

QUEER RURALISM

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* J.D., University of Pennsylvania Law School, 2010; B.A., The George Washington University, 2004. I thank Professors Tobias Barrington Wolff, Lisa R. Pruitt, and Robert McRuer for their thoughtful guidance; David Fischer, Jill, and Mike for sharing their personal journeys; and Craig Konnoth, Karen Rosenthal, and Jed Ross for their helpful suggestions. I dedicate this paper to my parents, Gene and Paula Jerke, who challenge negative rural stereotypes by simply being themselves.

INTRODUCTION

The U.S. legal system and queer Americans have something important in common: an urban assumption. Lesbian, gay, bisexual, and transgender citizens—collectively referred to here as “queer”¹—are deemed to be exclusively metropolitan dwellers. Queer orientations are urban orientations. The U.S. legal system is equally bound up in urbanity, assuming that social problems are exclusively those that are urban and constructing legal responses tailored to urban ills.

Urban assumptions are part and parcel of deeply held stereotypes about the rural generally and rural queers particularly. Rural dwellers are popularly depicted as backwards—as uneducated, intolerant, and dirty—or idyllic—as innocent and safe. Such stereotypes work to marginalize and distort rural realities. They lend to ruralism, which has been defined as “discrimination on the basis of factors stemming from living in a rural area.”² To compound this, rural queers are rendered invisible because popular stereotypes perceive queer people as solely urban. This “queer metronormativity” is pervasive in popular culture,³ scholarly literature, and even judicial rhetoric.⁴

Rural queers reside at the intersection of ruralism and queer metronormativity. They are a particular subset of rural dwellers for whom ruralism is particularly acute. This paper examines the situation of rural queers to construct a concept of *queer ruralism*: structural discrimination stemming from being queer and living in a rural area.

Particular focus is given to judicial rhetoric regarding rural queers. Language from judicial proceedings and opinions demonstrates that the judiciary engages many perceptions of rural queers that affirm and reinforce stereotypes of rural as backwards and queer as urban. This constitutive rhetoric dismisses the existence of rural queers almost entirely, having the effect of institutionalizing queer ruralism. The “impartial” branch of government, re-

¹ This Article employs “queer” as an umbrella term to encompass a range of sexual minorities. Numerous scholars have recognized this usage of “queer.” See, e.g., ANNAMARIE JAGOSE, *QUEER THEORY: AN INTRODUCTION* 3 (1996) (defining “queer” as indeterminate and able to encompass many fluid sexualities); Eli Green & Eric N. Peterson, *LGBTTSQI Terminology*, TRANS-ACADEMICS.ORG, 7 (2006), <http://www.trans-academics.org/lgbttsqiterminology.pdf> (defining “queer” as “[a]n umbrella term which embraces a matrix of sexual preferences, orientations, and habits of the not-exclusively-heterosexual-and-monogamous majority,” and continuing, “[q]ueer includes lesbians, gay men, bisexuals, transpeople, intersex persons, the radical sex communities, and many other sexually transgressive (underworld) explorers”). The term, however, is not without controversy, as it was originally used in a derogatory manner prior to being reclaimed by gay rights activists in the 1980s. See *id.* While the controversy is beyond the scope of this Article, the author believes that “queer” is the best term available to capture all sexual minorities who dwell in rural areas.

² Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273, 279 (2002).

³ See *infra* Part II.

⁴ See *infra* Part IV.

sponsible for protecting those left behind by the elected branches, works as a structure perpetuating such discrimination.

One does not have to look very far to see evidence of queer ruralism. In fact, it plays out on the pages of prominent American newspapers. Consider an article published on the front page of the *Washington Post*. The piece was entitled *How Gays Won a Marriage Victory*, and contained the subtitle *For 7 Years, Activists Eyed a Seemingly Unlikely Target: Iowa*.⁵ On its face, the subtitle seems pretty innocuous. But why is Iowa deemed a “seemingly unlikely target” for marriage litigation? Why were people surprised when the Iowa Supreme Court unanimously held that the State’s defense of marriage statute was unconstitutional? Is it because Iowa, a predominately rural state, is stereotyped as intolerant, uneducated, and ignorant? Or is it because queer people just do not live in rural states like Iowa? Both questions converge to constitute queer ruralism. The *Washington Post* article proceeds by engaging typical rural queer rhetoric. The attorney for Lambda Legal who spearheaded the litigation described the organization’s choice to pursue a strategy in Iowa:

Iowa was, they told her, a *conservative, religious state* in *America’s rural heartland*, and the effort was better concentrated on the more liberal coasts. “There were many people telling us we were crazy,” she said, “that we were foolhardy even thinking of filing a case, and that we might create a backlash.”⁶

Here, rural becomes inextricably linked with conservative and religious: queer rights will never prevail in this rural geography. Rather, one should focus on enlightened urban areas, where queer people actually reside, and where chances for success will be greatest. But while the unanimous decision of the Iowa Supreme Court directly contravenes such rural assumptions, the story is not so simple. In November 2010, Iowans voted against retaining all three justices on the ballot—all three of whom participated in the unanimous decision.⁷ It marks the first time that an Iowa Supreme Court justice has not been retained since the current retention system was adopted in 1962.⁸ The court’s decision and subsequent electoral backlash demonstrate the complexity of queer ruralism. On the one hand, the Iowa Supreme Court decision undermines backward stereotypes of rural, while the ouster of the justices reinforces those very stereotypes. The episode recognizes that rural queer existence is not simply the oppressive monolith underlying the

⁵ Keith B. Richburg, *How Gays Won a Marriage Victory*, WASH. POST, Apr. 15, 2009, at A01.

⁶ *Id.* (emphasis added).

⁷ See Grant Schulte, *Iowans Dismiss Three Justices*, DESMOINESREGISTER.COM (Nov. 3, 2010), <http://www.desmoinesregister.com/article/20101103/NEWS09/11030390/Iowans-dismiss-three-justices>.

⁸ *Id.*

stereotypes, but neither is it, even in the wake of a highly favorable judicial opinion, a progressive oasis. Rural queer realities are dynamic.

Part I of this Article considers ruralism and other scholarship that has explored the U.S. legal system's urban assumption. Part II looks at pop culture, queer theory, and gay and lesbian studies that have either assumed or refuted queer metronormativity. Part III moves away from the abstract to examine rural queer realities of several South Dakotans. Through interviews conducted by the author, these narratives—like the events in Iowa—both confirm and, importantly, belie stereotypes of rural queers. Part IV considers rural queer judicial rhetoric in court opinions, finding that stereotypes of rural and queer are assumed, negotiated, and, in effect, constituted by the judicial branch. Culminating in Part V is an elaboration of queer ruralism and a demonstration of how this pernicious form of structural discrimination has material consequences for rural queers. Namely, there are enormous deficiencies in educational resources for queer rural high school students, inadequacies in the treatment and prevention of HIV/AIDS for queer rural dwellers, and lack of political attention to rural queer priorities. In these areas, among others, rural queers are worse off than their rural heterosexual neighbors and worse off than their urban queer counterparts.

