oil.¹⁰ ExxonMobil remained exceptionally resistant to pressure from lobbyists as their competitors, many of which are also based in the Sunbelt, instituted protections and benefits. As will be demonstrated later, Exxon’s closeness to the Bush administration, their secretive internal management style, and their place as a market leader allowed them to ignore such concerns. As this thesis has demonstrated, the lack of success in winning a federal Employment Non-Discrimination Act (ENDA) throughout the 1990s and 2000s led to the acute attention placed upon the boardroom as the most likely avenue to secure these protections and benefits. As the tide finally turned at Cracker Barrel after a decade of grassroots and corporate activism, activists now placed greater emphasis on winning over larger corporations with conservative reputations. ExxonMobil, however, would hold out for a decade-and-a-half more, and demonstrate that arguments in favour of non-discrimination’s profitability could be ignored when the corporation was one of the biggest and most profitable in the world.

ExxonMobil received an intense focus from activists due to its enormous size and because it was so uncooperative to initial requests to change policy. What mobilised activists was not simply Exxon’s practice of refusing to incorporate nondiscrimination protections for sexual minorities within its own organisation, though that spurred initial campaigns. It was also the fact that Exxon rescinded those protections when it merged with another company. This was the case in 1999, when Exxon merged with Mobil to create one

⁹ Nicole C. Raeburn, *Changing Corporate America from Inside Out*, p.135.

¹⁰ “HRC co-files resolution urging ExxonMobil to prohibit sexual orientation discrimination”, *gaywire.net*, January 10, 2003 in Discrimination - Employment 2000-2003, ONE Subject File collection, Coll2012-001, ONE.

of the biggest companies in the world, ExxonMobil. Whereas Mobil included sexual orientation in its non-discrimination policies before the merger, Exxon rescinded these as well as the domestic partner benefits that Mobil had provided for its staff. Employees who already received benefits continued to do so but the entitlement would no longer be available for future hires, nor for their colleagues from the Exxon side in the new company. Gay and lesbian activists viewed this as corporate assault that sought to push gays and lesbians out of the workplace, something Exxon would contest. The company went to great lengths to buck the forward march of gay and lesbian employment protections and spousal benefits. That ExxonMobil was able to rescind benefits for employees and ignore demands from activists for so long points to the tenuous nature of employment rights won through shareholder activism in individual corporations.

Exxon and Mobil

Tom Allen joined Mobil in 1978. As he rose through the ranks at the corporation, he began to take a leading role in organising his co-workers for non-discrimination protections and benefits. Pushed into taking a more activist stance by the HIV/AIDS epidemic, he later told investigative journalist Antonia Juhasz, “I began to think, OK, you know what? Life’s too f-ing short for this.” He primarily became more open about his sexuality within the workplace by using breaks to ask questions of colleagues such as “Do you value me even if you know I’m gay?” He also used emerging websites and social networks such as Gaydar to find other gay, lesbian, and bisexual employees and found others like himself working in human resources.¹¹

Allen and others experienced success at Mobil. The company amended its Equal Employment Opportunity statement to include sexual orientation in the mid-1990s and an employee support group formed around the same time. In a story he would later repeat to several journalists, Allen recalled meeting with Mobil CEO Lucio Noto. Noto flew a group of

¹¹ Antonia Juhasz, “What’s Wrong With Exxon?”

employees to the company headquarters in Virginia to discuss their experiences at Mobil. “We met with him, and explained the advantages straight people had,” recalled Allen. “He turned to me and said, ‘You’ve got to help me out here. What do you mean by straight people?’” Nevertheless, the company moved quickly. Allen noted that within six months domestic partner benefits were extended.¹²

Yet in 1999, when Exxon merged with Mobil, it scrapped both the non-discrimination protections and the domestic partner benefits. “‘It was a slap in the face,’ says Tom Allen of the reversal of Mobil’s LGBT policies. ‘We worked so hard to get them, and this took us back 30 years.’”¹³ Those Mobil employees who already received domestic partner benefits would continue to do so but they were not to be offered in the future. This created an uneven system in which some gay and lesbian workers received benefits and others did not. “We were shocked,” Allen recalled to Juhasz, but he said that his colleagues “did not feel empowered to make change.”¹⁴ However, the rollback galvanised groups including the Human Rights Campaign and the Equality Project to launch national boycott campaigns alongside NYCERS’ stockholder activism, which now had more reason to challenge ExxonMobil chairman Lee Raymond.

The language used by ExxonMobil was not as explicit in its homophobia as that in Cracker Barrel’s corporate policy which expelled those “whose sexual preferences fail to demonstrate normal heterosexual values.”¹⁵ Nevertheless, the similarities between Cracker Barrel and ExxonMobil were striking. In response to demands from activists for domestic partner benefits, a spokesman for ExxonMobil noted that such benefits were reserved for those in a “legally recognized spousal relationship.” In doing so the company argued that

¹² James B. Stewart, “Exxon Defies Calls to Add Gays to Anti-Bias Policy,” *New York Times*, May 24, 2013; And, see *Ibid*.

¹³ Antonia Juhasz, “What’s Wrong With Exxon?”

¹⁴ James B. Stewart, “Exxon Defies Calls to Add Gays to Anti-Bias Policy”; Antonia Juhasz, “What’s Wrong With Exxon?”

¹⁵ John Howard, “The Cracker Barrel Restaurants.”

deciding who should and should not receive benefits and protections was not the responsibility of the corporate sphere. In response to a question from journalists as to whether ExxonMobil would reinstate domestic partner benefits, spokesman Tom Cirigliano told the press: “That’s a social issue for the country or state to decide, not the company.”¹⁶ Similarly, at the 2000 meeting of shareholders, the first since the merger, Lee Raymond told NYCERS and others to “go pass a federal law instead.”¹⁷ Raymond was most probably being flippant, yet such a stance is noteworthy not simply because it bucked the trend of ExxonMobil’s main competitors but also because it appeared contradictory to the company’s broader stance on governmental oversight and regulation, which it actively resisted. ExxonMobil’s position may have emerged from the company’s confidence that the passage of laws in favour of workplace rights was unlikely during the presidency of George W. Bush. Indeed, at the same time that activists were ramping up pressure for ExxonMobil to shift course, the administration placed more and more emphasis on rolling back the recent gains of the LGBT movement. For their part, gay and lesbian activists did argue that “such setbacks are further evidence of the need for legal protections in the public sector.”¹⁸

The activists’ strategy was similar to that mobilised at Cracker Barrel. They sought to win a majority of shareholders to support a resolution for the company to enshrine a non-discrimination clause, which also stated: “Employment discrimination on the basis of sexual orientation diminishes employee morale and productivity.”¹⁹ Such claims to the profitability of anti-discrimination and diversity sought to entice even those companies traditionally understood to be repelled by any notion of social movement action, including environmental

¹⁶ Kemba J Dunham and Rachel Emma Silverman, “Cheney’s Daughter Sparks Talk Of Corporate Strides in Gay Rights”, *Wall Street Journal*, August 4, 2000.

¹⁷ James B. Stewart, “Exxon Defies Calls to Add Gays to Anti-Bias Policy”; Antonia Juhasz, “What’s Wrong With Exxon?”

¹⁸ Kemba J Dunham and Rachel Emma Silverman, “Cheney’s Daughter Sparks Talk Of Corporate Strides in Gay Rights”.

¹⁹ “HRC co-files resolution urging ExxonMobil to prohibit sexual orientation discrimination”, *gaywire.net*, January 10, 2003 in Discrimination - Employment 2000-2003, ONE Subject File collection, Coll2012-001, ONE.

activism. These assertions, however, were unsustainable, as ExxonMobil's power and market share continued to rise steadily around the world. At the same time their fellow Texan oil executive, George W. Bush, came to the presidency, and US Vice President Dick Cheney sheltered the concerns of oil executives as their war on terror in the Middle East opened new resources and markets. Claims to profitability and moralism on the part of the Human Rights Campaign and NYCERS seemed like folly. Bush once famously told the Prime Minister of India of ExxonMobil: "Nobody tells those guys what to do."²⁰

Exxon's long reluctance to extend non-discrimination and benefits can be understood by its strong economic position. Unlike a corporation such as Apple with a liberal image to uphold, Exxon was more fixed in a Sunbelt corporate culture that resisted any outside intervention or regulation by dismissing any form of shareholder "activism." As Phil Tiemeyer and Nicole Raeburn have demonstrated in the airline industry and beyond, activists were able to win corporate executives to extending rights and benefits in the 1990s by arguing that it was good business practice and would add to a corporation's profitability. Tiemeyer suggests the reasoning for executives: "Benefits, in the postderegulation mind-set of neoliberalism, should be extended only when justified by a potential revenue stream—like appealing to prosperous LGBT customers—rather than dictated by civil rights principles or union perseverance."²¹ In addition, unlike in the oil industry, which experienced a boom in this era, the airline industry was especially volatile to market pressures following the September 11th, 2001, terrorists attacks.

This certainly held true of the activism which emerged around ExxonMobil. As the proposal to shareholders fell for a third consecutive year, the Human Rights Campaign (HRC) and others demanded that customers cut up their branded credit cards and skip filling

²⁰ Antonia Juhasz, "The United States of Exxon," *In These Times*. February 2017, <https://search.proquest.com/docview/1861349057?accountid=14511> (accessed April 19, 2019).

²¹ Phil Tiemeyer, *Plane Queer*, p.218.

up their cars at ExxonMobil gas stations.²² In a statement, HRC executive director Elizabeth Birch argued that: “A boycott may be a drastic action, but it is commensurate with the company’s actions, which are unique in U.S. business.” Further she noted that: “Our efforts to work this out with company officials have been met with resistance. As one of the largest corporations in the world, ExxonMobil should be a leader in fairness.” She continued: “Instead, it has become the leading proponent of stonewalling gay and lesbian employees, consumers and shareholders.”²³ The terrain of corporate acceptance of gay and lesbian rights had shifted massively over the course of the preceding decade, as more and more companies provided protections and benefits to the extent that ExxonMobil’s reluctance now bucked the trend. The HRC press release pointed to the success at Cracker Barrel in arguing that ExxonMobil should follow suit. “In the last two months of 2002, two smaller holdouts — Lockheed Martin and CBRL, the parent company of Cracker Barrel Country Stores — changed their non-discrimination policies rather than face more such shareholder resolutions,” noted a spokesperson. “If Cracker Barrel can do it, we fail to understand why ExxonMobil remains recalcitrant.”²⁴

For a company like ExxonMobil, such claims to the profitability of equality seemed superfluous given their position as a one of the biggest corporations in the world. More broadly, the oil industry saw itself tied to neoconservatism in the era of George W. Bush, which also reflected a tradition of actively disregarding the rights of workers in localities where executives held political strength, as demonstrated in Chapter Two with regards to Houston. Exxon’s rescinding of Mobil’s domestic partner benefit program and nondiscrimination policies can be best understood as a result of Sunbelt capitalism. The regional conservatism and the internal corporate structure of Exxon provided a buffer

²² “Gay organization leads ExxonMobil boycott”, *PlanetOut*, June 13, 2001 in Folder 2, Box 17, Maria Helena Dolan Papers, W134, Archives for Research on Women and Gender. Special Collections and Archives, Georgia State University, Atlanta.

²³ *Ibid.*

²⁴ “HRC co-files resolution urging ExxonMobil to prohibit sexual orientation discrimination”, *gaywire.net*, January 10, 2003.

against rights claims, even as other corporations including their competitors were beginning to provide these benefits. ExxonMobil feared, as those Houston boosters also did in the mid-1980s, that shifting their position on gay and lesbian rights would expose them to further demands for rights. James Stewart, who covered the battle at ExxonMobil for the *New York Times*, notes how these dynamics remained in play throughout this period: “Exxon retains a conservative and meritocratic culture, in which singling out any group is seen as a potentially dangerous step on the road to affirmative action. And the company has long prided itself on resisting pressure from outside activists, whether the topic be social issues or global warming.”²⁵ As such, ExxonMobil’s position is best understood as a continuation of the actions by Sunbelt boosters and executives who saw the region’s business profitability as their primary concern, and sought to avoid exposing the company to further demands on what is good for society rather than the company’s bottom line. In this way they reflected historic concerns of Sunbelt boosters to resist affirmative action on behalf of African-Americans and women, and unionisation.

In the late 1990s and early 2000s, Exxon was untouchable in terms of its profitability. One of the main reasons why Raymond was able and willing to ignore gay and lesbian activists was this profitability. Coll argues that “the ultimate measure (and the chief purpose) of this management culture was Exxon’s financial performance. Even during the early Lee Raymond era, a time when oil prices gyrated disruptively and at one point fell to historic lows, the corporation’s performance was superior from quarter to quarter and year to year.” Furthermore, Coll notes that Exxon’s “exceptional ability to complete massive, complex drilling and construction projects on time and under budget meant that, in comparison to industry peers, it remained exceptionally profitable in recessions and boom times alike, when oil prices were high and when prices were low.”²⁶ As such, the arguments of groups

²⁵ James B. Stewart, “Exxon Lingers Along to Catch Up With Gay Rights,” *New York Times*, July 1, 2015.

²⁶ Steve Coll, *Private Empire*, p.40.

such as the HRC and NYCERS that ExxonMobil's profitability was at risk by the corporation's position on gay and lesbian rights were more easily ignored than at other companies more susceptible to public pressure, such as those within in the service industry.

This is not to suggest that ExxonMobil was not exposed to the dangers of the market, or the social forces that demanded the company be more equitable to employees and friendlier to the environment. Coll argues that, even at this moment of corporate growth and merger, "Engineering and scientific talent in the United States was in high demand. The company competed with other super-majors to recruit the most talented geophysicists and geologists at the world's top schools." The company's chief concern was convincing a new generation of workers, who "had been reared during an age of environmentalism," that working at ExxonMobil was not a morally compromised option. Coll argues that this tension opened the possibility of reform within the organisation. "Some of them pushed for paternity benefits and nursing rooms at the office — and succeeded," he recalls, "but these were incremental achievements and the ambivalence remained."²⁷ The company therefore demonstrated that some change within corporate structure was possible to keep employees happy. In doing so, the heteronormative structure of marriage and family to extend benefits was upheld.

A more serious concern for the company, and one to which HRC and NYCERS activists spoke, was the danger of other corporations poaching their best workers. Coll notes that "the difference between excellent and mediocre geologists could be the difference between finding oil and failing to do so." Therefore, retaining the best workers was a priority for ExxonMobil as competitors sought to emulate and challenge their success. "After the merger," Coll notes, "ExxonMobil became concerned about unusually high attrition rates in these talent wars; the corporation seemed to have particular difficulty holding on to women."²⁸ This was possibly due to the masculinist culture at ExxonMobil's North Texas

²⁷ Ibid. p.218.