I. RURALISM

A growing body of scholarship is examining America's rural-urban divide in the context of legal studies. As a general point, "society's focus, its programs, its culture, and its standards are based on an urban assumption."⁹ Likewise, our legal system is considered equally urban-centric.¹⁰ In the U.S., "[a]n unspoken assumption permeates modern scholarship: the impact of laws should be measured exclusively in terms of how the legal system operates in America's cities and suburbs."¹¹

This urban assumption of American society results in the exclusion and marginalization of those who are not "urban"—America's rural inhabitants who have "disappeared from view."¹² This marginalization manifests in "ruralism," a distinctive form of "discrimination on the basis of factors stemming from living in a rural area."¹³ Awareness and acknowledgment of ruralism as a form of discrimination suffers because ruralism "does not look

⁹ Bassett, *supra* note 2, at 273.

¹⁰ See Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 168 (2006) [hereinafter Pruitt, *Rural Rhetoric*] (arguing that there is a "judicial propensity to depict rural people and places in highly idealized ways, with courts frequently making assumptions about characteristics of rurality, presumably based upon popular perception[]" which has the effect of neglecting "rural realities" and "rural livelihoods").

¹¹ Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 970 (2005).

¹² *Id.*

¹³ Bassett, *supra* note 2, at 279.

like what we [think] discrimination [should] look[] like.”¹⁴ Ruralism’s effects are not a result of “outright hostility to a particular group,”¹⁵ as “most individuals do not overtly express discriminatory animus toward rural dwellers.”¹⁶ As such, ruralism is often characterized as merely a set of disadvantages.

Ruralism is best cast as a form of *structural* discrimination. Current literature has not considered this approach, but it is an appropriate framework for describing how American society’s various policies, assumptions, and stereotypes have pervasive and systemic—and hence, discriminatory—adverse effects on rural dwellers. Structural discrimination is more fully explored in Part V, as applied to queer ruralism. For now, it suffices to define structural discrimination as: “the policies of dominant race/ethnic/gender institutions and the behavior of the individuals who implement these policies and control these institutions, which are race/ethnic/gender *neutral in intent* but which have a *differential and/or harmful effect* on minority race/ethnic/gender groups.”¹⁷

The structural discrimination that constitutes ruralism arises from the confluence of an urban-centric focus of policymakers who draft laws tailored to urban ills while eliding rural differences,¹⁸ judicial rhetoric that embraces and constitutes rural stereotypes,¹⁹ and society’s popularly embraced perceptions of rurality as embodied in television, literature, and film.²⁰

The effects of ruralism are numerous. Ruralism works to exacerbate rural poverty.²¹ The predominant focus on urban poverty renders rural poverty virtually invisible and lacking the attention that it requires. This may be attributed to stereotypes, as discussed above, that portray rural as ideal and positive or because of spatial isolation and metrocentrism.²² Ruralism contributes to an educational and employment divide. Economic factors, such as funding disparities, and geographic and cultural isolation, which make it

¹⁴ *Id.* at 331 (alterations in original).

¹⁵ *Id.* (quoting Anne Lawton, *The Meritocracy Myth and the Illusion of Equal Employment Opportunity*, 85 MINN. L. REV. 587, 606 (2000)).

¹⁶ *Id.* at 284 n.28.

¹⁷ Fred L. Pincus, *Discrimination Comes in Many Forms: Individual, Institutional, and Structural*, in READINGS FOR DIVERSITY AND SOCIAL JUSTICE 31, 31 (MAURIANNE ADAMS et al. eds., 1st ed. 2000) (emphasis added).

¹⁸ See *infra* Part I(B).

¹⁹ See Pruitt, *Rural Rhetoric*, *supra* note 10 (reviewing a collection of judicial opinions that embrace stereotypes of rural life as safe and idyllic and rural dwellers as simple, self-sufficient, and neighborly).

²⁰ See Bassett, *supra* note 2, at 293–99 (examining rural stereotyping in pop culture that depicts rural dwellers as stupid, poor, uncivilized, and violent, as well as romanticized portrayals of rural life that embrace a nostalgia for simpler times).

²¹ See, e.g., *id.* at 302; Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place*, 71 MONT. L. REV. 1, 21 (2010) [hereinafter Pruitt, *Spatial Inequality*] (“Child poverty tends to increase with the degree of rurality so that the least rural counties, often adjacent to metropolitan counties, experience lower poverty rates than those which are more rural.”) (citations omitted).

²² See Pruitt, *Spatial Inequality*, *supra* note 21, at 15.

difficult to recruit and retain high quality teachers, have created a “‘separate but equal’ problem: educational facilities are provided to rural children, but the opportunities do not approximate those provided to urban children.”²³ Educational disadvantages, coupled with ruralist perceptions that “[b]rilliance is associated with urban, not rural, dwellers” puts these rural inhabitants at a significant disadvantage for post-college employment.²⁴ Ruralism manifests in the lack of access to various goods and services.²⁵ These include access to quality and affordable healthcare,²⁶ housing,²⁷ and other government and social services, such as welfare,²⁸ mental health treatment,²⁹ and substance abuse programs.³⁰

Disconcertingly, “ruralism serves to exacerbate the impact of other forms of discrimination.”³¹ This paper explores how ruralism uniquely complicates life for queer rural dwellers. In one sense, it is an extension of earlier work that has examined the particularly acute challenges rural racial minorities face by residing at the intersection of racism and ruralism.³²

²³ Bassett, *supra* note 2, at 312; *see also* Pruitt, *Spatial Inequality*, *supra* note 21, at 41 (noting that while Montana students perform above average according to many indices, “[m]any of Montana’s school buildings are structurally deteriorating, while low salaries and rural locales make teacher recruitment and retention problematic”) (citations omitted).

²⁴ Bassett, *supra* note 2, at 315.

²⁵ *See id.* at 316–23; Lisa R. Pruitt, *Place Matters: Domestic Violence and Rural Difference*, 23 WIS. J.L. GENDER & SOC’Y 347, 353 (2008) [hereinafter Pruitt, *Place Matters*] (“An array of services, from basic health care to victim advocates, typically are scarce and difficult for rural residents to reach.”); *see generally* Lisa R. Pruitt, *The Forgotten Fifth: Rural Youth and Substance Abuse*, 20 STAN. L. & POL’Y REV. 359 (2009) [hereinafter Pruitt, *Forgotten Fifth*].