²⁸ Ibid.

headquarters that encouraged intense competition among executives, and a policy of intense peer-appraisal that saw employees constantly ranked by worthiness. Such a ranking system, which created feelings of competition and pressure “amid cost reductions, reassignments, demotions, salary reductions, and job cuts,” also had specific implications for LGBT workers, who under such an intimidating system would feel afraid to come out of the closet for fear it could impact their career.²⁹

An increasingly globalised world also encouraged demands on the company to promote sound policies around sexual orientation. ExxonMobil was willing to defer judgment on who should or should not receive benefits on the basis of sexual orientation because they worked in so many jurisdictions with differing policies. While their competitors, such as Shell or BP, also faced similar issues, ExxonMobil strove to create an international internal culture that was task orientated and nothing else. They sought to immediately overcome differences between the nationalities and cultures of their employees in the hope of making them more productive. As part of this they respected local custom with regard to nondiscrimination rights but also sought not to take a more visible stance.³⁰ “By the mid-1990s, Exxon operated in almost two hundred countries with about eighty thousand regular employees; overseas, 98 percent of its employees were non-American.”³¹ Such issues gave the company further reason to remain ambivalent about passing judgement on contentious issues of sexual orientation. Yet activists ramped up pressure at ExxonMobil specifically because a stance by such a powerful corporation could help to extend benefits and protections to workers in other countries with even more restrictive laws surrounding sexual dissidence. While ExxonMobil respected the laws of the countries in which they operated

²⁹ Ibid. pp.38-39.

³⁰ For a discussion of ExxonMobil's international internal culture compared to other companies, see: Erin Mayer, “When Culture Doesn't Translate,” *Harvard Business Review*, October 2015. Available: <https://hbr.org/2015/10/when-culture-doesnt-translate> (accessed: 2/7/2019).

³¹ Steve Coll, *Private Empire*, p.41.

with regards to sexual orientation, this meant respecting both virulently homophobic laws as well as moderately tolerant ones.

One incident is particularly illustrative of the ways in which the corporation continued to ignore demands for openness and integration in a similar way to boosters across the Sunbelt over the preceding decades. ExxonMobil sought to transfer a “highly valued executive from Belgium, where the executive lived with his husband, to Texas,” reported the *New York Times*, when the executive told the company, “‘I’m not coming alone,’ and asked for the same medical benefits and recognition for his spouse that he received in Belgium. The company refused.”³² Activists nevertheless demanded that the corporation take an active role within US society in extending the benefits to its US employees, a small fraction of their overall workforce.³³ Yet the company signalled that it was willing to pass on even those they deemed “most talented” to uphold the regional status quo of traditional marriage and heterosexuality, in much the same way that boosters refused to welcome companies that threatened to imperil the legacy of segregation and anti-unionism in past decades.

ExxonMobil’s argument that it was for the state to decide, not the corporation, was continually mobilised in the period from 1999 to 2015. Writing in 2004, Nicole Raeburn noted that “the company told the HRC that the only reason it has any written non-discrimination policy at all is to retain eligibility for federal government contracts.”³⁴ When a board member asked the company’s infamously abrasive chairman Lee Raymond, why he did not just make a simple statement to remove the pressure from activists, he declined, stating “Well, it’s not required by law.” Steve Coll reports that the conversation continued among the executives: “‘But it’s a freebie,’ the director persisted, speaking later to one of Raymond’s lieutenants. The executive retorted: ‘What’s next? Polygamy?’”³⁵ Hence a wider anti-diversity culture was

³² James B. Stewart, “Exxon Defies Calls to Add Gays to Anti-Bias Policy.”

³³ Steve Coll, *Private Empire*, p.41.

³⁴ Nicole C. Raeburn, *Changing Corporate America from Inside Out*, p.130.

³⁵ Steve Coll, *Private Empire*, p.38.

present at Exxon even though more direct forms of homophobic discrimination were not. The unwillingness of Raymond to consider amending the non-discrimination protections would later be echoed by his successor, Rex Tillerson, who argued that the Defense of Marriage Act (DOMA) inhibited any action on the part of corporations to extend benefits to employees' same-sex partners. Such an argument made little sense to the activists or to ExxonMobil's competitors who extended benefits precisely because lesbian and gay workers could not access the privileges of marriage at this time. Raeburn argued that "ExxonMobil's intransigence is especially perplexing given the policies of its competitors: Sunoco, Texaco, Atlantic Richfield, BP Amoco, Chevron, and Shell all prohibit antigay discrimination, and the latter three also provide equitable benefits." Further, she noted, "Shell and BP have both submitted testimony or letters to Congress urging passage of the Employment Non-discrimination Act."³⁶ ExxonMobil provides a unique case study because it held out the longest. Arguably this was because of its own internal culture which mimicked the wider arguments of Sunbelt boosters, some of whom would have worked to bring the company to the region in the 1980s.

Perhaps even more perplexing was the willingness of the company to pass the buck to the federal government. Coll notes that Lee Raymond "considered himself unabashedly to be a 'free-market capitalist' and resisted government intervention and regulation instinctively; Dallas suited him"³⁷ Yet both he and his subordinates, including Tillerson, continually argued that it would only be when the federal government intervened on behalf of lesbian, gay, bisexual, and transgender workers that the company would amend its policies. Such an argument may have been perplexing to outside activists and commentators, but the broader context of the Bush Administration's increasingly activist stance in defence of traditional marriage in the wake of the *Lawrence v. Texas* decision, and the Administration's commitment to the profits of the oil sector, signalled to intransigent executives like Raymond

³⁶ Nicole C. Raeburn, *Changing Corporate America from Inside Out*, p.131.

³⁷ Steve Coll, *Private Empire*, p.38.

and Tillerson that such an intervention would not be forthcoming. As a result, the executives could continue to deflect activist pressure to the federal government with the understanding that demands were unlikely to be heard.

Backlash

At the same time that Lee Raymond was suggesting that gay and lesbian activists should focus upon changing wider society and law, battles at other corporations signalled a broader backlash against employment rights. Whereas the groups including the HRC and NYCERS had been consistently successful in winning protections and benefits within the corporate sphere, in the early 2000s they witnessed the instigation of conservative pressure against them. Nicole Raeburn notes that the early-2000s saw the development of “antigay shareholder activism.” This became notable at corporations including AT&T and Boeing, whose long history of supporting gay and lesbian workers was challenged by shareholder proposals to repeal nondiscrimination policies and domestic partner benefits. Raeburn recalled: “In May 2001, marking a first in the history of shareholder activism, AT&T stockholders were faced with a proposal to remove sexual orientation from the corporation’s nondiscrimination policy.” The resolution was successfully defeated when the company’s employee network united with the board of directors to argue against it. However, the attempt demonstrated that push-back against the roll-out of protections within the corporate sphere was growing.³⁸

Even as the oil industry received increased attention by corporate gay and lesbian activists, other companies in the sector followed the recalcitrance of ExxonMobil by scrapping protections. When Conoco and Phillips Petroleum merged in August 2002 to create the third largest oil company behind ExxonMobil and ChevronTexaco, rights were again rescinded. Whereas Conoco included sexual orientation in its anti-discrimination policy, Phillips Petroleum did not, and when the two merged the language disappeared

³⁸ Nicole C. Raeburn, *Changing Corporate America from Inside Out*, p.131.

entirely. In defending the policy, ConocoPhillips reiterated the reasoning used by ExxonMobil that they were following federal policies that did not protect sexual minorities. A ConocoPhillips spokesperson stated that: "There are no plans to change the policy unless the federal law changes." Given that the Bush Administration appeared to have no intentions to challenge DOMA nor institute non-discrimination measures, oil executives were assured that they need not guarantee protections. The HRC's Kim Mills argued, "At a time when more and more companies are demonstrating how much they value the diversity of their employees, ConocoPhillips has delivered a slap in the face to its lesbian and gay workers." The incident further demonstrated the need to win federal protections rather than within individual corporations, which could change policy at any moment.³⁹

Yet just one week later, ConocoPhillips U-turned on the protections. In a move that points to the shifting power of corporate gay and lesbian activists, and to the saliency of their arguments around profit and moral responsibility at times, the company announced that "ConocoPhillips is and always has been deeply committed to fair and nondiscriminatory treatment for all employees." Further they stated that: "The management committee has amended (effective immediately) the company's EEO policy to include the term 'sexual orientation' to more accurately reflect this commitment."⁴⁰ The HRC claimed victory as they could demonstrate that their strategy of shaming corporations through public pressure was successful. "We applaud ConocoPhillips for acting responsibly to meet the needs of its diverse work force," the HRC's Elizabeth Birch told the press. "There are a lot of gay, lesbian and bisexual ConocoPhillips employees who will surely feel better about going to work today knowing they have the full support of management." Yet these voices were absent from the debate which emerged in the week in which the company had rescinded its policy, perhaps concerned to make themselves known as their jobs were now threatened. Instead,

³⁹ "US oil company merger loses anti- gay discrimination policy", *gay.com*, February 7, 2003 in Discrimination - Employment 2000-2003, ONE Subject File collection, Coll2012-001, ONE.

⁴⁰ "ConocoPhillips amends non- discrimination policy to include sexual orientation", *gay.com*, February 12, 2003 in Discrimination - Employment 2000-2003, ONE Subject File collection, Coll2012-001, ONE.

ConocoPhillips relented to the public pressure placed upon it by the HRC and others demonstrating that this form of activism could bring success in the oil industry. Birch further stated that: “ConocoPhillips has done the right thing by joining many leading corporations in the petroleum industry that have implemented fair non-discrimination policies.” In doing so she returned gay and lesbian attention to shaming ExxonMobil for its continued exclusion, now buoyed that companies could be convinced to shift course.⁴¹

In her study of gay and lesbian corporate activism, Nicole Raeburn notes that Perot Systems Corporation was the only other company to have rescinded equitable benefits before Exxon did so with Mobil.⁴² This was not due to a merger but rather to H. Ross Perot’s own leadership. The benefits had been installed while he was on the presidential campaign trail in 1996, and when he returned to the company he rescinded them. This was the first time benefits were removed.⁴³ Interesting for this study is the fact that all three of these companies, Perot Systems, ExxonMobil and ConocoPhillips are based in Texas.⁴⁴ As such, the politics and culture of Sunbelt conservatism arguably continued to shape corporate responses to gay and lesbian rights, as they had done previously in Houston in 1985 and Williamson County in 1993. Yet, until 2015 when ExxonMobil finally shifted course in response to the federal government’s policies, it remained the only company ever to have permanently rescinded nondiscrimination protections.⁴⁵

Bush and Lawrence

Gay and lesbian activists looked to transform the oil industry at an unfortunate moment that coincided with emergence of George W. Bush as President. A keen supporter

⁴¹ Ibid.

⁴² Nicole C. Raeburn, *Changing Corporate America from Inside Out*, p.130.

⁴³ Ibid. p.170.

⁴⁴ Ibid. p.258.

⁴⁵ Antonia Juhasz, “What’s Wrong With Exxon?”

of the oil industry, Bush was a born-again Christian who expressed contradictory and complicated views on rights for gays and lesbians during the 2000 election campaign. The tightly contested election was ultimately decided by the Supreme Court, but the role of the oil industry was evident. Antonia Juhasz notes that in 2000, “the oil industry, including Exxon Mobil, spent more money than on any previous election to get fellow oilmen Bush and Cheney into office.”⁴⁶ Such connections solidified the reach and power of the oil industry, and especially ExxonMobil. This was also an exceptional moment for the oil industry in the United States. Juhasz highlighted this fact: “The Bush Administration itself represents the first time in history that the president, vice president, and secretary of state are all former energy company officials. In fact, the only other U.S. president to come from the oil and gas industry was Bush’s father.”⁴⁷ As the Bush Administration remade the world after the 9/11 attacks, oil companies were to play a major role. “The Bush years have been a record-breaking bonanza for the oil industry,” Juhasz recalled, “Oil profits were so high in 2005, that the top three companies alone (ExxonMobil, Chevron, and ConocoPhillips) earned nearly \$64 billion between them, more than half of which went to Texas-based ExxonMobil, which recorded the single most profitable year of any corporation in world history in both 2004 and 2005.”⁴⁸

Business support for Bush and Cheney, especially from within the Sunbelt, was rewarded in a number of ways. Nelson Lichtenstein has detailed how the Bush Administration heralded a new era of increased deregulation in the workplace while effectively stalling minimum wage increases. Meg Jacobs has also demonstrated how Bush immediately used executive power to further the interests of energy extraction. As such, it is telling that ExxonMobil would remain the most steadfast holdout against non-discrimination and domestic partner benefits throughout Bush’s presidency and towards the end of

⁴⁶ Antonia Juhasz, “The United States of Exxon.”

⁴⁷ Antonia Juhasz, *The Bush Agenda: Invading the World, One Economy at a Time* (New York: HarperCollins, 2006) p.6.

⁴⁸ Ibid.

Obama's. ExxonMobil executives could rely upon an argument that the government should intervene first because they knew that under Bush it would not challenge the status quo. In fact, Bush went out of his way to amend the constitution to uphold second-class citizenship for sexual minorities through bars on same-sex marriage.⁴⁹

The George W. Bush era was marked by a shifting terrain in the legality of same-sex rights in the United States. Anti-sodomy laws were finally ruled unconstitutional by the Supreme Court in *Lawrence v. Texas* in 2003. This spurred new claims to marriage equality, which became a priority over workplace protections for LGBT activists. During the campaign for the presidency, there were signs that Bush would represent a more inclusive Republican Party in terms of welcoming sexual minorities. Analysts saw this as part of creating a tone of tolerance due to the shift in the corporate sphere. One conservative magazine argued that this trend would only grow as more corporations voiced their uneasiness with homophobic rhetoric. "It's the lobbyists, corporations and big donors who are uncomfortable with culture-war rhetoric and anti-gay themes," wrote a columnist for *The Weekly Standard*, "as their donation-based influence continues to grow, anti-gay themes will abate."⁵⁰ Mary Cheney, the daughter of Bush's running mate, Dick Cheney, was a lesbian, conservative consultant who spent much of the 1990s working with major corporations to make their image more palatable to the "gay and lesbian market." Nevertheless, *The Wall Street Journal* noted that "the 2000 GOP platform retains anti-gay language opposing gay marriages and civil-rights protections based on sexual preference. Moreover, it declares that 'homosexuality is incompatible with military service.'" The 2000 election also marked the first time that an openly gay Republican was invited to address the convention. Rep. Jim Kolbe of Arizona gave a speech on trade. His reception further demonstrated the tensions among

⁴⁹ Nelson Lichtenstein, "Ideology and Interest on the Social Policy Home Front," pp.169-198; and: Meg Jacobs, "Wreaking Havoc from Within: George W. Bush's Energy Policy in Historical Perspective," pp.139-168 in Julian Zelizer (ed.) *The Presidency of George W. Bush: A First Historical Assessment* (Princeton: Princeton University Press, 2010).