²⁶ *See* Bassett, *supra* note 2, at 318–19; Pruitt, *Spatial Inequality*, *supra* note 21, at 28 (noting that nationally eleven percent of children do not have healthcare insurance, but that when “the data are analyzed according to relative rurality of the county, the rates of uninsured children in the most rural counties reach 15.2%, compared with 9.9% uninsured in the most urban counties”) (citations omitted).

²⁷ Bassett, *supra* note 2, at 319–21.

²⁸ *Id.* at 321.

²⁹ *Id.* at 322.

³⁰ Pruitt, *Forgotten Fifth*, *supra* note 25, at 362–63, 401 (arguing that substance abuse in rural areas is prevalent, but that “[t]he persistent association of substance abuse with cities means rural residents are disserved by drug policies and regulations at both national and state levels”).

³¹ Bassett, *supra* note 2, at 284.

³² *See, e.g.*, Leif Jensen, *The Doubly Jeopardized: Nonmetropolitan Blacks and Mexicans*, in RURAL POLICIES FOR THE 1990s 181, 181 (Cornelia B. Flora & James A. Christenson eds., 1991) (“Nonmetropolitan . . . blacks and Mexicans suffer a double jeopardy owing to their geographic location and minority group status . . . [T]he comparative economic disadvantage of rural minorities has been sizable and persistent.”) (citation omitted); Craig Anthony (Tony) Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL’Y REV. 191, 195 (1990) (“Biases against the rural poor are compounded by cultural prejudices against the poor and racial and ethnic minorities, especially blacks and Latinos.”).

A. *Rural Stereotypes: Idyllic & Backwards*

What are the forces animating ruralism? Like other forms of discrimination, ruralism is driven by popularly embraced stereotypes about rural people and their lives. Dichotomous stereotypes operate to construct rurality as either idyllic or backwards. Professor Debra Lyn Bassett has attributed the seeming inconsistency of these stereotypes to societies' "'love-hate' relationship with its rural communities."³³

Idyllic conceptions of rural life are embraced to signify that the rural lifestyle is simple and desirable. These stereotypes perceive rural America as "quiet, clean, connected, and wholesome."³⁴ They embrace a national "nostalgia for our rural past," when we were "safe" and everyone was "neighborly."³⁵ Accordingly, the rural ideal is incompatible with important social issues, such as poverty,³⁶ and tends to perpetuate the "long-standing notion that law should play less of a role in rural livelihoods."³⁷ Rural idealism—although seemingly good-natured—perpetuates ruralism by masking social, political, and legal issues behind idyllic stereotypes.

Conversely, a more facially degrading stereotype perceives rural people as "uneducated and unsophisticated . . . backward, unattractive, lazy, stupid, and dirty."³⁸ Popular culture is ridden with examples of this type of rural stereotyping, including television,³⁹ literature,⁴⁰ and film.⁴¹ It could be argued that these portrayals are mere jokes and are not meant to be taken seriously. As Professor Bassett identifies, however, "pervasive stereotyping dehumanizes" and "the impact is the same whether the stereotyping involves African-Americans, women, gays and lesbians, or rural dwellers."⁴²

B. *Legal & Political Implications*

Of particular importance to this Article is how ruralism affects law and public policy. Negative stereotypes associated with ruralism work to marginalize rural constituents and litigants, rendering rural dwellers invisible and fostering an urban-centric legal and political regime. The urban assumption is embraced by our political and legal actors, which has the effect of perpetuating and institutionalizing ruralism. As Professor Pruitt observes,

³³ Bassett, *supra* note 2, at 275 (citation omitted).

³⁴ Pruitt, *Rural Rhetoric*, *supra* note 10, at 169. *See also* Bassett, *supra* note 2, at 275 ("[R]ural areas often are idealized as safe, bucolic, quiet havens from the stress of city living.").

³⁵ Pruitt, *Rural Rhetoric*, *supra* note 10, at 159.

³⁶ *See id.* at 172.

³⁷ *Id.* at 159.

³⁸ Bassett, *supra* note 2, at 275.

³⁹ *Id.* at 293–96 (describing degrading portrayals of rural characters in the popular television shows *Green Acres* and *The Beverly Hillbillies*).

⁴⁰ *Id.* at 296–99 (discussing rural stereotypes in *Tobacco Road* and *A Painted House*).

⁴¹ *Id.* at 298–300 (discussing rural stereotypes in *Deliverance* and *Fargo*).

⁴² *Id.* at 299.

the “urban norm . . . is implicit in contemporary legal scholarship and in a great deal of law- and policy-making.”⁴³ She argues that the “law’s constitutive rhetoric about rural people, places, and livelihoods” reflects many stereotypes about rurality and influences legal outcomes.⁴⁴ When legal and political actors give purchase to rural stereotypes they exacerbate those perceptions; their rhetoric is not merely shaped by rural stereotypes, but has constitutive force in prospectively shaping or affirming them.

Rural stereotypes are embedded in several areas of the law. The concern of “local bias” with regard to diversity jurisdiction often involves rural stereotyping, “which assumes provincialism and lack of intelligence” of the rural judiciary.⁴⁵ The area of venue also assumes negative stereotypes of rural juries and their inabilities—inabilities that allegedly prejudice litigants and lead to lower damages awards.⁴⁶

Professor Pruitt observes that the substantive law is sometimes shaped by a “rural-urban dichotomy.”⁴⁷ She notes that policy-makers do sometimes shed the urban assumption:

Judges and legislators embrace the rural-urban dichotomy in a variety of contexts and for a variety of reasons. They sometimes respond to legislation that expressly distinguishes rural from urban and at other times respond to a litigant’s argument that the rural setting justifies deviation from an explicit or implicit urban norm.⁴⁸

While lauding some courts for the attention they pay to the unique situations of rural dwellers, Professor Pruitt is critical of the fact that judges and policy-makers too often rely on rural stereotypes and not “rural realities.”⁴⁹

For example, courts evoke rural stereotypes in various areas of property law, such as nuisance,⁵⁰ and when deciding whether private land has become a public road.⁵¹ In tort law, courts sometimes “endorse[] a bright-line distinction between rural and urban,” for example, when determining liability

⁴³ Pruitt, *Place Matters*, *supra* note 25, at 356.

⁴⁴ Pruitt, *Rural Rhetoric*, *supra* note 10, at 159.

⁴⁵ Debra Lynn Bassett, *The Hidden Bias in Diversity Jurisdiction*, 81 WASH. U. L.Q. 119, 149 (2003). *See also* Bassett, *supra* note 2, at 323–24 (“Local bias is ascribed primarily to rural courts, not urban ones, and generally is considered a problem stemming from the provincialism of rural areas and the concomitant bias by rural dwellers against out-of-staters.”).

⁴⁶ *See* Debra Lynn Bassett, *The Rural Venue*, 57 ALA. L. REV. 941, 963–70 (2006) (discussing how litigants often invoke rural stereotypes when arguing for a change of venue). *See also* Bassett, *supra* note 2, at 324.

⁴⁷ Pruitt, *Rural Rhetoric*, *supra* note 10, at 185–86.

⁴⁸ *Id.*

⁴⁹ *Id.* at 159.

⁵⁰ *Id.* at 186 (citing cases in which courts applied a different standard for what constitutes a nuisance in a rural area as opposed to an urban area and requiring rural litigants to make a greater showing of nuisance to trigger liability).

⁵¹ *Id.* at 187 (citing cases where courts apply different standards for what constitutes dedication of “public roads” by landowners in rural as opposed to urban settings).

for fallen trees and maintenance of roads.⁵² Generally, rural landowners are not responsible to tort claimants who suffer injury for fallen trees on roads and sidewalks adjacent to their property, while urban landowners are liable.⁵³ In the area of obscenity, courts have suggested a lower threshold for what constitute obscene in rural as opposed to urban landscapes.⁵⁴ In criminal law and procedure, courts often perceive spatial isolation of rural inhabitants as relevant when determining expectations of privacy in the search and seizure context.⁵⁵

On the political level, ruralism is compounded because rural dwellers lack significant political power. In the 1960s, congressional districts with a majority rural population constituted forty-two percent of all districts.⁵⁶ By the late twentieth century, this number had decreased to just thirteen percent.⁵⁷ One scholar notes that “[r]ural people are so widely dispersed that they are politically invisible.”⁵⁸

This level of political invisibility has significant implications, particularly for national policymaking. For example, Professor Pruitt argues that the Personal Responsibility Work Opportunity Reconciliation Act (“PRWORA”), the 1996 welfare reform legislation, “reflects an urban political agenda that failed to consider rural realities.”⁵⁹ National dialogue surrounding PRWORA embraced rural myths and stereotypes, such as the belief that the “informal economy” assists the rural poor by allowing them to rely on family and neighbors to supplement income and provide networks for assistance,⁶⁰ and a broad collective notion that challenges of rural life are minor and “offset by its many pleasures.”⁶¹ Consequently, PRWORA failed to respond to the unique structural challenges confronting rural dwellers,

⁵² See *id.* at 191–92. The rural-urban divide previously applied in the context of the locality rule in medical malpractice, according to which doctors in rural areas were often held to a lower standard of care. This has generally been abandoned with the standardization of the medical profession. See *id.* at 193.

⁵³ See *id.* at 191.

⁵⁴ *Id.* (citing *Price v. Commonwealth*, 201 S.E.2d 798, 799 (Va. 1974) (stating that allegedly obscene materials not offensive to “the community standards of our metropolitan areas might well be regarded as obscene by the standards of some of our rural communities”).

⁵⁵ See *id.* at 194–99 (reviewing judicial opinions to demonstrate that courts often accord rural dwellers a greater expectation of privacy in the search and seizure context and, at times, embrace a view that “rural residents are more vulnerable to crime to justify police action”).

⁵⁶ Bassett, *supra* note 2, at 291.

⁵⁷ *Id.* (citing Rhodes Cook, *America’s Heartland: Neither One Mind Nor One Heart*, 55 CONG. Q. WKLY. REP. 2243, 2243 (1997)).

⁵⁸ *Id.* (citing Charles W. Fluharty, *Refrain or Reality: A United States Rural Policy?*, 23 J. LEGAL MED. 57, 65 (2002)).

⁵⁹ Lisa R. Pruitt, *Missing the Mark: Welfare Reform and Rural Poverty*, 10 J. GENDER RACE & JUST. 439, 439 (2007).

⁶⁰ See *id.* at 461, 475–77 (using the example of family childcare to illustrate assumptions about the informal economy and concluding that it is not an adequate substitute for public assistance).

⁶¹ *Id.* at 444.

such as housing, transportation, childcare, employment, and education.⁶² For example, in the area of housing, rural dwellers have a more difficult time than their urban counterparts purchasing a home or paying rent.⁶³ With regard to transportation, rural dwellers face unique challenges due to spatial isolation.⁶⁴ Like much national legislation, PRWORA did not “attend[] to the different economic structures, institutions, social norms, and demographics that mark rural places and entrench rural poverty.”⁶⁵

Similarly, Professor Pruitt considers the problem of substance abuse among rural youth and suggests that substance abuse is now a “greater problem among rural youth than among their urban counterparts.”⁶⁶ She argues that rural communities lack resources for prevention and treatment and that “cultural differences may render national programs ineffective in rural contexts.”⁶⁷ Professor Pruitt concludes that effective responses to youth substance abuse must be “place-specific” and not “national” or “universal” because “[u]rban agendas, ideas, and images are frequently unworkable and ineffective in rural settings.”⁶⁸ Professor Pruitt’s analysis of PRWORA and rural youth substance abuse dovetails with other scholarship, which has argued that social programs, such as welfare reform, are “largely a product of an urban political and cultural legislative agenda.”⁶⁹ Ruralism engages popular stereotypes of rurality with the effect of ignoring rural realities. Engaging “rural realities” would embrace the unique circumstances of rural dwellers, including challenges with housing, spatial isolation, and transportation, among others, that distinguish rural from urban life.

II. QUEER METRONORMATIVITY

Paralleling the general urban assumption of America is an even more acute assumption with regard to queer rural dwellers: they simply do not and cannot exist. It is popularly believed that queer culture and identity can only be situated in an urban geography—hence the concept of “queer metronormativity.” The previous section demonstrated how ruralism works as a unique form of discrimination. This section focuses on queer individuals as a particular subset of rural dwellers. Relying on these discussions and judicial rhetoric in the next section, Part V sets forth the view of “queer ruralism” as a particularly pernicious form of ruralism that is exacerbated by queer metronormativity.

⁶² See *id.* at 443.

⁶³ See *id.* at 452–53.

⁶⁴ See *id.* at 453.

⁶⁵ *Id.* at 478.

⁶⁶ Pruitt, *Forgotten Fifth*, *supra* note 25, at 361.

⁶⁷ *Id.* at 363.

⁶⁸ *Id.* at 401.