⁵⁰ Kemba J Dunham and Rachel Emma Silverman, "Cheney's Daughter Sparks Talk Of Corporate Strides in Gay Rights".

conservatives as to their approach to gay and lesbian rights. *The Wall Street Journal* reported that “several of Mr. Bush's home-state delegates in the front rows doffed their cowboy hats and bowed their heads in silent prayers of protest.”⁵¹ As activists entered a new millennium with a new administration in the White House, it seemed as though the battlegrounds would remain the same. Key Sunbelt business interests would continue to be targeted to support gay and lesbian rights, and this pressure would then manifest itself in further pressure upon the government. The Sunbelt remained a battleground as Republicans continued to appraise their priorities with regards to free market and family values conservatism.

The ruling by the Supreme Court to legalise sodomy in 2003 opened the door for activists to make further demands for workplace rights. Yet while these demands were certainly mobilised, the demand for marriage equality would receive greater attention and priority as activists responded to Bush and other Republican efforts to amend the constitution. Kevin Kruse notes that Bush stood on a platform of “compassionate conservatism”, and Edward Ashbee characterised the Bush Administration’s approach to gay and lesbian rights as a “conciliatory course.” Yet both note that such moderation by the administration was ended by the Supreme Court’s decision to rule anti-sodomy laws unconstitutional in *Lawrence v. Texas* in June 2003, as conservatives now saw the institution of marriage threatened.⁵² Justice Antonin Scalia vocalised such concern for the Defense of Marriage Act (DOMA) in his dissent in the *Lawrence* ruling:

What justification could there possibly be for denying the benefits of marriage to homosexual couples exercising “[t]he liberty protected by the Constitution”... Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry. This case “does not involve” the issue of homosexual marriage only if one

⁵¹ Ibid.

⁵² Kevin M. Kruse, “Compassionate Conservatism: Religion in the Age of George W. Bush” Julian Zelizer (ed.) *The Presidency of George W. Bush: A First Historical Assessment* (Princeton: Princeton University Press, 2010) pp.227-251; and: Edward Ashbee, *The Bush Administration, Sex and the Moral Agenda*, (Manchester: Manchester University Press, 2013) p.81.

entertains the belief that principle and logic have nothing to do with the decisions of this Court.⁵³

In so arguing, Scalia established marriage equality as the next major battleground for sexual dissidence in the United States. Over the course of his administration, Bush would seek to solidify the DOMA's definition of marriage as between one man and one woman. In the wake of the *Lawrence* decision, every Sunbelt state (except New Mexico) passed constitutional amendments banning gay marriage and civil unions, including Texas. At one point, Bush considered an attempt to add an amendment to the constitution to that effect in response to individual states beginning to add marriage equality or alternatives such as civil partnerships. This was dropped following the 2004 election with the understanding that the threat of a Federal Marriage Amendment (FMA) could be mobilised in Congress should the Supreme Court rule DOMA unconstitutional.⁵⁴ Such activism on the part of the president and other conservatives who contemplated this offensive in the wake of the legalisation of sodomy actually helped to propel claims for same-sex marriage to the centre of LGBT activism for the next decade. While Don't Ask, Don't Tell (DADT) and DOMA remained in place, and while there continued to be no federal protections against employment discrimination, activists in groups such as the HRC continued to prioritise winning marriage equality over these other issues.⁵⁵

Nevertheless, the victory at Cracker Barrel and the hold out from ExxonMobil ensured that workplace issues would remain newsworthy and continued to galvanise activism. In the early 2000s ExxonMobil was certainly not the sole focus of this shareholder activism. At the same time that NYCERS and the HRC were proposing shareholder motions at ExxonMobil they also targeted "American Electric Power, El Paso Corporation, Reliant

⁵³ Scalia, J., dissenting, *Lawrence V. Texas* (02-102,) 539 U.S. 558 (2003), Supreme Court of the United States.

⁵⁴ See: Edward Ashbee, *The Bush Administration, Sex and the Moral Agenda*, pp.86-97.

⁵⁵ *Ibid*, and Kevin M. Kruse, "Compassionate Conservatism."

Energy, JCPenney Company Inc., TXU Corporation, Georgia Pacific, and Ingram Micro.”⁵⁶

Yet the sheer scale of ExxonMobil in terms of company size, market share and political influence, as well as its constant refusal to even consider adopting the resolution, made it a primary target for the corporate activists. The fact that many of those other companies listed included those headquartered in the South points to the ongoing tensions around workplace homophobia in Sunbelt industries during the early 2000s in which little advancement was made concerning gay and lesbian rights at work.

Continued Intransigence

ExxonMobil continued to hold out against including sexuality as a protected characteristic in its non-discrimination statement. Employment non-discrimination concerns were derided at the shareholders meeting in May 2003. The meeting was particularly fractious due to a number of environmental protection proposals that were also up for discussion. As the HRC and others sought a more secure seat at the corporate table for gay and lesbian executives and employees, other activists were seeking to protect the planet from Exxon’s extractive belligerency. Yet both groups of shareholders and activists were outnumbered by booster protestors who demonstrated their support for the company and what they understood to be American values of free enterprise. “Exxon Mobil supporter, Janelle Shepard of Weatherford, stood with the pro-Exxon Mobil side of the crowd and said, ‘I’m for free enterprise.’ Her fellow Exxon Mobil supporters sang God Bless America.” Additionally, another pro-ExxonMobil demonstrator, “Michael Salzan, dressed from head to toe in a Revolutionary War military uniform. ‘I’m here to tell you that free enterprise exists even in Austin,’ he said.”⁵⁷ As such pro-Exxon demonstrators argued that shareholders and other activists, including Greenpeace, should have no effect over the corporation’s non-

⁵⁶ "New move to force ExxonMobile [sic] to recognize gay workers", *365gay.com*, January 11, 2003 in Discrimination - Employment 2000-2003, ONE Subject File collection, Coll2012-001, ONE.

⁵⁷ "Exxon Mobil boosters outnumber protesters", *Dallas Star-Telegram*, May 29, 2003.

discrimination or environmental policies. The *Dallas Star-Telegram* reported that: “The spirit of the 1,000 in attendance was summed up by David Lake, a shareholder from Arlington, Va., who responded to criticism of the Exxon Mobil board. ‘If you don’t like the corporation, then take your money and get out of the stock,’ Lake said to loud cheers and applause.”⁵⁸

Lee Raymond continued to ignore demands from shareholders to debate them over sexual orientation non-discrimination, and separately over environmental concerns. However, the HRC resolution did begin to gain some traction. One newspaper reported that “the biggest gain among social activist resolutions was won by a proposal for the company to add wording in its hiring policies to prohibit discrimination on the basis of sexual orientation.” Yet this was still a minimal increase, attracting 27.1 percent of the votes, a slight improvement upon 23.9 percent the previous year. Activists suggested that they understood the company may hold out for much longer but nevertheless ramped up pressure: “‘We’ll probably never get them as long as Lee Raymond is in office,’ said Erin Moore of Dallas, a member of the Human Rights Campaign who demonstrated.”⁵⁹

In response to the 2003 shareholder defeat, the HRC argued that “ExxonMobil’s continued resistance to changing its policy leaves it increasingly isolated in corporate America... Exxon is one of only 10 companies in the Fortune 100, and one of only three companies in the Fortune 50, without such a policy.” Further Kim Mills pitched the HRC’s arguments around productivity and profitability: “Exxon Mobil [is] needlessly restricting the pool of potential workers.”⁶⁰ Yet for Exxon these kinds of demands may have been seen as unconvincing. Of course, poaching from other companies was a concern. However, their sheer size meant they could afford to hold out against any threat of boycott or campaign, and similarly they could rely upon the persistence of the closet by suggesting that they permit gay men and lesbian women in employment without providing the concrete

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ “ExxonMobil again rejects gays”, *365gay.com*, 5/30/2003 in Discrimination - Employment 2000-2003, ONE Subject File collection, Coll2012-001, ONE.

protections to allow those employees space to come out and claim rights. ExxonMobil's internal corporate culture was also linked to its unwillingness to listen to anyone outside of the corporation. It was not only gay and lesbian and environmental activists to whom they refused to listen: under Raymond it was other corporations and outside analysts too. Neva Goodwin Rockefeller, "a descendent of the founding family who became a critic of modern Exxon management, acknowledged that the company enjoyed 'a strong corporate culture.'" However, she continued, "unfortunately, it includes a lack of interest in listening to outsiders, an assumption that they know the answers."⁶¹ As such, it was no surprise that arguments which contrasted Exxon to other corporations' practices around the question of non-discrimination, and domestic partner benefits, were ignored.

The battle over rights at ExxonMobil continued with little breakthrough over the next decade as groups of shareholders chipped away at the majority against them. The new ExxonMobil chairman, Rex Tillerson, who succeeded Lee Raymond in 2006, appeared to offer little more than his predecessor. However, political shifts in 2008 and internal discussions at ExxonMobil seemed to suggest a more politically opportune moment to push for workplace rights. The election of America's first black president, Barack Obama, also seemed to mark a sea-change from the traditional conservative politics of his predecessor, George W. Bush. However, the fact that Obama's presidency would later be marked as the most progressive in terms of gay and lesbian rights was not evident from the outset. Marriage continued to remain a priority for gay and lesbian activists. Obama's "change we can believe in" signified little in the way of actual rights for sexual minorities early on. On the campaign trail Obama "robo-called" voters in California, imploring them to support Proposition 8 banning same-sex marriage in the state even as LGBT activists mobilised support for him across the country.⁶²

⁶¹ Steve Coll, *Private Empire*, p.40.

⁶² Cleve Jones, *When We Rise: My Life in the Movement* (London: Constable, 2017) p. 265.

The campaign at ExxonMobil took a number of contradictory turns during 2008. On the one hand, ExxonMobil approved the formation of an LGBT employees group, Pride, in August. This provided the possibility for employees to find and support each other as well as to organise for rights.⁶³ Within a year, however, the corporation repeated its attack on lesbian and gay rights in 2009 when it again removed protections during a merger when they acquired XTO Energy.⁶⁴ Such actions signified to sexual minorities both within and outside the corporation that little had changed since the merger with Mobil a decade earlier had first spurred on attempts to change corporate policy. XTO employees who spoke to Antonia Juhasz (under condition of anonymity) characterised the merger in cultural terms: “I feel that [Exxon is like that] racist old aunt, that racist grandfather figure, that person completely out of touch with the times. I don’t see the upside to the company for continuing [the discriminatory policies]. Someone must think there’s an upside.” Another told the journalist that the merger created an environment of fear and paranoia. “He believes the policy creates a chilling effect, keeping LGBT employees from speaking out within the company,” writes Juhasz, “It also applies to speaking with the press. Fred explains, “There is nothing written about Exxon that they are not aware of.”⁶⁵

Under the chairmanship of Rex Tillerson, ExxonMobil also re-affirmed its opposition to rights and domestic partner benefits by claiming that DOMA disallowed them from doing so. In mobilising this argument, the company again deflected responsibility onto the federal government and the Supreme Court. Yet, as demonstrated in the previous chapter, numerous organisations and companies, including higher education establishments like Duke University, instigated domestic partner benefits and non-discrimination protections precisely because same-sex partners could not legally marry. However, in arguing the opposite, ExxonMobil continued to demonstrate that it was willing to buck the trend of

⁶³ James B. Stewart, “Exxon Lumbers Along to Catch Up With Gay Rights.”

⁶⁴ James B. Stewart, “Exxon Defies Calls to Add Gays to Anti-Bias Policy.”

⁶⁵ Antonia Juhasz, “What’s Wrong With Exxon?”

corporate support for sexual minorities. The merger with XTO also impacted the Texas community beyond LGBT employees at ExxonMobil or XTO. The merger marked the end of funding that XTO had provided to the Fort Worth AIDS Outreach Center for years. “Exxon is much more skeptical of writing a check to an AIDS organization,” said Randall Gentry, a Center associate.⁶⁶

Tillerson’s argument that the company did not need to provide protections or benefits because the government did not is illuminating if not surprising. As detailed in Chapter Two with regards to boosters in Houston, oil executives and other businessmen actively campaigned against gay rights on the basis that it would foster further government intervention in the industry. In short, they did not want to be told what to do. Yet here Tillerson seemed almost to goad the government and the courts to intervene on behalf of gay and lesbian employees so that the company did not need to take a stance of its own. While Lee Raymond could rely upon such an argument to bear little fruit because the Bush Presidency was firmly opposed to same-sex marriage, the terrain rapidly shifted under Obama’s administration. Obama made promises that federal contractors who discriminated against LGBT people would not receive government contracts. ExxonMobil was one of the largest recipients of such contracts, and therefore any shift from the Executive Branch on this issue would force ExxonMobil to adjust its stance.

In June 2012 the staff of the Dallas Resource Center, an LGBT organisation, met with ExxonMobil human resources officials to discuss how other Texas companies had successfully integrated sexual orientation into non-discrimination clauses. Among those present was Paul von Wupperfeld, previously a Log Cabin Republican, who had battled conservative Republicans in 1993 to secure support for Apple Computer Inc. “At the meeting, von Wupperfeld said that for Texas Instruments, a ‘traditional, conservative,’ Dallas-Fort Worth-based company, it was ‘amazingly easy’ to implement these policies. Moreover, ‘within our corporate culture there has been far greater lasting blowback from when we

⁶⁶ Ibid.

stopped giving away free donuts in the cafeteria.” Although optimistic following the meeting, the advocates noted that the company ignored them and took no action.⁶⁷

Battles at ExxonMobil intensified again in 2013 as the Supreme Court debated the constitutionality of the Defense of Marriage Act (DOMA). At the same time, ExxonMobil was accused of discriminating against prospective LGBT employees when an advocacy group responded to a job advertisement in Illinois. “Two fictitious job candidates with nearly identical resumes, both vying for an administrative assistant position, one with better grades and a history of volunteering for a gay rights group.” The *Los Angeles Times* reported that at “Exxon Mobil Corp., hiring managers allegedly chased after the less-qualified prospect while ignoring the applicant linked to the lesbian, gay, bisexual and transgender community.” This supported a 2011 Harvard University study which “found that LGBT candidates were 40% less likely than their heterosexual peers to land job interviews.”⁶⁸ ExxonMobil was further called out on its homophobic stances by the HRC who gave the corporation a negative rating on its Corporate Equality Index. “Exxon Mobil is in a class by itself, and I don’t mean that in a positive sense,’ said Deena Fidas, H.R.C.’s deputy director for the workplace project.”⁶⁹ The *New York Times* noted that the company was the only Fortune 1000 corporation to receive a negative score (-25 out of 100) for “engaging in activities that undermine L.G.B.T. equality.”⁷⁰ “Exxon is just such a rogue outfit,’ Congressman Alan Lowenthal of California, a cosponsor of the Employment Non-Discrimination Act and the sponsor of an amendment barring Exxon from winning future government oil and gas leases until it changes its LGBT policies,” told Antonia Juhasz: “You don’t have to be progressive just to join the rest of the human race and not discriminate. I don’t get it.”⁷¹ While one the

⁶⁷ Ibid.

⁶⁸ “Exxon is accused of bias against LGBT job seekers”, *Los Angeles Times*, May 23, 2013.