⁶⁹ Daniel T. Lichter & Leif Jensen, *Rural America in Transition: Poverty and Welfare at the Turn of the Twenty-First Century*, in *RURAL DIMENSIONS OF WELFARE REFORM* 77, 78 (Bruce A. Weber et al. eds., 2002).

The stereotypes of rural dwellers articulated in Part I—rural as backwards and rural as idyllic—have a particular application to rural queers. Charles Silverstein articulates the popular idyllic perceptions in *Man to Man: Gay Couples in America*:

City gays imagine the boys on the farm as somehow more wholesome than themselves. Soaking up the sun while pitching a bale of hay, their bodies taking on a bronze glow, these promising young men develop tight muscles from manual labor and hardiness; the lines in their faces and the callouses [sic] on their hands are the result of wind, rain, and the warming sun. In short, they are pictured as country bumpkins with rosy cheeks, ready to be plucked if they venture into the big city.⁷⁰

Rural queers similarly confront stereotypes of backwardness, stupidity, and naiveté. Clark Williams, interviewed by Will Fellows for *Farm Boys: Lives of Gay Men from the Rural Midwest*, grew up on a farm in rural northwestern Wisconsin.⁷¹ Williams' narrative demonstrates the backwards stereotype:

A lot of men idealize the naïve, good-looking, tanned farm boy. "Wouldn't you love to go to bed with him? Wouldn't you love to have him, to take him down?" I've had some guys take that kind of approach with me. I'm supposed to be wide-eyed, naïve, less intelligent, and in denial about who I am. They'll ask me, "Are you married? Do you have a girlfriend?"⁷²

In addition to suffering from general stereotypes of backwardness and idealness because they are rural dwellers, rural queers experience further typecasting because they are rural *and* queer. That is, metronormative assumptions implicit in queer culture and identity deny recognition of queer Americans who live and prosper in rural spaces. So when rural queers "escape" to the city, they are perceived as backwards or idyllic. But when they remain in a rural geography they are simply ignored.

Popular perceptions of queer Americans as exclusively urban have permeated nearly all aspects of our social, political, and legal understanding.⁷³ Queer rural stereotypes are animated in part by specific episodes of hate and

⁷⁰ CHARLES SILVERSTEIN, *MAN TO MAN: GAY COUPLES IN AMERICA* 240 (1981). See also WILL FELLOWS, *FARM BOYS: LIVES OF GAY MEN FROM THE RURAL MIDWEST* xi (1998) ("It is not uncommon for gay men who grew up on farms to regard their rural roots as irrelevant or embarrassing. Those attitudes tend to be reinforced by the popular gay press, in which the most common representations of the rural childhood experience include a variety of farm-boy stereotypes, fantasies, and romanticized, back-to-nature images.").

⁷¹ See FELLOWS, *supra* note 70, at xi, 292.

⁷² *Id.* at xi.

⁷³ One of my favorite associations of queer and urban was made by Christwire.org. In an article entitled *Is My Husband GAY?*, the ninth sign that your husband is gay is whether he "[t]ravels frequently to big cities or Asia":

intolerance in rural areas, such as the 1998 murder of Matthew Shepard in Laramie, Wyoming, and the 1993 rape and murder of Brandon Teena, a transgender teenager, in a small Nebraska town.⁷⁴ These regrettable events give credence to both rural and queer stereotypes by portraying rural as backwards and intolerant and rural queers as victims. The message is simple: rural queers ought to remain in the closet or escape to the city lest they too become victims of rural bigotry.

Similar depictions are perpetuated by pop culture. The Academy Award-winning film *Boys Don't Cry* is the story of Brandon Teena's brutal Nebraska murder.⁷⁵ The critically acclaimed film *Brokeback Mountain* provides a nuanced view of same-sex love in Wyoming over a twenty-year period beginning in the 1960s.⁷⁶ The film deserves praise for acknowledging the existence of queer identities in the American West while simultaneously representing the struggles faced by rural people in assuming queer identities. Compare these films to the popular sitcom *Will & Grace*, a comedy portraying happy "urban" gay men and their friends in New York City,⁷⁷ or the Showtime series *Queer as Folk*, a drama depicting sociable and (mostly) successful, attractive, and sexual gay men and women in Pittsburgh.⁷⁸ Juxtaposed, these depictions convey a simple message: rural queers face oppression and even violence while urban queers flourish. The only way for rural queers to be happy is to migrate to the city.

Many of these pop cultural touchstones are rooted in the stereotype of rural as backwards or intolerant and rural queer as invisible. They draw from a strict dichotomy between urban and rural to animate and give context to plot lines. While films should be lauded for acknowledging urban-rural divergences, one should be cautious not to rely on gratuitous assumptions of rural or queer. The remainder of this section considers the academic scholarship that has provided a framework for understanding queer metronormativity.

Some husbands will spend a great deal of money traveling far from home to hide their deplorable same-sex actions. Big cities offer indulgence of every kind. From gay bars and clubs to prostitutes and sex bathhouses, a man seeking encounters can find them easily if he's so inclined. Is there ever really a good excuse for a husband to visit Thailand or San Francisco without his wife?

Stephenson Billings, *Is My Husband GAY?*, CHRISTWIRE.ORG (Aug. 14, 2010), <http://christwire.org/2010/08/is-my-husband-gay>. Not only does the association link queer experience exclusively with urban locales, it assumes the idyllic rural stereotypes; "deplorable" same-sex desire is simply unavailable in rural America.

⁷⁴ See Dina Mazina & Rebecca DiBrienza, *Hate Crimes Against Queer Youth*, OUTHISTORY.ORG (2008), http://www.outhistory.org/wiki/Hate_Crimes_Against_Queer_Youth; Andrew Matzner, *Teena*, BRANDON, GLBTQ.COM (Dec. 31, 2004), http://www.glbtq.com/social-sciences/teena_b.html.

⁷⁵ *BOYS DON'T CRY* (IFC Productions 1999).

⁷⁶ *BROKEBACK MOUNTAIN* (Focus Features 2005).

⁷⁷ *Will & Grace* (NBC television broadcast 1998–2006).

⁷⁸ *Queer as Folk* (Showtime television broadcast 2000–2005).

A. *The Queer Urban Assumption & Gay Migration*

Queer theorists and historians have given purchase to queer urban assumptions and the “gay migration,” noting the importance of metronormativity in the queer psyche. Joseph Litvak observes that “[w]e have learned from gay, lesbian, and queer theorists that gay people—especially gay men—have traditionally functioned as objects of such distinguished epistemological and rhetorical aggressions as urbanity and knowingness.”⁷⁹

Judith Halberstam describes queer metronormativity with reference to a dominant “story of migration from ‘country’ to ‘town,’” “a spatial narrative within which the subject moves to a place of tolerance after enduring life in a place of suspicion, persecution, and secrecy” and accepts that moving to a city is the only option for rural queers.⁸⁰ This physical journey from small town to urban center is conflated with the “psychological journey from closet case to out and proud.”⁸¹

Several queer historians have focused exclusively on urban centers as the locus of queer identity. John D’Emilio argues that gay identity first arose from the congregation of groups in American cities in the early twentieth century.⁸² George Chauncey explores the roots of urban gay culture in *Gay New York* by examining gay ownership of various public spaces and private venues in New York City in the first half of the twentieth century.⁸³ Other scholars, too, equate queer culture with metropolitan living.⁸⁴ While these historical undertakings ought to be praised for, in many instances, their exhaustive retelling of urban community histories, they are responsible, in part, for encouraging a myopic view of queer identity that is limited to the urban.

Kath Weston argues that gay identities originate in the teleological migration to the city.⁸⁵ The prospective migrant looks to the city for cues of how to behave. The city, in essence, constitutes queer identity. Weston is

⁷⁹ JOSEPH LITVAK, *STRANGE GOURMETS: SOPHISTICATION, THEORY, AND THE NOVEL 4* (1997).

⁸⁰ JUDITH HALBERSTAM, *IN A QUEER TIME AND PLACE: TRANSGENDER BODIES, SUBCULTURAL LIVES* 36–37 (2005).

⁸¹ *Id.* at 37.

⁸² JOHN D’EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940–1970* 11–13 (1983).

⁸³ GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD, 1890–1940* (1994).

⁸⁴ See ALLAN BÉRUBÉ, *COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO* 244–45 (1990) (“Gay male and lesbian veterans who moved to the cities found an anonymity, independence, and safety in numbers allowing them to lead gay lives without the scrutiny of unsympathetic family members and small-town neighbors who could condemn them or threaten their livelihood.”); Craig J. Konnoth, *Created in Its Image: The Race Analogy, Gay Identity, and Gay Litigation in the 1950s–1970s*, 119 *YALE L.J.* 316, 329 (2009) (“Communities of people attracted to the same sex congregated in cities following World War II. A vibrant subculture sprang up in many cities, with bars and other establishments catering to these individuals.”).

⁸⁵ Kath Weston, *Get Thee to a Big City: Sexual Imaginary and the Great Gay Migration*, 2 *GAY & LESBIAN Q.* 253, 274 (1995) (exploring how the rural-urban dichotomy influences the formation of gay and lesbian identity).

quick to clarify that this “migration” does not only embody the physical, but the imaginative as well:

The gay imaginary is not just a dream of a freedom to “be gay” that requires an urban location, but a symbolic space that configures gayness itself by elaborating an opposition between rural and urban life. It is also the odyssey of escape from the isolation of the countryside and the surveillance of small-town life to the freedom of anonymity of the urban landscape.⁸⁶

The queer metronormative scholarship relies on an unsupported assumption: that rural queers experience “isolation” because they dwell in the “countryside;”⁸⁷ that queer people in rural areas are oppressed, persecuted, unaccepted, and isolated. According to this portrayal, no rational queer would choose to reside in his or her rural home; migration to a gay urban mecca is the only way out. This characterization is consistent with Halberstam’s summation: “Rural and small-town queer life is generally mythologized by urban queers as sad and lonely, or else rural queers might be thought of as ‘stuck’ in a place they would leave if they only could.”⁸⁸

B. *Rebuking Queer Metronormativity*

Queer historians, theorists, and documentarians are increasingly recognizing queer rural dwellers. Dominant assumptions of queer identity as an urban identity are increasingly being contested and undermined as “more and more historians have begun to examine the richness of gay life in areas not well known today for their lesbian, gay, and bisexual communities.”⁸⁹ Community histories are diverting attention from urban queer environments to specific localities to emphasize how queer experiences vary from place to place. As Brett Beemyn notes:

The increased focus on individual communities has drawn greater attention to the specificity of gay experience and the importance of place in shaping the lives of lesbians, gay men, and bisexuals. Whereas general histories have often assumed that gays in the U.S. shared many experiences, community studies frequently highlight the distinctions between the lives of gays in different regions, cities, and neighborhoods and the unique circumstances surrounding the development of gay communities across the country.⁹⁰

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ HALBERSTAM, *supra* note 80, at 36.

⁸⁹ BRETT BEEMYN, *CREATING A PLACE FOR OURSELVES: LESBIAN, GAY, AND BISEXUAL COMMUNITY HISTORIES 2* (1997).

⁹⁰ *Id.*

John Howard's unprecedented documentation of gay and lesbian identities in rural Mississippi highlights the vitality of community histories.⁹¹ "In contrast to urban-centered and identity-focused studies of American lesbian and gay history, *Men Like That* attends to queer desire, both identity based and not, in small cities, towns, and rural settings of meager economic resources."⁹²

Will Fellows, in his book *Farm Boys*, documents the experiences of gay men in the rural Midwest from the mid-1960s to mid-1980s.⁹³ Fellows undertook the project because he felt that the "experiences and perspectives of gay men who grew up in farm families" were neglected in the literature.⁹⁴ While all of the men Fellows interviewed came of age and explored their sexualities in rural areas, most eventually migrated to urban and suburban communities.⁹⁵ Fellows attributes this to the need to put "distance between themselves and the farm" in order to come out of the closet.⁹⁶ In an urban environment, these men were able to "connect with others like themselves," "develop community," benefit from a "greater range of opportunity," and become politically active.⁹⁷ Fellows concludes that "[i]f the prospect of staying in their rural communities had not appeared to be so incompatible with leading honest, unconstricted lives, more of the men might have made their homes in farm communities—some of them as farmers, perhaps."⁹⁸ In essence, the biographies provided by *Farm Boys* are important for documenting rural upbringings, while reinforcing notions of gay migration; they demonstrate the complexity of rural queer existence.

Scott Herring has employed the term "anti-urbanism" to describe a movement "outside the U.S. metropolis" that had assumed a "deliberately queer anti-urbanism."⁹⁹ Herring explores the journals of *RFD Country* and *Country Women* in the 1970s, examining the "visual culture and stylistic productions of rural-based queer print culture that speak volumes about the calcification of U.S. metronormativity over the course of the 1970s."¹⁰⁰ In contrast with national magazines like the *Advocate*, with its "relentless promotion of this cosmo-urban style,"¹⁰¹ *RFD* was rural-focused¹⁰² and "let us

⁹¹ JOHN HOWARD, *MEN LIKE THAT* (1999).