⁶⁹ James B. Stewart, “Exxon Defies Calls to Add Gays to Anti-Bias Policy.”

⁷⁰ Ibid.

⁷¹ Antonia Juhasz, “What’s Wrong With Exxon?”

one hand ExxonMobil's stance seems bizarrely intransigent, on the other it also demonstrates structural issues with demanding rights from major corporations who may be willing to ignore such demands until their profit margin is seriously hit. As will be highlighted in the Epilogue, there are also issues with the way the HRC's Corporate Equality Index is measured.

Alongside criticisms from LGBT organisations, ExxonMobil was also attacked for both its environmental policies, and its anti-union stances. Antonia Juhasz reported that the US Department of Labor "cited the company for numerous safety violations" when two workers died and ten others were injured at ExxonMobil's Texas refinery in 2013. Ricky Brooks, president of the United Steelworkers local representing workers at Exxon Mobil's facility in nearby Baytown, spoke to Juhasz.⁷² In a provocative interview Brooks noted the ways in which the corporation seemed unstoppable. "The company is vehemently anti-union, says Brooks, and workers, whether unionized or not, are made to fear for their jobs if they speak out." Juhasz paraphrased his argument in a later article: "Size and influence, he argues, allow Exxon Mobil to get away with what others cannot. 'Exxon only changes when forced to,' he says, 'and few people, or governments for that matter, are in a position to force them.'"⁷³ Such sentiments from those pushing for broad workplace protections within the organisation suggested that little advancement should be expected over the issue of sexual orientation non-discrimination either.

Yet, while ExxonMobil stood fast against extending benefits to gay and lesbian workers, it did also host a gay and lesbian workers association. Nicole Raeburn and others, who have examined the shift in corporate cultures from the 1990s onwards, have noted it was these groups who had the most impact upon a corporation's decision to extend benefits,

⁷² Antonia Juhasz, "The United States of Exxon."

⁷³ Ibid.

as was the case at AT&T.⁷⁴ By 2013 ExxonMobil's employee group, Pride, boasted eight chapters and over 700 members "out of more than 83,000 employees worldwide."⁷⁵ Tom Allen, who had recently retired from ExxonMobil, told a *New York Times* reporter that: "As an employee there every day, I never experienced anything close to discrimination based on sexual orientation or anything else, for that matter... The only complaints I heard were about medical benefits." The report also noted that ExxonMobil Pride members attended the "Out and Equal" workplace meeting when it held its annual convention in Dallas in 2011, providing further opportunities to network with employees in other corporations with more successful campaigns for rights and benefits.⁷⁶ However, the holdout continued to have a chilling effect upon those who worked there. Allen told reporters that:

Inside the company we anxiously watched that shareholder vote year after year. We kept hoping to see it turn to a yes vote, and we felt it was trending in the right direction. We never understood the company's position. All their major competitors have taken this step. That's what I don't get. They are so driven by what happens at the competition, and wanting to stay competitive, except for this. It's got to be somebody somewhere is blocking it. I can't imagine who that is.⁷⁷

As detailed above, ExxonMobil's profitability made such claims to competition and productivity easy to ignore. Yet the HRC and others continued to prioritise arguments around productivity and profitability into the second decade of the twenty-first century. New York State Comptroller Thomas P. DiNapoli, on behalf of the New York State Employees Retirement System, told the *New York Times* that "the company runs the risk of restricting its ability to attract and maintain top talent. Exxon Mobil is sending a message that applicants and employees can be discriminated against on the basis of non-job-related criteria. It just doesn't make sense from a bottom-line standpoint." In 2013, when NYCERS tried for the

⁷⁴ See: Nicole C. Raeburn, *Changing Corporate America from Inside Out*. See also: Miriam Frank, *Out in the Union*; and, Katherine Turk, "'Our Militancy is in Our Openness': Gay Employment Rights Activism in California and the Question of Sexual Orientation in Sex Equality Law," in *Law and History Review* 31 (May 2013), pp.423-469.

⁷⁵ James B. Stewart, "Exxon Lumbers Along to Catch Up With Gay Rights."

⁷⁶ James B. Stewart, "Exxon Defies Calls to Add Gays to Anti-Bias Policy."

⁷⁷ *Ibid.*

fourteenth year in a row to change the policy, the company argued that they would not change because the Defense of Marriage Act (DOMA) held that same-sex relationships were incompatible with the legal definition of marriage. This reasoning demonstrates the vicious circularity that that legislation had on employment rights from the 1990s until it was ruled unconstitutional. As demonstrated earlier in this thesis, activists turned their attention to winning marriage rights in the mid-1990s in the face of the AIDS crisis and their unsuccessful struggles to pass ENDA. The impact of DOMA reached far beyond individual relationships by shaping corporate responses to rights claims in the early twenty-first century. As demonstrated by ExxonMobil, DOMA provided a compelling reason for conservative corporations to deny protections and benefits to their employees. In doing so it upheld second class citizenship in the workplace. “I don’t think they’ll ever back down,’ Tom Allen told the *New York Times*, “Not until they’re forced to. I think it’s just a cultural thing.”⁷⁸

For their part, ExxonMobil’s spokespeople continued to argue to the press that non-discrimination protections were unnecessary and that DOMA prevented them from extending spousal benefits. Claiming that the company was a meritocracy and that it was the target of a “political campaign” by a minority of LGBT activists, Ken Cohen, vice president for public affairs wrote: “Let us be absolutely clear: Exxon does not discriminate, will not discriminate, and has not discriminated against members of the L.G.B.T. community. Period.”⁷⁹ Unlike other Sunbelt corporations like Cracker Barrel, ExxonMobil sought to allay fears that it was homophobic by making such a statement, However, the simple assurances that sexual minority employees could trust the corporation gave little comfort to those without federal protections or the extended benefits. The corporate closet was thus upheld at this moment as ExxonMobil accepted that it had LGBT workers but did not provide them with concrete protections that would have allowed them to come out.

⁷⁸ Ibid.

⁷⁹ Quoted in James B. Stewart, “Exxon Lumbers Along to Catch Up With Gay Rights.”

ExxonMobil and Marriage Inequality

The first sign that ExxonMobil would be willing to shift its long recalcitrance to LGBT rights came in light of the Supreme Court ruling the Defense of Marriage Act (DOMA) was unconstitutional in its 2013, *United States v. Windsor* decision. The repeal of DOMA was a clear victory for the activists who had prioritised demands around marriage over the previous two decades. James Stewart, writing in the *New York Times*, notes that: “Progress [at ExxonMobil] has been incremental, but it seems to have accelerated” since the ruling. Indeed, Stephen Engel notes that “Exxon asserted that its hand was forced by the Supreme Court’s ruling in *United States v. Windsor*, which compelled the federal government to recognize same-sex marriages and thereby offer same-sex couples similar rights and benefits where they were already recognized by state governments.”⁸⁰ In October 2013, the company extended health insurance benefits to married same-sex employees before finally extending domestic partner benefits to employees with same-sex spouses in the United States in September 2014, “and noted that it did the same in 30 countries where same-sex marriages were recognized.” The company also extended non-discrimination protections on the basis of sexual orientation or gender identity in January 2015, shortly after President Obama signed similar executive orders covering federal contractors.⁸¹ The consistent argument from consecutive ExxonMobil CEOs Lee Raymond and Rex Tillerson that the company would only provide such protections and benefits in countries where they were legally obliged to do so demonstrates further the need for activists to move beyond individual corporations to win protections both federally and in localities. It also highlights the fact that ExxonMobil was building upon longer traditions of southern and Sunbelt corporate executives who passed responsibility for unpopular policies onto the federal government. During the civil rights movement of the 1950s and 1960s for instance, Sunbelt businesses,

⁸⁰ Stephen Engel, *Fragmented Citizens*, p.150.

⁸¹ James B. Stewart, “Exxon Lingers Along to Catch Up With Gay Rights”; and: Tara Siegal Bernard, “Exxon to Extend Health Care to Married Same-Sex Couples,” *New York Times*, September 27, 2013.

often initially resistant to desegregation, later accepted it due its profitability and blamed the federal government when it provoked a backlash from racist whites, as Timothy Minchin and Gavin Wright have highlighted.⁸² This policy was consistent with ExxonMobil's stance that it would follow the federal government in terms of benefit provision for its workers.

Nevertheless, this stance still lagged behind other companies, some of which "went as far as paying for the taxes that gay employees had to pay on the value of their partner's [health insurance] coverage," something was no long necessary after the Defense of Marriage Act was ruled unconstitutional as the tax no longer applied to gay married couples.⁸³ The fact that some companies would go so far as to pay taxes levied upon same-sex couples demonstrates that corporate activists were clearly successful in winning the argument that corporations needed to provide extra benefits to LGBT employees to remain competitive.

Yet Stephen Engel and others have also posited that the real reason ExxonMobil shifted its policy was precisely because it was becoming costly in terms of providing bureaucracy to process the uneven provision of benefits throughout the country in the wake of the Windsor decision. The post-Windsor system created an administrative burden on companies to compute different tax codes and returns for the same employee. An article in the Society for Human Resource Management newsletter shortly after the Windsor decision highlighted some of these burdens: "In states that don't recognize same-sex marriages ("nonrecognition states"), employers are still expected to impute income spent on benefits provided to a same-sex spouse for state tax purposes, but not to do so for federal tax purposes." Conversely, "in states that do recognize same-sex marriages ("recognition states") employers no longer need to impute this income for either federal or state taxes, but would have to do so for unmarried domestic partners."⁸⁴ Dale Carpenter, a law professor at

⁸² Gavin Wright, "The Economics of the Civil Rights Revolution", p.387. See also: Timothy J. Minchin, "Federal Policy and the Racial Integration of Southern Industry, 1961–1980", pp.147–78.

⁸³ Tara Siegal Bernard, "Exxon to Extend Health Care to Married Same-Sex Couples."

⁸⁴ "The Future of Domestic Partner Benefits", *Society for Human Resource Management*, October 8, 2013. Available: <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/domestic-partner-benefits.aspx> (accessed: 20/05/2019).

the University of Minnesota wrote of the implications of Windsor upon companies like ExxonMobil: “Consider that some states now recognizing same-sex marriages, like California, do not have residency requirements for getting validly married under state law. A Texas couple can fly to San Francisco in the morning, get married in the afternoon, and be back home in time for the reception, with ERISA protections at the Texas jobs.”⁸⁵

For ExxonMobil, with its headquarters in the nonrecognition state of Texas but with employees situated across the country, this created a costly headache, one eased by recognising the need for nondiscrimination protections, and domestic partner benefits. The company said in a statement in September 2013 that it “will recognize all legal marriages for the purposes of eligibility in U.S. benefit plans to ensure consistency for employees across the country.”⁸⁶ Engel elaborates that “having a singular policy was far more economically rational than maintaining distinct policy regulations for different employees.”⁸⁷ So ExxonMobil did indeed shift their policy due to economics but not necessarily because bias was bad for business as the protestors argued in reference to boycotts. Instead it was bad for business because having separate systems for different-sex and same-sex couples was becoming cumbersome and costly within the US’s system of state and federal taxes.

On June 26, 2015 the Supreme Court put an end to this patchwork of marriage rights when it ruled in *Obergefell v. Hodges* that the right to marriage was constitutionally guaranteed for all same-sex couples across the United States. “Perhaps even more surprising than the Supreme Court’s historic ruling,” wrote James Stewart in the *Times*, was the sight of more than 125 ExxonMobil employees marching in the Houston Pride parade the day after the ruling: “They carried an Exxon banner and wore rainbow-hued Exxon T-shirts — all with the company’s approval.”⁸⁸ Yet the shift had little to do with the activism that

⁸⁵ Ibid.

⁸⁶ Tara Siegal Bernard, “Exxon to Extend Health Care to Married Same-Sex Couples.”

⁸⁷ Stephen Engel, *Fragmented Citizenship*, pp.150-151.

⁸⁸ James B. Stewart, “Exxon Lumbers Along to Catch Up With Gay Rights.”

surrounded the company, argues Stephen Engel. He notes in *Fragmented Citizens* that the company “rationalized the decision without any reference to equal treatment or response to employee, customer, or shareholder demand. It did not reference profit motive or other best business practice aims.” As such it continued to ignore any engagement with the HRC and other activists who had mobilised these arguments for decades. In contrast, Engel notes that the company claimed that “spousal eligibility in our U.S. benefit plans has been and continues to be governed by the federal definition of marriage and spouse.” In doing so ExxonMobil continued its decades long argument which “placed all responsibility for its move on the liberal move by the Court and the executive branch.”⁸⁹ What some saw as a moment of full equality and acceptance, however, others saw as a moment of exclusion. Sunbelt employers who had provided domestic partner benefits now sought ways to rescind them with the excuse that those partners should now marry to receive the full benefits of heteronormative society.⁹⁰

At the moment that ExxonMobil finally expanded its benefits to include LGBT workers, other corporations began to reconsider their provision of domestic partner benefits. Faced with increasing paperwork and the opportunity to cut costs, some employers used the excuse that same-sex couples could now rely on marriage to rescind domestic partner benefits. “Employers such as IBM, Delta Airlines and Verizon, had rescinded these benefits in states that had legalized same-sex marriages,” noted a 2015 article in *The Emory Wheel*, “with same-sex unions now legal across the nation, other employers may also be moving in this direction.”⁹¹ The Society of Human Resource Management offered guidance for those companies seeking to roll back domestic partner benefits: “If an employer does decide to alter or eliminate these benefits, it should do so with care. Even employees who do not take advantage of domestic partner programs could react negatively on behalf of their peers and

⁸⁹ Stephen Engel, *Fragmented Citizens*, p.150.

⁹⁰ Namrata Susan Verghese, “Same-Sex Partner Employee Benefits Spark Debate,” *The Emory Wheel*, September 8, 2015.

⁹¹ *Ibid.*

colleagues if these offerings are cut back or eliminated.”⁹² As the *Atlanta Journal-Constitution* warned its readers in 2015: “If you’re in a domestic partnership, you might consider putting a ring on it soon or face losing benefits. Employers around metro Atlanta are considering whether to phase out domestic partner benefits now that gay marriage is legal nationwide.”⁹³ This further demonstrates the dangers that are inherent in relying upon the private sector to protect minorities and provide benefits to them in lieu of achieving more substantial reform and acceptance.

The debate as to whether corporations could, or should, now remove access to domestic partner benefits emerged in both the public and private employers, and in many sectors. Emory University, a private employer, that had been in the vanguard of providing access to its workers in Georgia, contemplated removing them in 2015. In an email to student paper, *The Emory Wheel*, Vice President of Human Resources Peter Barnes wrote: “In light of the U.S. Supreme Court ruling allowing same-sex marriage, Emory University is reviewing its current policy.” This was immediately challenged by the university’s own law faculty. Professor Tim Holbrook argued that the university would open itself to a discrimination lawsuit should they remove the policy. Instead he argued that they should expand the definition to include partners of a different sex. “‘There likely are many people who are opposed to the institution of marriage for a host of reasons,’ Holbrook wrote. ‘Emory could consider expanding the definition of domestic partner benefits in this way to accommodate such couples.’” As noted in the chapter on higher education, university committees had suggested this in the first place at the beginning of the 1990s but these proposals were rejected due to fear of increased cost for the employer.⁹⁴ Similar to Holbrook, an Emory student and Pride Publicity member, Katya Miranda argued: “My main opinion on

⁹² “The Future of Domestic Partner Benefits”, *Society for Human Resource Management*, October 8, 2013.