⁹² *Id.* at xiv.

⁹³ FELLOWS, *supra* note 70.

⁹⁴ *Id.* at xi.

⁹⁵ *Id.* at 311.

⁹⁶ *Id.* at 312.

⁹⁷ *Id.* at 313.

⁹⁸ *Id.* at 314.

⁹⁹ Scott Herring, *Out of the Closets, Into the Woods: RFD, Country Women, and the Post-Stonewall Emergence of Queer Anti-urbanism*, 59 AM. Q. 341, 345 (2007).

¹⁰⁰ *Id.* at 346.

¹⁰¹ *Id.* at 348.

¹⁰² "As *Advocate* obliterated other possible U.S. geographies with its emphasis on the bicoastal, the white, the male, the fashionable, and the middle class, 'RFD Country' insists on reintroducing the very local and regional and often working-class styles and states that are rendered inconsequential." *Id.* at 367.

imagine alternative possibilities for belonging within the sexual boundaries of the geographic U.S. nation-state, as well as for imaginatively extracting one's self from metronormativity at the moment of its historical inception in post-Stonewall queer cultures."¹⁰³ Herring concludes that *RFD* lost sight of its rural origins and, by 2000, *RFD*'s founders "would have been hard-pressed to find critiques of normalizing urban gay culture."¹⁰⁴

The experiences of rural queers are increasingly being exposed through personal essays and documentaries. Eli Clare explores the intersections of queer, disability, and rural studies in *Exile and Pride: Disability, Queerness and Liberation*, a collection of essays about growing up as a disabled transman in rural Oregon.¹⁰⁵ In the Afterword to the 2009 edition, ten years following the original publication of Clare's essays, Dean Spade lauded Clare for challenging rural and queer stereotypes, writing that Clare:

disrupts the binary of rural/urban that assigns to rural backwardness, homophobia, violence, and ignorance while assigning to urban sophistication, liberation, tolerance, and greater safety for outsiders. He troubles the notion that queer and trans people find ourselves and liberate ourselves in the city, leaving behind rural settings that offer us nothing. Instead, he paints the rich and complex dynamics of sexual and gender outsider statuses in rural communities and shares the complex grief and longing for rural ways that he faces as he mixes with urban queer people who dismiss and simplify rural life. Through a careful analysis of the class, gender, and ability dynamics that shaped his own rural context, he exposes the inaccuracy of the societal narrative of urban queer liberation and wholeness, requiring the reader to wrestle with the complexities erased by the commonly oversimplified vision of rural life.¹⁰⁶

In recent years, several documentary films have chronicled rural queer existence. *Farm Family: In Search of Gay Life in Rural America* shares the experiences of a dairy farmer in Wisconsin; a rural Wisconsin couple that has adopted five children; participants in a gay rodeo association event in Minnesota; attendees at Wyoming's gay pride campout—modeled after the old mountain man "rendezvous" where attendees set up camp for several days and participate in an array of games and activities; and "Radical Faeries" living together in rural New Mexico;¹⁰⁷ among others.¹⁰⁸ *Small Town*

¹⁰³ *Id.* at 366.

¹⁰⁴ *Id.* at 341.

¹⁰⁵ ELI CLARE, *EXILE AND PRIDE: DISABILITY, QUEERNESS AND LIBERATION* (10th ed. 2009).

¹⁰⁶ Dean Spade, *Afterword* to ELI CLARE, *EXILE AND PRIDE: DISABILITY, QUEERNESS AND LIBERATION*, at 168 (10th ed. 2009).

¹⁰⁷ The Radical Faeries is a decentralized gay movement that believes in a "spiritual dimension" to sexuality. *About RadFae.Org*, RADFAE.ORG, <http://www.radfae.org/about.htm> (last visited Oct. 27, 2010). Many Radical Faeries are pagans and share the values of "feminism, respect for the Earth, and individual responsibility rather than hierarchy." *Id.*

Gay Bar explores queer commercial venues in rural Mississippi, focusing on Rumors in Shannon, MS (population 1,657¹⁰⁹) and Crossroads in Meridian, MS (population 36,153¹¹⁰).¹¹¹ The bars, while regularly facing harassment from authorities, community leaders, and citizens, are described as a “safe place,” a “getaway,” the only place to “come and be yourself,” a “second home,” an “outlet,” and an “escape from reality.”¹¹² *Out in the Silence* is the story of a gay man who returns from the city to his rural Pennsylvania town and the controversy surrounding his same-sex wedding announcement appearing in the local press.¹¹³ The documentary’s aim “is to expand public awareness about the difficulties that gay, lesbian, bisexual and transgender people face in rural and small town America and to promote dialogue and action that will help people on all sides of the issues find common ground.”¹¹⁴

C. Conclusion

While popular culture and queer studies have given credence to queer metronormativity, a growing body of scholarship is examining rural queer experiences. Rural queers are increasingly sharing their experiences through memoirs, essays, and documentaries. In so doing, they are challenging dominant assumptions of rural queers as non-existent, sad, isolated, or trapped. Despite these important advances, rural queers continue to suffer adversely from queer metronormativity.

Queer metronormativity is dangerous because it enables urban queers to dictate queer culture, or at least the popular perceptions thereof. “Taken as story, style, or both, metronormativity thus buttresses the narratives, customs, and presumptions of many modern U.S. urban gays and lesbians”¹¹⁵ It therefore “enables these gays and lesbians to govern the aesthetic, erotic, material, and affective imaginaries of many modern queers, irrespective of ‘country,’ ‘town,’ or somewhere in between.”¹¹⁶ As discussed below in Part V, this metronormativity has legal and political implications

See also *Radical Faeries*, RADICALFAERIES.NET (2009), <http://www.radicalfaeries.net/radicalfaeries/sanctuary.htm>.

¹⁰⁸ FARM FAMILY: IN SEARCH OF GAY LIFE IN RURAL AMERICA, (TJoeMurray Videos 2004).

¹⁰⁹ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for “Shannon, Miss.”) (last visited Oct. 27, 2010) (based on 2000 census).

¹¹⁰ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for “Meridian, Miss.”) (last visited Oct. 27, 2010) (2006–2008 estimate).

¹¹¹ SMALL TOWN GAY BAR (Malcom Ingram 2006).

¹¹² *Id.*

¹¹³ OUT IN THE SILENCE (qWaves Documentary Films 2009).

¹¹⁴ OUT IN THE SILENCE, http://wpsu.org/outinthesilence/about_index (last visited Aug. 29, 2010).

¹¹⁵ Herring, *supra* note 99, at 345.