⁹³ Leon Stafford, “Gay marriage puts domestic partner benefits in doubt,” *Atlanta-Journal Constitution*, July 16, 2015. Available: <https://www.ajc.com/business/gay-marriage-puts-domestic-partner-benefits-doubt/hEqeDOPKeBBpyAIQtz9M2O/> (Accessed 2 February 2019).

⁹⁴ Letter to Seth J. Persily from Nannerl O. Keohane, November 22, 1994 in AQUADuke Records.

this issue is that they shouldn't be forcing domestic partners to marry to get benefits just because they can do so legally,' she elaborates. 'They should make the program more uniform without invading the privacy of domestic partners.'"⁹⁵ Among the first to eliminate benefits because same-sex couples could now marry was the city of Decatur, a place where many Emory University workers live. In contrast, the city of Atlanta stated that they would retain them because they were offered to both couples of same and different sex.⁹⁶ Decatur's labour attorney recommended dropping the benefits for that exact reason: "The current domestic partner benefits policy could be subject to a discrimination claim if the domestic partner rights are only offered to same-sex partners."⁹⁷ Yet workers complained that they were now being forced into marriage to retain the same level of protections and benefits they had come to enjoy. "Your employer should not be in the business of setting your wedding date,' said Michael Bishop, who is in a domestic partnership." Bishop worked for AT&T who planned to retain the benefits because they offer them to both sets of couples.⁹⁸

The onus on marriage demonstrated the extent to which these benefits were to be restricted unless employees and their spouses bought into and participated in the historic construction of monogamous marriage as the threshold of benefits and welfare in the United States. As Elizabeth Pleck and Jennifer Klein, among others, have noted this system is inadequate and helps to foster inequality. Pleck points out that: "Law and policy offer far greater benefits to those who can furnish a wedding certificate."⁹⁹ This was especially true within the corporate sphere, where activists sought redress, first through domestic partner

⁹⁵ Namrata Susan Verghese, "Same-Sex Partner Employee Benefits Spark Debate," *The Emory Wheel*, September 8, 2015.

⁹⁶ *Ibid.*

⁹⁷ Leon Stafford, "Gay marriage puts domestic partner benefits in doubt," *Atlanta-Journal Constitution*, July 16, 2015.

⁹⁸ *Ibid.*

⁹⁹ Elizabeth Pleck, *Not Just Roommates*, p.239.

benefits, and second through access to marriage equality. However, as Pleck further argues, the focus upon marriage and domestic partner benefits brings only diminishing returns as employers constantly seek to pass costs onto employees and customers, and seek ever more profit for themselves. “While more employers than ever before offer these important benefits to cohabitators, other firms have been cutting pensions and contributions to health care premiums.”¹⁰⁰ Further, Pleck predicts that over time the gap between those with and without privileges will close but only because of the onslaught against workplace protections. “Regrettably, much of the equalization of entitlements will come not from greater access for unmarried couples to employer-provided health care but instead from cutting holes in the safety net the married currently enjoy.”¹⁰¹

The repeal of domestic partner benefits following the Supreme Court ruling that same-sex marriage was legal and constitutional demonstrates this point. Same-sex unmarried spouses remained second-class citizens next to their married colleagues. Yet this second-class citizenship has been one also experienced by unmarried heterosexual couples as well. The failure of the movement to extend domestic partner benefits to different-sex couples when they were first won meant they were easy to strip away later. The movement for marriage equality widened the gulf between those with and without privileges even further by uncritically supporting heteronormative, monogamous marriage. The willingness of major corporations, usually at the forefront of supporting LGBT rights, also demonstrated themselves adept at swiftly repealing partner benefits when they found compelling excuses to shore up profit.

Conclusion

The decades long fight at ExxonMobil demonstrates that victories for workplace protections and benefits remained at risk when tied to corporate capitalism. When mergers

¹⁰⁰ Ibid. p.240.

¹⁰¹ Ibid.

took place, protections were lost. This further demonstrated the need to constantly battle to retain the basic rights that had been won while fighting for further protections. The fact that ExxonMobil eventually did extend these rights when the Supreme Court ruled state bans on same-sex marriage unconstitutional highlighted the necessity of fighting on multiple fronts to secure workplace rights. Even the most recalcitrant of corporations demonstrated that they were willing to fall in line behind equality when mandated by the government. This further supports the notion that a more fruitful strategy could be found in winning federal protections for sexual minorities in the workplace, rather than focusing upon individual corporations, the dominant strategy of mainstream advocacy groups since the early 1990s. However, the possibilities of doing so have been greatly constrained by a partisan political system that has used LGBT rights as a political football throughout this period. Likewise the movement has also been limited by more embedded structures of a privatised welfare system which has pushed those minorities to make claims upon their employer rather than through the government. Similarly, tying workplace rights to marriage equality maintained a two-tier system between those who believed and supported the notion of heteronormative marriage, and those whose relationships fell outside of this monogamous structure. As the Obama era came to an end, one of the markers of his presidency was the exceptional rate in which gay and lesbian rights were advanced in eight years. It is certainly true that marriage equality advanced rapidly from the 2003 *Lawrence v. Texas* decision onwards. Yet fragmentation of citizenship has continued.

Activist attention upon profitability demonstrates one of the great dangers of relying upon individual organisations to mediate benefits and protections. If they are not required by law, not enshrined through union negotiation and solidified in contracts, they can be easily repealed or ignored when internal corporate cultures dictate or necessitate it. Exxon rescinded domestic partner benefits when it took over Mobil, and later in 2009 at XTO, because it could. No federal law required it to retain rights or expand its non-discrimination clause. Demands that it should expand benefits and rights on the basis that doing so would

cost little and make employees more productive appeared redundant to a corporation with a strong internal management culture that demanded constant loyalty and competition, and which enjoyed a position as one of the most profitable corporations on the planet. Raymond and Tillerson's arguments that the company would only shift if there was a legal argument seems surprising when considering the long history of activism by similar Sunbelt executives who sought to guard against any government intervention. Yet it made sense to ExxonMobil because they could ignore demands and threats of groups such as the HRC and its equality index.

Corporations may now be in general agreement that bias is bad for business, but they have demonstrated themselves willing to understand this only while the institution of marriage is upheld as the arena in which benefits and entitlements are controlled. The next, and final, section considers how the conditions which have shaped gay and lesbian experiences of the workplace in the Sunbelt have continued to inform national discourses during the Trump era. Sunbelt states and cities have continued to rebuff efforts to enshrine nondiscrimination protections in their localities. Displaying an intransigence similar to that of ExxonMobil in the private sphere, cities such as Houston, and states including North Carolina have continued to push back against the rights of sexual minorities and transgender people. LGBT employment rights across the country have remained tenuous, most notably in the Sunbelt region where one can still get married on a Sunday but be fired on a Monday for having done so.

Epilogue

Sexuality and Workplace Rights from Obama to Trump

In June 2019, a Cracker Barrel store in Tennessee took a stance against homophobia when it refused to allow pastor Grayson Fritts to stage an event in one of its stores. Fritts had previously called for lesbian, gay, bisexual and transgender (LGBT) people to be executed. In responding to calls by the Tennessee Democratic Party to ban Fritts, the company did so and released a statement noting that: “At Cracker Barrel, we work hard to foster a culture that is welcoming and inclusive — we have a zero-tolerance policy for discriminatory treatment or harassment of any sort.” Further, the statement continued: “Our corporate policy strictly prohibits any type of protest or public demonstration on our property or in our stores... We serve everyone who walks through our doors with genuine hospitality, not hate, and require all guests to do the same.”¹ In arguing against discrimination, specifically discrimination aimed at LGBT people, and in banning those who practice such hatred, the company demonstrated how far it had moved since the 1990s, when it only begrudgingly adopted a non-discrimination policy after years of grassroots and corporate activism. The moment was testament to the sit-ins, sip-ins, and lobbying by numerous groups. Both the anti-discrimination stance and the language banning protests at the stores are products of the grassroots and corporate activism that emerged at Cracker Barrel during the 1990s. The company can now be more easily pressured to bar homophobes from their stores because of its nondiscrimination policy. The most recent incident demonstrates the monumental shift that businesses in the South and Southwest have taken over the past half-century to realign their corporate values towards inclusivity and equality on the basis of sexuality.

Although it was probably the most notable, Cracker Barrel was not alone in its stance. Most other major corporations now mark “Pride Month” each June by selling rainbow

¹ “Cracker Barrel bans an anti-gay pastor from holding an event in one of its stores”, [CNN.com](https://edition.cnn.com/2019/06/19/us/cracker-barrel-anti-lgbtq-pastor-trnd/index.html), June 20, 2019. Available: <https://edition.cnn.com/2019/06/19/us/cracker-barrel-anti-lgbtq-pastor-trnd/index.html> (accessed 20/6/2019).

clothing and redesigning their logos in rainbow designs. While the dramatic shift in acceptance of sexual minorities at Cracker Barrel and other previously homophobic corporations is important, such changes have done little to improve working conditions for all workers, regardless of sexuality. The use of “at-will” employment practices to fire most gay and lesbian Cracker Barrel employees, including Jeffrey Sherrill, remains an option for employers in Sunbelt states today. This means a worker can be fired with no reason given at any point in their contract. Alongside Cracker Barrel, other major corporations have taken what can be described as “activist” stances against homophobia and transphobia in recent years, often in the Sunbelt. As the movement shifted its focus towards the workplace following the 2015 marriage ruling, conservatives sought to stem the progress of LGBT rights by claiming religious rights of their own. Unlike just a few decades ago, however, the majority of corporations and Sunbelt business elites now appear to support LGBT rights.

This epilogue examines two incidents that demonstrate the persistence of the major issues that LGBT workplace activists have contended with in the Sunbelt, by focussing on recent and successful attempts in Houston and North Carolina to roll back non-discrimination protections. In both instances, politicians used transphobic fears of men in women’s restrooms to undermine broad non-discrimination protections. In response, corporations threatened to boycott the areas and to withdraw future investment. While they failed to follow through on this promise in Houston in 2015, a year later corporations did lead the charge against North Carolina. Most notably, PayPal withdrew plans for a new development in Charlotte. These incidents mirrored the case studies of Houston and Williamson County earlier in this thesis, yet with new conclusions for our understanding of the possibility of progressive political change in the Sunbelt, and the role of corporations in support of LGBT rights. Much like Apple in 1993, PayPal used their clout to stand up for LGBT rights. However, this time the company did not shy away from including gays and lesbians in their arguments.

Finally, the epilogue examines the limits of corporate activism and the role of sexuality in selling a corporate image in the ongoing era of neoliberalism. It will examine how corporations are increasingly more “activist” in their approach to defending rights of their sexual minority employees, to the extent that they will rescind projects in locations understood to be homophobic or transphobic, and will submit Supreme Court amicus curiae briefs in defence of workplace rights. However, I also highlight the limits of such pressure and some of the ways that LGBT activists themselves have found these stances to be hypocritical and restrictive. As noted in the previous chapter, one such warning sign was the removal of domestic partner benefits following the Supreme Court’s ruling that same-sex marriage is constitutional. Corporations were quick to drop the provision of domestic partner benefits and instead encouraged their employees to marry. As such, rather than becoming “queered” by activists in recent years, corporations have actually sought to uphold the heteronormative, monogamous status quo. The repeal of domestic partner benefits has been but one way in which corporate activism has had an insidious effect upon the movement for LGBT rights in the workplace and across the South. The persistence of right-to-work laws, the impact of forced arbitration, and the support of corporations for homophobic and transphobic politicians all work to continue to undermine the gains won sexual minorities as corporations look to shoring up their profits. Finally, the thesis concludes by exploring the ways that LGBT workplace rights have remained tenuous during the administration of President Donald Trump, a man who came to power promising to protect LGBT rights but whose administration has constantly sought to undermine them.

Houston

This thesis has largely been concerned with struggles for rights for gay men, lesbian women, and bisexual people — sexual minorities who dominated the mainstream movement for workplace protections in the period from the 1970s. More recently, however, as marriage equality has been won and a majority of corporations protect against discrimination,

transgender people have come to the fore of the movement to demand their own protections. Trans issues have also emerged as the cutting edge in conservative attempts to undermine those fragmented advances that all of the disparate LGBT movements have made in the past few decades. Recently this tension was most visibly demonstrated in Houston and North Carolina.

In 2015, just months after the Supreme Court ruled same-sex marriage constitutional, history seemed to repeat itself when voters in Houston repealed in a referendum a non-discrimination ordinance that protected LGBT people. Introduced by Mayor Annise Parker, the first openly lesbian mayor of a major city, the ordinance was passed in the City Council in May 2014 but faced legal challenges until the city agreed to put it to a referendum.² The Houston Equal Rights Ordinance, or (HERO) extended “legal protections to 15 classes, including race, color, religion, national origin, sex, age, sexual orientation, gender identity, disability and military status, and give those who feel they have been discriminated against the ability to file a complaint with the city.”³ As it had done in 1985, the referendum once again gave new energy to a conservative movement in Houston, who used it as an opportunity to undermine Democratic political power, and to push sexual minorities back into the closet. On this occasion Steven Hotze and his former “Straight Slate” allies did not base their arguments on economic reasoning but upon fears of transgender people accessing bathrooms. Unlike in 1985, when the chamber of commerce led the charge, Houston businesses were now resolutely in opposition to the repeal of the ordinance, with few exceptions, and sought to use their clout to encourage voters that bias is bad for business.

² “Failure to woo minority voters helps tank Houston's 'bathroom ordinance'”, *Reuters*, November 4, 2015. Available: <https://www.reuters.com/article/us-usa-election-houston-idUSKCN0ST2U720151104> (accessed: 1/6/19).

³ “Editorial: Support Houston’s Equal Rights Ordinance”, *New York Times*, November 2, 2015. Available: <https://www.nytimes.com/2015/11/03/opinion/support-houstons-equal-rights-ordinance.html> (Accessed: 1/6/2019).

The Southern Poverty Law Center (SPLC) investigated Campaign for Houston, the organisation that fueled the movement against the ordinance. They noted that: “Campaign for Houston appears to be the brainchild of long-time right-wing anti-LGBT activist Steven Hotze, president of the Conservative Republicans of Texas.” Recalling Hotze’s role in forming the Straight Slate in 1985, the SPLC detailed his more recent arguments against LGBT rights: “Hotze said that HERO would allow ‘perverted men’ be ‘as strange, as weird, as perverted, as deviant as you want to be.’” They reported that at a launch event he “brandished a sword, claimed that ‘Satanic cults’ were behind the ‘homosexual movement,’ and demanded that LGBT people be hounded out of Houston.” Repeating a trope he perfected in the 1980s, Hotze demanded that voters: “Drive them out of our city,” and, “send them back to San Francisco.”⁴ In a hugely influential advertisement that was shared across the internet and was widely reported in mainstream media, Hotze’s Campaign for Houston portrayed the ordinance battle as one needed to protect children. “The ad asserts that ‘any man at any time could enter a woman’s bathroom simply by claiming to be a woman that day’ and ‘even registered sex offenders could follow women or a young girl into the bathroom and if a business tried to stop him, they’d be fined.’” The advert encouraged fears of child molestation by mobilising transphobic tropes of heterosexual men, dressed as women, praying on young girls. As the SPLC report summarised: “The ad urges people to vote ‘no’ on the Proposition 1 ‘bathroom ordinance,’ as the camera, shooting in lurid black and white, follows a little girl into a public bathroom stall. Next up is a man shown emerging from a neighboring stall and entering the girl’s stall.” The Southern Poverty Law Center designated the Campaign for Houston as a hate group.⁵ Nevertheless, the advertisements worked, and yet again Hotze was successful in halting workplace protections for LGBT people.

⁴ “Anti-LGBT Groups Ramp Up Transphobia Before Houston Vote”, *Southern Poverty Law Center*, October 26, 2015. Available: <https://www.splcenter.org/hatewatch/2015/10/26/anti-lgbt-groups-ramp-transphobia-houston-vote> (accessed: 9/6/2019).

⁵ Ibid.

The measure failed by an almost 2-to-1 margin, a vote of 61 percent to 39 percent.⁶ Though not as profound as the 4-to-1 margin of defeat for a similar ordinance in 1985, the vote was a severe setback for LGBT rights in the city. Coming just months after the Supreme Court's ruling that same-sex marriage was legal, and after six years with an openly lesbian mayor, Houston demonstrated yet again that rights for sexual minorities remained fragile in the South.

As in 1985, LGBT activists quickly began to take stock of how they lost the vote. The Houston repeal pointed to ongoing tensions between LGBT activists and African Americans. In 1985, Louie Welch, John Goodner and others successfully mobilised "special rights" rhetoric against sexual minorities to help splinter the liberal coalition that had emerged downtown. Media reports also noted that African American support for same-sex marriage still lagged below 50% nationally. A report by *Reuters* noted that: "Houston is 25 percent African-American and 37 percent Hispanic, and blacks are generally overrepresented at the polls while Hispanics are underrepresented."⁷ The blaming of the disappointing result upon racial minorities was compelling for some activists and news outlets. On the one hand, African Americans also stood to lose out in the repeal as they were included in the non-discrimination protections. Yet on the other hand they could rely upon federal anti-discrimination protections on the basis of race, while white LGBT people could not. Black LGBT people faced multiple forms of discrimination, and yet were largely overlooked in campaign literature. At the same time conservatives including Steven Hotze successfully portrayed the measure as a narrow transgender "bathroom bill" rather than attack the broader non-discrimination protections it provided.

Black trans* activists pushed back against the characterisation of African American communities as inherently homophobic and called for common cause. Monica Roberts, the

⁶ "Failure to woo minority voters helps tank Houston's 'bathroom ordinance'", *Reuters*, November 4, 2015.

⁷ *Ibid.*

author of the *TransGriot* blog, complained that: “There’s a tendency among the gay community to not work intersectionally... to only come when they need something.” Noting that pleas to canvas African American neighbourhoods went unheard, Roberts reported that she “heard resentment from African Americans about ‘gay folks hijacking our civil-rights movement.’”⁸ Emily Deruy in *The Atlantic* paraphrased Roberts’ experiences in Houston, noting: “Some of that pushback comes, she says, from the fact that the gay community remains distanced from issues like officer-involved shootings of young black men or the closure of inner-city schools that serve mostly black students. “That’s noticed.”⁹ In response, the chair of the Houston GLBT Political Caucus, Fran Watson, agreed: “Going forward, we have to make sure as an LGBT community that we’re recognizing that intersectionality plays a role.” One reoccurring theme of this thesis has been the tension between LGBT grassroots activists and African American communities. In 1985, African Americans became a key component of John Goodner’s campaign to roll back non-discrimination protections. He used the anti-affirmative action language of “special rights” to divide the liberal coalition.¹⁰ In the 1990s, activists at Cracker Barrel sought common cause in challenging the company’s racism alongside its homophobia. Yet these intersections were largely lost when the grassroots movement quietened down and activists focused on the corporate sphere. As with 1985, the 2015 Houston repeal shed light on the ongoing tensions of race and class within Houston’s LGBT communities.

⁸ Ibid.

⁹ Emily Deruy, “Houston, We Have an LGBT Problem”, *The Atlantic*, February 24, 2016. Available: <https://www.theatlantic.com/politics/archive/2016/02/houston-we-have-an-lgbt-problem/470709/> (accessed: 10/6/2019) For further discussion of other recent tensions around the south, LGBT rights, race and the Black Lives Matter movement see: Julio Capo Jr., “Homophobia Baiting: Queering the Trayvon Martin Archives and Challenging the AntiBlackness of Color-Blind Politics” in *Beyond the Politics of the Closet: Gay Rights and the American State Since the 1970s* ed. Jonathan Bell (Philadelphia: University of Pennsylvania Press forthcoming).

¹⁰ Similar processes were at work in Colorado in 1992. See: Rachel Guberman, “‘No Discrimination & No Special Rights’: Gay Rights, Family Values, and the Politics of Moderation in the 1992 Election” in *Beyond the Politics of the Closet*, Jonathan Bell ed. pp.165-186.

In much the same way that gay and lesbian activists were sidelined by Mayor Kathy Whitmire in 1984, now gay, lesbian and bisexual activists sidelined transgender people. They played down trans* participation in the movement so as to not “alienate” those who had become convinced by the opposition of the need to roll back rights. “The wounds are particularly deep for transgender people, who are feeling not only rejected by Houston voters, but rejected by some members of the LGBT movement itself,” wrote Emily Deruy in *The Atlantic*. Those grassroots activists argued that more mainstream activists had “tried to play down [trans] existence in an attempt to win voter approval from an electorate far more comfortable with the idea of gay and lesbian neighbors than with transgender people.” She further notes that in Houston and more generally, there “is a sense of confusion around what exactly it means to be transgender, and opponents have become particularly adept at capitalizing on that confusion to spread fearsome messages like ‘No men in women’s bathrooms.’” Without countering this with increasing visibility of trans people, both the explicit and implicit transphobia went relatively unchallenged.¹¹ Indeed, such an absence of a trans* presence within the campaign played into the arguments of Steven Hotze and other bigots, who suggested to voters that other minorities, who were already protected under federal laws, were only listed on the ordinance to provide cover for LGBT people.¹² The accusation failed to consider the numerous forms and combinations that discrimination can take.

The corporate role in the ordinance campaign was striking. Unlike in 1985, when corporations lined up within the Chamber of Commerce to demand a repeal, now most corporations within and outside the city of Houston defended employment protections for sexual minorities and transgender people. Aside from a handful of local businessmen, including the NFL’s Houston Texans owner, Bob McNair, the majority of business leaders

¹¹ Emily Deruy, “Houston, We Have an LGBT Problem.”

¹² “Anti-LGBT Groups Ramp Up Transphobia Before Houston Vote”, *Southern Poverty Law Center*, October 26, 2015.

called for a yes vote in the referendum.¹³ Using the corporate clout they had built up over the past three decades, liberals across the country warned Houston voters of economic disaster should they vote the wrong way on the ordinance. An editorial in the *New York Times* warned: “The consequences of repealing the law could be severe.” They added that: “Such a move would surely discourage people thinking about moving to Houston or doing business there.”¹⁴ The NFL threatened to withdraw a future Super Bowl from the city and the college basketball association, NCAA similarly threatened to relocate high-revenue events. Speaking on the night of the repeal, Mayor Parker “predicted a ‘direct, economic backlash’ for the Bayou City.”¹⁵

Yet the actual economic reaction to the repeal of rights was remarkably silent. As this thesis has demonstrated from the mid-1980s onwards activists have focused attention upon winning support from corporations to help account for the fact that these non-discrimination protections are not in place in many Sunbelt cities and states. Yet when it came to following through with threats, corporations were muted. Much focus was placed upon the NFL, as they were scheduled to host the Super Bowl in Houston in February 2017. However, the company failed to pull out, most probably because the cost of defending LGBT and other minorities rights would mean too much of a dent in their profits. Writing six months later, a local columnist noted that: “Thus far, Houston has suffered no other consequences—nothing, nada, zilch.” This lack of follow through by corporations who failed to act upon their promises of retribution began to have adverse effects elsewhere in the Sunbelt. An article in *Texas Monthly* notes that this bluff on the part of corporations had the effect of “emboldening

¹³ “Breaking: Houston Texans Owner Bob McNair Retracts His \$10,000 Donation to the Anti-HERO Campaign”, press release, *Houston Unites*, undated. Available: <http://houstonunites.org/mcnair/> (accessed 12/6/2019).

¹⁴ “Editorial: Support Houston’s Equal Rights Ordinance”, *New York Times*, November 2, 2015.

¹⁵ “Why Didn’t Houston Face Backlash For HERO’s Repeal?”, *Texas Monthly*, April 13, 2016. Available: <https://www.texasmonthly.com/the-daily-post/hero/> (accessed 10/6/2019).

the Houston anti-HERO leadership to lend both their support and their tactics to legislators in Mississippi and North Carolina.”¹⁶

North Carolina

In contrast to Houston, in North Carolina corporations did flex their economic clout in defence of LGBT rights. In March 2016, PayPal announced a major expansion to Charlotte, North Carolina, the banking and financial heart of the Sunbelt. The new office was to provide over 500 new jobs in a range of white collar roles in return for \$3.7 million in incentives from the state.¹⁷ Yet just weeks later, the company announced that it was withdrawing these plans in response to the introduction of a bill that would limit transgender access to public restrooms and restrict LGBT claims to non-discrimination protections. Dubbed the “bathroom bill,” House Bill 2 (HB2) legislated that people could only use a restroom that corresponded to the sex they were assigned at birth. Focusing primarily upon schools but with consequences for all public facilities, the bill legislated that: “Local boards of education shall require every multiple occupancy bathroom or changing facility that is designated for student use to be designated for and used only by students based on their biological sex.”¹⁸ More broadly, the bill also limited the ability of municipalities to set their own non-discrimination ordinances, limited their ability to raise the minimum wage, and had implications for who could and could not be sued for discrimination infringements.¹⁹ In creating this law, Republicans at the state level said that they were forced into action because the city of Charlotte had enacted an ordinance “which would have allowed transgender people to use

¹⁶ Ibid.

¹⁷ “PayPal withdraws plans for Charlotte expansion over HB2”, *Charlotte Observer*, April, 05, 2016. Available: <https://www.charlotteobserver.com/news/business/article70001502.html> (accessed 1/6/2019).

¹⁸ House Bill 2, General Assembly of North Carolina, Second Extra Session, 23 March 2016 Available: <https://www.ncleg.net/Sessions/2015E2/Bills/House/PDF/H2v4.pdf> (accessed 1/6/2019).

¹⁹ “Bathroom Bill' to Cost North Carolina \$3.76B, AP Analysis Finds”, *NBC News*, March 27, 2017. Available: <https://www.nbcnews.com/feature/nbc-out/bathroom-bill-cost-north-carolina-3-76b-ap-analysis-finds-n738866> (accessed 1/6/2019).

the bathroom that corresponds to the gender with which they identify.”²⁰ Shortly after he signed the law, Republican Governor Pat McCrory released a statement that assured residents that “it wouldn’t affect North Carolina’s status as ‘one of the top states to do business in the country.’”²¹

Activists across the country quickly seized upon this as the latest, and most successful, in a line of attempts to limit the rights, access, and visibility of transgender people and gender non-conformists, including in Houston a few months earlier. Most visible were major corporations who signed letters, promised to boycott, and in some cases actually cancelled expansion projects in the state. These companies included American Airlines, Bank of America, Coca Cola, Deutsche Bank, and Lionsgate Entertainment. Added to this was the decision by the NBA and NCAA to move basketball tournaments out of the state, and musicians, including Bruce Springsteen, who cancelled concerts. Most notable however was PayPal, whose cancelled expansion potentially cost the state billions of dollars.²² The *Associated Press* projected the impact of such actions would be \$3.76 billion over a decade with the biggest parts of that in lost revenue due to boycotts and relocation, and the cancelled PayPal facility.²³

As this thesis has demonstrated, the methods and reasoning used by North Carolina politicians to legislate in favour of discrimination fits with a historic pattern across the Sunbelt. Historically politicians have been willing to sacrifice investment and growth projects when they threatened the structures of anti-trade unionism and segregation. More recently they have been willing to do this when they felt local “family values” were under threat by the presence of sexual minorities. PayPal’s decision to pull out of Charlotte due to the North

²⁰ “PayPal withdraws plans for Charlotte expansion over HB2”, *Charlotte Observer*, April, 05, 2016.

²¹ “‘Bathroom Bill’ to Cost North Carolina \$3.76B, AP Analysis Finds”, *NBC News*, March 27, 2017.

²² “Who Has Gained From North Carolina’s HB2 Losses?”, *NBC News*, March 30, 2017. Available: <https://www.nbcnews.com/feature/nbc-out/who-has-gained-north-carolina-s-hb2-losses-n740601> (accessed 1/6/2019).

²³ *Ibid.*

Carolina's transphobic stance brings to mind obvious parallels with Apple in Texas in 1993. Both are highly successful Silicon Valley companies which have found themselves under fire due to their support for sexual diversity. Yet PayPal's stance went far beyond Apple's some two decades earlier. Rather than reacting to local conservatism and discrimination with only muted support for gay and lesbian employees, as Apple did in 1993, PayPal took a leading role in moving its business elsewhere. PayPal president and CEO, Dan Schulman wrote in the wake of HB2 that: "The new law perpetuates discrimination, and it violates the values and principles that are at the core of PayPal's mission and culture. As a result, PayPal will not move forward with our planned expansion into Charlotte."²⁴

Business has now emerged as a key bargaining chip in attempting to force ultra-conservative legislatures towards a more moderate path in the South where state legislatures lean more Republican. Similarly, as Democratic Party politicians in Washington D.C. faced difficulty in passing any form of progressive legislation due to a Republican controlled Congress, they have sought to pressure conservatives in other ways. For instance, at a groundbreaking ceremony for a new Aldi distribution centre in Virginia that will employ 145 people and be worth \$57 million, "Governor Terry McAuliffe referenced North Carolina, which also competed for the project." *NBC News* reported McAuliffe's comments: "'Let's be honest, North Carolina has been badly hit by HB2,' the Democratic governor crowed, having vetoed his own state's version of a similar 'bathroom bill.'"²⁵ Such comments were clearly meant to send a warning to other states, as well as North Carolina, that bias would no longer be profitable and that Democratic Sunbelt boosters would use this as further basis in which to draw business away from other areas of the region.

Within North Carolina, the Democratic Party also focused its strategy on playing up the economic impact of the decision. Roy Cooper, who was concurrently challenging Pat

²⁴ "Did losing PayPal over HB2 really cost Charlotte \$285 million?" (*Raleigh*) *News and Observer*, May 26, 2016. Available: <https://www.newsobserver.com/news/politics-government/state-politics/article80022012.html> (accessed: 1/6/2019).

²⁵ "Who Has Gained From North Carolina's HB2 Losses?", *NBC News*, March 30, 2017.

McCrory for the governorship, stated in reaction to PayPal's withdrawal: "These are new, better paying jobs North Carolina won't get because Governor McCrory has put his political ideology above all else," Cooper said. "It's time to reverse course and take actions to undo the damage."²⁶ McCrory's campaign manager, Russell Peck, fired back that Cooper: "Continues to side with out-of-state and Washington, D.C., special interests over what's best for North Carolina and its families."²⁷ Such rhetoric drew upon historically racialised tropes of northern carpetbagger activists moving southwards to upend the "southern" way of life. As incidents such as the Houston, Apple, and Cracker Barrel case studies of this thesis demonstrate, this trope was regularly adapted by homophobes during the so-called "culture wars" to rally support against LGBT rights that they saw as morally repugnant.

The conservative supporters of HB2 both attempted to shame PayPal for what they saw as an unfair and hypocritical stance, while they also denied that it was having much of an economic impact. "Companies like PayPal who are pushing their radical bathroom policies on states like North Carolina should think twice before they assert themselves into the policy decisions of the state," said Tami Fitzgerald, executive director of North Carolina Values Coalition.²⁸ Meanwhile, Michele Nix, vice chairperson of the North Carolina Republican Party, "accused PayPal of 'corporate hypocrisy and bullying,' due to the company's 'past violations of economic sanctions on Cuba, Sudan and Iran.'"²⁹ Furthermore, other Republican politicians pointed out that PayPal's stance in North Carolina was hypocritical because "it still operated in countries where homosexual behavior was illegal."³⁰ As will be shortly demonstrated, this was also an era in which LGBT activists began to pay

²⁶ "PayPal withdraws plans for Charlotte expansion over HB2", *Charlotte Observer*, April, 05, 2016.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ "After HB2 repeal, NBA is coming back to Charlotte. So what about PayPal?", *Charlotte Observer*, May 24, 2017. Available: <https://www.charlotteobserver.com/news/business/article152390907.html> (accessed: 1/6/2019).

closer attention to the hypocrisy of major corporations who, on the one hand, supported LGBT rights while, on the other, gave money to homophobic politicians.

Economists as well as Republican officials played down the impact of immediate lost revenue. Lieutenant Governor of North Carolina, Dan Forest, told Texas legislators that: "Our economy is doing well. Don't be fooled by the media. This issue is not about the economy. This issue is about privacy, safety and security in the most vulnerable places we go."³¹ John Connaughton, an economics professor at University of North Carolina Charlotte, explained to *NBC* that: "The estimated \$3.7 billion loss over 12 years is in context to an estimated aggregate state GDP (gross domestic product) over that time period of \$6.8 trillion... In percentage terms, that's a 0.06 percent loss."³² He stated: "When compared to the state's GDP, it's nothing."³³ However, Connaughton and others did concede that the negative connotation of the state with bigotry may play a larger role than currently calculated. "This is where most of the activity is," Connaughton noted. "The companies that never consider us from last year on because of HB2."³⁴ Indeed, Bank of America CEO, Brian Moynihan, who staunchly opposed HB2, told the press that he had "spoken privately to business leaders who went elsewhere with projects or events because of the controversy, and he fears more decisions like that are being made quietly."³⁵ Similarly, a collection of boosters under the Economic Development Partnership of North Carolina released a statement warning that: "A number of companies we engage with in our efforts to market the state for business recruitment, tourism and film production have expressed reservations about doing business in North Carolina because of concerns regarding House Bill 2."³⁶ Regardless of who was pulling out of the state, analysts noted that the biggest effect may be upon turning off other

³¹ "Bathroom Bill' to Cost North Carolina \$3.76B, AP Analysis Finds", *NBC News*, March 27, 2017.

³² "Who Has Gained From North Carolina's HB2 Losses?", *NBC News*, March 30, 2017.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ "Bathroom Bill' to Cost North Carolina \$3.76B, AP Analysis Finds", *NBC News*, March 27, 2017.

³⁶ "PayPal withdraws plans for Charlotte expansion over HB2", *Charlotte Observer*, April, 05, 2016.

future investment. "I don't know of any examples where somebody located here because of HB2," said James Kleckley, of East Carolina University's business college. "Virtually everything we know about (HB2) are the negative effects. Even anecdotally I don't know any positive effects."³⁷

Analysts also came to question why North Carolina faced an economic backlash, seeing PayPal, NCAA and other projects pulled, whereas Houston, just a few months earlier, did not. Unlike in Houston, where corporate response to the repeal was muted, in North Carolina corporations acted quickly to demonstrate their displeasure at the transphobic and homophobic measures installed in the state. In taking stock of the economic fallout of both Houston and Charlotte, *Texas Monthly* quoted Jessica Shortall, the managing director of Texas Competes, "a group advocating LGBT equality on business grounds." She posited that: "The fact that HERO was defeated in a referendum rather than the legislature is one reason Houston has not been subjected to the same ire as North Carolina."³⁸ Further she noted that: "In Georgia the business response was to prompt a veto from Nathan Deal... There was a recourse."³⁹ As North Carolina and Georgia's bills were passed by politicians rather than through popular vote it made sense to organise boycotts and sanctions to spur pressure on these individuals who could amend or repeal the laws. Columnists nevertheless warned that the business backlash could still impact Texas. "Texans should watch North Carolina very carefully," argued John Nova Lomax in *Texas Monthly*: "Like Texas, North Carolina's business community likes to portray itself as both high-tech and cutting edge (with its Research Triangle serving as its Austin) and a great place for stuffer industries like banking and finance." Yet he notes that industry was now firmly on the side of LGBT rights: "Both of those sectors of the Tarheel business community have made it plain that McCrory's signing of this bill does not sit well with them, and the actions of multinationals like Deutsche

³⁷ "Bathroom Bill' to Cost North Carolina \$3.76B, AP Analysis Finds", *NBC News*, March 27, 2017.

³⁸ "Why Didn't Houston Face Backlash For HERO's Repeal?", *Texas Monthly*, April 13, 2016.

³⁹ *Ibid.*

Bank and national powerhouses like PayPal show they are in accord.”⁴⁰ North Carolina therefore served as a warning to other Sunbelt locations that industry both within, and outside, could be mobilised against homophobia and transphobia. LGBT activists in Houston now acknowledged the need for a massive education and visibility campaign around transgender lives and experiences to win over the electorate in a future vote. “For an antidiscrimination measure to be successful in the future, it will need to come from Houston residents,” activists told *The Atlantic*, rather than legislating from the top-down, and hoping that it does not get challenged in the courts.⁴¹ Whether such a campaign can be successful in Houston, where referendums on LGBT rights have successively proven divisive and unpopular, remains to be seen.

The national and local attention placed upon HB2 as a “bathroom bill” that discriminates against transgender people overlooked the other elements of the bill that were just as insidious but that targeted all workers, especially LGBT people and racial minorities. Other sections of the bill included the prevention of “city and county governments from setting a minimum-wage standard for private employers.” Additionally, it limited “how people can sue for discrimination in state court” and as such can be seen as an attack upon on African American and Latino rights as well. As *The Washington Post* notes, perhaps most importantly, the law “contains a provision allowing for remaining parts of the law to stand if others are struck down in court.”⁴² In a divide-and-rule strategy, the politicians who crafted the bill talked up the sections that specifically attacked the rights of transgender people to divert attention away from other sections of the bill that sought to gut workplace and anti-discrimination protections for everyone. In doing so they constructed a new social outcast, the trans person, to attack movements for economic justice and redirect focus from the

⁴⁰ Ibid.

⁴¹ Emily Deruy, “Houston, We Have an LGBT Problem.”

⁴² “‘Not about bathrooms’: Critics decry North Carolina law’s lesser-known elements” in *The Washington Post*, 14 May 2016. Available: https://www.washingtonpost.com/national/not-about-bathrooms-critics-decry-north-carolina-laws-lesser-known-elements/2016/05/14/387946ec-186b-11e6-924d-838753295f9a_story.html (accessed 18 May 2016).

workplace as a site of contestation. The strategy seemed to backfire when corporations as well as social justice groups undertook economic activism against North Carolina in solidarity with transgender people. However, the mechanism to allow other sections of the bill to remain if others are removed meant that they can still achieve other policies aimed at weakening workplace rights and protections.

While PayPal, the Obama Administration and local Democrats were quick to stand up to the discriminatory sections of the bill against transgender people, they were largely quiet on other aspects that would also hold back rights for workers and people of colour, whether they identify as transgender or not. As will be examined in more detail below, even corporations who support LGBT rights still prioritise profits over this support. As such it is unsurprising that the mainstream corporate movement would fail to draw attention to the other sections of HB2. The campaign against Cracker Barrel in the 1990s, in which Southern lesbians and gays built grassroots networks and broadened their campaign as a civil rights issue, suggested a different route to nondiscrimination that did not rely upon corporations. In April 2016, the rekindling of this sort of movement came to the fore when fast food workers fighting for a fifteen-dollar minimum wage joined campaigns to reverse the decision of North Carolina's discriminatory laws while prioritising LGBT rights by launching petitions and staging demonstrations.⁴³ Activists began to build upon previous lessons of the need to be cautious of tactics which rely too heavily upon top-down approaches, as well as those which overlook the interconnected nature of these struggles with race and class.

The repeal of HB2 further demonstrated the ways that sexual minorities and gender nonconformists remain confined in a battle between neoconservatism and neoliberalism. In March 2017, new Democratic Governor Roy Cooper, who owed his election partly to the

⁴³ See: "Obama: North Carolina, Mississippi laws limiting LGBT protections are 'wrong' and 'should be overturned'" in *The Washington Post*, 22 April 2016, available here: <https://www.washingtonpost.com/news/post-politics/wp/2016/04/22/obama-north-carolina-mississippi-laws-limiting-lgbt-protections-are-wrong-and-should-be-overturned/> (accessed 5 July 2016) and also "End discrimination in North Carolina NOW!" in *Fight for 15*, available here: http://fightfor15.org/s-petition/north-carolina-hb2-petition/?utm_campaign=LowPay&utm_medium=email&utm_source=4-25-NCHB2-EM-01 (accessed 5 July 2016).

controversy over HB2, signed a bill that sought a compromise between the positions of homophobic politicians and LGBT communities in North Carolina. However, the state legislature remained in Republican control following the 2016 election, and lawmakers quickly moved to try to strip the governor's office of any meaningful power.⁴⁴ On the one hand, the bill repealed HB2, yet on the other it "banned local governments from passing anti-discrimination ordinances for three years."⁴⁵ The NCAA and others quickly announced that sporting events they previously canceled because of HB2 would return.⁴⁶ At the same time, however, activists and lobbyists for LGBT communities remained unconvinced by the Democratic Party's compromise in North Carolina. In a series of tweets released shortly after Gov. Cooper had shepherded the repeal of HB2, Chad Griffin, president of the Human Rights Campaign, argued: "This 'deal' does NOT repeal #HB2. It's simply another version of HB2 dressed up in a way desperate lawmakers hope will save state's economy." *NBC News* reported that the replacement bill leaves "state legislators in charge of policy over multi-stall bathrooms and puts a halt on local governments passing nondiscrimination ordinances."⁴⁷ As with so many of the episodes detailed throughout this thesis, sexual minorities yet again found themselves in the limbo of "virtual equality." They were without proper protections at the state-wide level, and therefore still vulnerable to employment discrimination regardless of some corporate commitments to non-discrimination. PayPal's stance may have been noble, but it was little benefit to local workers unable to benefit from PayPal's protective policies. While Roy Cooper's eventual victory after a contested election against McCrory signalled that things could be shifting in North Carolina, that shift was later demonstrated to be insubstantial.

⁴⁴ Will Doran, "Roy Cooper loses a lawsuit in his power struggle against the NC legislature", *The News & Observer*, December 21, 2018. Available: <https://www.newsobserver.com/news/politics-government/article223424305.html> (accessed: 17/07/2019).

⁴⁵ "After HB2 repeal, NBA is coming back to Charlotte. So what about PayPal?", *Charlotte Observer*, May 24, 2017.

⁴⁶ *Ibid.*

⁴⁷ "Who Has Gained From North Carolina's HB2 Losses?", *NBC News*, March 30, 2017.

A week after the Houston defeat, President Obama announced his support for a federal Equality Act, an updated and expanded version of the Employment Non-Discrimination Act that failed to pass during the 1990s. Yet there was little chance of the Equality Act passing with Republicans in control of both chambers of Congress. Indeed, it failed to move through the legislature before Obama left office.⁴⁸ The bill remains at a standstill in Congress. In May 2019, Democrats in the House, now the majority party for the first time in eight years, passed the Equality Act. While this was a step in the right direction, it will almost certainly be vetoed the Republican controlled Senate, who defend discrimination on the basis that the Equality Act infringes on the rights of “those Americans who object to homosexuality and being transgender on religious grounds.”⁴⁹ This argument was repeatedly mobilised by the likes of Vice President Mike Pence, while he was governor of Indiana, in opposition to LGBT rights.

President Donald J. Trump came to power paying lip-service to gay, lesbian, bisexual and transgender (LGBT) rights. At the height of Houston and North Carolina’s “bathroom bills” he famously invited the transgender Republican, Caitlyn Jenner, to use any restroom in his Trump Tower, as a way to attack more traditionally conservative opponents in the Republican presidential primaries. Indeed, in stating he felt transgender people should use whichever restroom they felt most comfortable, Trump referenced the North Carolina issue, stating: “There has been so little trouble, and the problem with what happened in North Carolina is the strife and the economic punishment that they're taking.”⁵⁰ However, the selection of Indiana Governor, Mike Pence, who adapted an LGBT non-discrimination law to

⁴⁸ “Obama supports altering Civil Rights Act to ban LGBT discrimination”, *The Washington Post*, November 10, 2015. Available: https://www.washingtonpost.com/politics/obama-supports-altering-civil-rights-act-to-include-gender-discrimination/2015/11/10/3a05107e-87c8-11e5-9a07-453018f9a0ec_story.html?utm_term=.bb830fe91594 (accessed 2/6/2019).

⁴⁹ *Ibid.*

⁵⁰ “Caitlyn Jenner takes Trump up on bathroom offer”, *CNN*, April 24, 2016. Available: <https://edition.cnn.com/2016/04/28/politics/caitlyn-jenner-bathroom-trump-tower-donald-trump/index.html> (accessed 20/06/2019).

provide an exemption on the basis of religion, as his vice-presidential nominee demonstrated a willingness for Trump to ditch this lip-service as he edged closer to power. Indeed, LGBT employment protections were some of the first to face repeal after his election. In March 2017, Trump issued an executive order that rescinded an Obama order banning federal contractors from discriminating on the basis of sexuality.⁵¹ Similarly, transgender rights came under attack early on in his presidency. In June 2017, Trump announced a ban on transgender personnel in the military, and has sought to make biological sex a protected characteristic over gender identity.⁵² Finally, a Supreme Court that skews towards conservatism and traditionalism will hear arguments in Autumn 2019 as to whether Title VII of the Civil Rights Act should be extended to protect LGBT people in work. A ruling on this issue has the potential to set back the gains of the movement described within this thesis. The nature of workplace-based protections and rights for LGBT people therefore remain tenuous, fragmented and geographically patchwork, as they face a sustained threat from the White House since Trump's election.⁵³

The trouble with Corporate Activism

The reliance upon the profit model has underpinned LGBT activist demands for workplace protections since the 1980s. Activists argued with homophobic boosters and politicians that anti-sodomy laws and workplace bias was bad for business. They sought to convince private businesses including Apple, Cracker Barrel, Duke University and ExxonMobil that their employees would be more productive with non-discrimination

⁵¹ Mary Emily O'Hara, "LGBTQ Advocates Say Trump's New Executive Order Makes Them Vulnerable to Discrimination", *NBC News*, March 20, 2017. Available: <https://www.nbcnews.com/feature/nbc-out/lgbtq-advocates-say-trump-s-news-executive-order-makes-them-n740301> (accessed: 10/06/2019).

⁵² Erica L. Green, Katie Benner and Robert Pear "‘Transgender’ Could Be Defined Out of Existence Under Trump Administration", *New York Times*, October 21, 2018. Available: <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html?sfns=mo> (accessed: 20/01/2019).

⁵³ For an analysis of this moment from the perspective of American Political Development, see: Stephen M. Engel, *Fragmented Citizens*.

protections and benefits for their same-sex partners. Yet while this argument proved compelling to some, such as Apple, it seemed weak to others, such as ExxonMobil. Regardless of the success in winning over the majority of the Fortune 500, the most profitable companies in the US, the extension of protections has not been forthcoming for the vast majority of LGBT people who do not work in such corporations or universities. Without a focus upon a more expansive vision of equality or liberation, including a restructuring of corporate capitalism and demands for benefits for all, not simply those who wish to marry, LGBT communities, as with the rest of US society, remain stratified by the structures of class, gender, race and ability. Writing in 2000, Alexandra Chasin warned that the reliance of the movement upon the corporate sphere would not benefit the majority of LGBT people: “Market operations... tend to consolidate and even amplify existing economic inequalities.”⁵⁴ These disparities have become indisputable over the past two decades, with particular consequences for LGBT workers in the Sunbelt.

In recent years, activists have begun to challenge the reliance of the mainstream LGBT movement on the corporate sphere. Activists in campaigns such as the Fight for \$15, which emerged in the fast food sector to demand huge chains like McDonalds pay their staff fair wages, have linked these economic demands with social ones. At the height of HB2 in North Carolina, Fight for \$15 activists in the state launched petitions detailing the various sections of the bill and calling for common cause between workers, African-Americans, and LGBT people.⁵⁵ The recent wave of “Red for Ed” walkouts by teachers across the country, from West Virginia to Arizona for better pay and conditions for students, have also opened up space to demand workplace protections for sexual minorities. These grassroots movements, and groups such as Southerners On New Ground (SONG), have demonstrated the agency of southern workers of all races to unite together and demand protections, in

⁵⁴ Alexandra Chasin, *Selling Out*, p.6.

⁵⁵ “End discrimination in North Carolina NOW!” in *Fight for 15*, available here: http://fightfor15.org/s-petition/north-carolina-hb2-petition/?utm_campaign=LowPay&utm_medium=email&utm_source=4-25-NCHB2-EM-01 (accessed 5 July 2016).

opposition to the top-down corporate activism that dominated anti-discrimination campaigns of the 1990s and 2000s.⁵⁶

Activists have also blown the whistle on how corporations have simultaneously sponsored pride parade interventions while at the same time bankrolling viciously homophobic politicians who continue to seek to roll back the rights of these individuals. At the height of June 2019 Pride celebrations that marked the fiftieth anniversary of the Stonewall Riots, activists drew attention to the insipid role that corporations have played. Days before World Pride in New York, Forbes published an article detailing the hypocritical ways corporations both supported Pride events, employee associations and donated vast sums to homophobic politicians. Sunbelt examples of top-scoring corporations on the HRC's Corporate Equality Index who also supported homophobic and transphobic political candidates included Home Depot and UPS, both based in Atlanta. UPS donated \$2,366,122 to 159 anti-gay politicians while Home Depot donated \$1,825,500 to 111 anti-gay politicians. Memphis-headquartered FedEx donated \$1,261,500 to 75 anti-gay politicians. The worst offender was AT&T, the Dallas based company which had been at the forefront of employee protections in the 1970s. Now it was noted that it donated \$2,755,000 to 193 anti-gay politicians.⁵⁷ The report matched those companies with the best corporate equality score with those who supported the worst performing politicians on the basis of equality. It noted that: "HRC gave [these] 228 members of Congress the worst possible score: a zero. All of them voted to confirm anti-gay members of the Trump cabinet, voted to deny healthcare to transgender troops, and wouldn't sponsor or co-sponsor any legislation in support of LGBTQ rights."⁵⁸

⁵⁶ Southerners On New Ground state their mission is in "building a political home across race, class, culture, gender & sexuality." See: <http://southernersonnewground.org/about/> (accessed: 13/6/2019).

⁵⁷ Dawn Ennis, "Don't Let That Rainbow Logo Fool You: These 9 Corporations Donated Millions To Anti-Gay Politicians", *Forbes*, June 24, 2019. Available: <https://www.forbes.com/sites/dawnstaceyennis/2019/06/24/dont-let-that-rainbow-logo-fool-you-these-corporations-donated-millions-to-anti-gay-politicians/> (accessed 24/6/2019).

⁵⁸ *Ibid.*

In response to the outcry from activists, corporations reasoned that while supporting LGBT rights was important, they also sought influence by funding candidates who supported their industries. For instance, a spokesperson for the pharmaceutical giant Pfizer noted that they have "a long and proud history of caring, supporting, and advocating for the LGBTQ community, which includes signing on to the Equality Act, filing a Supreme Court amicus brief in support of same-sex marriage, and maintaining a perfect HRC score since 2004." However, they also defended their support for viciously homophobic and transphobic politicians by arguing it was what was best for them: "The decision to contribute to these elected officials was made based on their support of the biopharmaceutical industry and policies that protect innovation incentives and patients' access to medicines and vaccines. In no way does our support translate into an endorsement of their position on any social issue."⁵⁹ Yet LGBT issues are economic as well as social. As this thesis demonstrates, LGBT people across the country can still be fired for their sexuality. The pharmaceutical industry has historically also made other decisions which cut against the interests of LGBT communities. The reliance upon the private healthcare system, one that pharmaceutical companies help to prop up, has devastating consequences for those LGBT people without a job that provides health insurance, or enough money to buy it directly.

The online LGBT advocacy and activism website *AllOut* called out the hypocrisy and demanded action by the CEOs of these companies. "Waving rainbow flags while supporting some of the biggest enemies of LGBT+ rights is an insidious form of 'pinkwashing' - when LGBT+ rights are used simply for financial gain," they argued. "Ask these companies to stop supporting anti-LGBT+ politicians and prove that they REALLY believe in equality!" Yet as with ExxonMobil a decade earlier, these arguments do not cut very deeply when considering the vast amounts of profits such corporations make.⁶⁰

⁵⁹ Ibid.

⁶⁰ "AT&T, UPS, AND Comcast: Stop Supporting Anti-LGBT+ Politicians", *AllOut*, undated. Available: https://action.allout.org/en/a/stop-pinkwashing/?akid=34629.232515.bDSkr0&rd=1&t=10&utm_campaign=stop-pinkwashing&utm_medium=email&utm_source=actionsuite (accessed 24/6/2019).

Separately, other activists poured criticism over corporations for their poor employment practices, which these activists claimed superseded their support for LGBT rights. They noted that “In 2018, a record-breaking 609 major employers received perfect scores from the nation’s largest and most visible LGBTQ rights organization for their inclusion of LGBTQ workers.” However, they argued, “these changes might be worth applauding—if those companies didn’t also force workers to sign away their right to sue if they experience the very discrimination and harassment that nondiscrimination policies seek to stamp out.” The authors pointed out that the HRC’s Corporate Equality Index does not check to see whether those ranked companies also require employees to sign forced arbitration clauses, “a legal loophole” they note, “that waives workers’ right to sue over illegal treatment at work, like being denied overtime wages or getting fired for being queer or trans.” They called upon LGBT people not to wait for a “White House less hostile to our rights” and to demand that the HRC takes into account forced arbitration when assigning marks in its equality index. They argue that without placing pressure upon businesses to change their wider employment practices, any future federal nondiscrimination law, such as the Equality Act will have limited impact. In doing so, the activists suggested “sweeping changes to the Federal Arbitration Act so that huge corporations can’t bully the little guy into signing away his rights.” They wrote: “LGBTQ-friendly policies on the books mean little if employees can’t meaningfully enforce their rights.”⁶¹ The whole system of private-employer based rights and privileges that is exclusive to the United States therefore needs to be examined alongside equality reforms to ensure they have the desired impact. Yet again the constraints of the capitalist system on equality movements become visible as activists begin to push back against discrimination. Without disconnecting rights and benefits from the profit

⁶¹ Vail Kohnert-Yount, Jared Odessky, and Sejal Singh, “No, Companies That Force Workers to Sign Away Their Right to Sue Are Not LGBTQ-Friendly”, *Slate*, January 23, 2019. Available: <https://slate.com/news-and-politics/2019/01/human-rights-campaign-corporate-equality-index-arbitration-lgbtq.html> (accessed 20/6/2019).

model, corporations will continue to side with LGBT workers when convenient, and with their political enemies when it is not.

Similarly, activists and scholars including Miriam Frank and Jared Odessky viewed the Supreme Court's 2018 anti-union decision in *Janus v. AFSCME*, which limits the rights of public sector unions to collect dues and effectively extends right-to-work laws nationally, to be an attack upon LGBT rights more generally. "The continued weakening of unions also poses a challenge for the disproportionate number of L.G.B.T. people working to secure a basic economic footing," they argue. Furthermore, they note that, contrary to popular opinion that LGBT people are more affluent, the reality is that they "are more likely to live in poverty than heterosexual and cisgender people. Transgender Americans in particular are almost four times as likely to have a household income under \$10,000 per year." They argue that: "Further contraction of union membership is likely to amplify this inequality."⁶²

The fact that most of those LGBT people live in the South underlines this last point. Business boosters in the Sunbelt prioritised winning profitable contracts anyway they could, but they also demonstrated themselves willing to scrap such plans when corporations threatened what they saw as the anti-union, anti-big government, anti-desegregation "harmony" of the South. Such a lack of unions due to "right-to-work" laws left LGBT people more vulnerable to discrimination, especially when they did not work at a corporation with a non-discrimination pledge nor a workplace with collective bargaining agreements in place. Broader patterns of poverty also have a great impact upon LGBT people, especially in the South, where the majority of LGBT people live in the US. A report on inequality in LGBT communities notes that: "Almost two-thirds of the U.S. LGBTQ population lives in the South, the Midwest, or the mountain states, where they are respectively 1.5, 1.8, and 1.9 times

⁶² Jared Odessky and Miriam Frank, "Janus Is This Term's Worst L.G.B.T. Ruling", *New York Times*, June 27, 2018. Available: <https://www.nytimes.com/2018/06/27/opinion/janus-lgbt-supreme-court-unions.html> (accessed 30/06/2018).

more likely to experience food insecurity than non-LGBTQ people.”⁶³ Now with the Janus decision, unions nationally face similar conditions to those in the South in which workers can opt out of paying subscription dues, diminishing the power of unions to make big political campaigns around sexual nondiscrimination as well as fight day-to-day campaigns in individual workplaces. Yet recent grassroots teachers and fast food worker campaigns help demonstrate the possibility for unions to mobilise a more expansive vision.

The reliance upon workplace protections in the private sector is uniquely American. The system offers little space for advancing more expansive visions of equality and liberation. These issues especially continue to shape the lives of gay, lesbian, bisexual and transgender people in the US South and Southwest. Yet the lack of union protections and worker militancy in the South that has helped to uphold this fragmented citizenship may be shifting. The Fight for \$15 movement as well as the wave of wildcat teachers strikes across the country in recent years have also mobilised broad claims for social justice, and specifically centred LGBT lives in their campaigns.

The long reliance by individual and collective groups of workers on corporations to provide benefits and rights remains inadequate. At the same time that some workers received protections through work, others have seen those protections removed. Without federal protections based on sexual identity, many remain vulnerable to discrimination with little recourse. Yet even if these protections are enshrined in law, they will still be inadequate, especially for those in the Sunbelt, but increasingly everywhere in the United States. The anti-union, anti-government interventionist nature of Sunbelt business, with its reliance upon at-will employment laws, the privatised health care system, and recent attacks on pension rights and benefits, leaves all workers less secure, and those already vulnerable from marginalisation due to their sexuality more likely to lose out. Until the entire system of

⁶³ *Intersecting Injustice: A National Call to Action Addressing LGBTQ Poverty and Economic Justice for All*, Social Justice Sexuality Project Graduate Center, CUNY, March 2018. p.80. Available: https://socialjusticesexuality.com/intersecting_injustice/ (accessed 16/6/2019).

privatised rights is overturned in the United States, inequality will remain within LGBT communities and beyond.

The case studies examined within this thesis demonstrate that the fight for gay and lesbian workplace rights in the latter part of the twentieth century has not been a linear one. There have been moments in which gays and lesbians succeeded in winning certain protections, but they were constantly pushed back by local elites who opposed them. The fight for workplace protections has therefore been a constant battle, one often fought out in the new high tech and oil industries of the Sunbelt. Recent fights over transgender rights in the military demonstrate that these rights remain tenuous and under constant threat of roll back. However, this thesis demonstrates the range of activist responses to employment discrimination in the most difficult of circumstances. From grassroots sip-ins at Cracker Barrel stores to top-down corporate executive activism at Apple and Bank of America, LGBT activists have proven successful in gaining and defending their rights in whatever way they could while they reckoned with a conservative political culture that suggested little may be gained. Yet these protections remain tenuous without a national Equality Act or other civil rights coverage for sexual minorities and gender nonconformists. Such a demand must be at the heart of future LGBT movements, whilst they also remain aware of the complex local and statewide situations that have shaped the lived experience of LGBT people as workers, partners, family members, and citizens over the last half century.

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