¹¹⁶ *Id.*

that work to exclude queer voices from important dialogue, thereby having tangible implications.

III. NARRATIVES FROM NORTHEASTERN SOUTH DAKOTA

This section demonstrates how queer people in northeastern South Dakota both confirm and controvert queer metronormative assumptions.¹¹⁷ These narratives are drawn from interviews of residents of Aberdeen, a city of approximately 25,000 in the northeastern corner of South Dakota, or the surrounding area.¹¹⁸ On the one hand, urban assumptions are harbored by many rural queers who perceive migration to an urban gay mecca as necessary, who at times feel isolated, or who attribute trauma with being gay to their rural locale. On the other hand, these same individuals remain rural dwellers because they are rooted in and attached to a place. To the surprise of many—including themselves—they have found or created extensive queer spaces in northeastern South Dakota, demonstrating that queers exist and can thrive in rural areas. What emerges through these narratives is a rural queer identity that is far from monolithic. Rural queer experiences are varied: at times, they give credence to rural queer stereotypes, and at other times, they undermine those stereotypes.

In approaching these narratives, one must be careful not to generalize the meaning of “rural” and to assume that one rural locale is identical to all others. The diversity of “rural” space is well-documented. A Carsey Institute report demonstrates that the “tapestry of rural America is complex.”¹¹⁹ The Carsey research dissects “rural” into four diverse categories: (i) amenity-rich rural America, (ii) declining resource-dependent rural America, (iii) chronically poor rural America, and (iv) amenity/decline rural America.¹²⁰ While “rural” “conjures up images of farm life, fresh air, wide open spaces, and small, somewhat isolated towns populated with hard-working, independent people,” where farming is the main, or only, industry, this image is not accurate today.¹²¹ In the twenty-first century, when nearly ninety-four percent of the rural labor force is employed in non-farm industries, “[i]t no longer makes sense to think of rural communities simply as farmland or

¹¹⁷ The narratives described here originated from the author’s undergraduate thesis, written under the direction of Professor Robert McRuer at George Washington University. Bud W. Jerke, Aberdeen, The “Hub City”: Queer Intersections in Northeastern South Dakota (2004) (unpublished A.B. thesis, George Washington University) (on file with author). The narratives have been tailored to reflect the objectives of this paper.

¹¹⁸ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for “Aberdeen, SD”) (last visited Nov. 15, 2010).

¹¹⁹ LAWRENCE C. HAMILTON ET AL., CARSEY INST., PLACE MATTERS: CHALLENGES AND OPPORTUNITIES IN FOUR RURAL AMERICAS 30 (2008), available at http://www.carsey.institute.unh.edu/publications/Report_PlaceMatters.pdf.

¹²⁰ *Id.* at 6.

¹²¹ *Id.*

sparsely populated, idyllic retreats.”¹²² Rather, a true account of “rural” must attend to the specific political, economic, and social regimes of a particular rural locale.

Moreover, even within the same rural region, rural experiences are highly divergent, as these personal stories of rural queers in northeastern South Dakota demonstrate. It is imperative to be attentive not only to the diversity of various rural geographies but also to the unique experiences of individuals within the same rural setting. Before turning to the narratives of queer experience in northeastern South Dakota, the next part considers the demographics of South Dakota generally and of Aberdeen and northeastern South Dakota in particular.

A. *Snapshot of Northeastern South Dakota*

John R. Milton, University of South Dakota English professor, opens his *South Dakota: A History* by characterizing the independence afforded by the state’s open space:

South Dakotans do not dislike large metropolitan complexes, nor do they stay away from them deliberately, but they can get along without them. Tall buildings prevent a man from seeing the full sky, or from finding a horizon, and if he is from Dakota he is accustomed to seeing weather systems (or feeling them) while they are still hours or even a day in the distance The long look across open land gives him a sense of humility (the land is clearly bigger than he is) and a surge of freedom, independence, and pride which both reinforces the humility and build upon it.¹²³

Professor Milton describes how South Dakota’s climate, geography, and location “have been a shaping force in the history of the region.”¹²⁴ Its features have allowed inhabitants to live “relatively unhampered by many of the social or people problems which plague high-density population areas. And so they are usually friendly to each other, and to visitors, all the while keeping one eye on the sky.”¹²⁵ A friendly people rooted in a terrain that breeds independence, South Dakotans maintain a strong sense of place. Yet while open space is liberating, for the South Dakotan the land is law. As an agricultural state dependent on the weather, it has, at times, appeared to care “more about rain than about science.”¹²⁶ One cannot debate public policy—political, economic, or social—without utmost attention to the South Dakota

¹²² *Id.*

¹²³ JOHN R. MILTON, *SOUTH DAKOTA: A HISTORY* xi (1977).

¹²⁴ *Id.* at xi, xii.

¹²⁵ *Id.* at xii.

¹²⁶ *Id.* at 179.

landscape: “Dakotans are perhaps extraordinary in their attachment to the land. They are indeed rooted in a place.”¹²⁷

1. *South Dakota: “Mount Rushmore State”*¹²⁸

a. *General*

At 75,885 square miles, South Dakota is the home to a modest 812,393 people.¹²⁹ Compared to the national average of 86.8 persons per square mile, South Dakotans live at a comfortable 10.7 persons per square mile.¹³⁰ Forty-six and a half percent of South Dakotans reside in urban areas,¹³¹ compared with the national average of 79%.¹³² The largest cities are Sioux Falls in the southeast corner of the state with a population of 157,935,¹³³ Rapid City in the southwest with 67,107,¹³⁴ and Aberdeen in the northeast with 24,992.¹³⁵ The state lagged the national average in population growth between 2000

¹²⁷ *Id.*

¹²⁸ As home to Mount Rushmore National Memorial, South Dakota’s official state nickname is “South Dakota, The Mount Rushmore State.” *Signs and Symbols of South Dakota*, STATE OF SOUTH DAKOTA OFFICIAL STATE GOVERNMENT WEBSITE, <http://www.state.sd.us/state/sdsym.htm> (last visited Aug. 20, 2010).

¹²⁹ *State and County Quickfacts: South Dakota*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/46000.html> (last visited Aug. 20, 2010).

¹³⁰ This number is larger than the year 2000 figure of 9.9 reported by the U.S. Census Bureau. *See id.* I have recalculated to account for population growth through 2009. *See American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (follow “Data Sets” hyperlink; follow “Annual Population Estimates” hyperlink; follow “Thematic Maps” hyperlink under “2009 Population Estimates”; select “United States” then follow “Next” hyperlink; select “TM-M2: Persons per Square Mile: 2009” then follow “Show Result” hyperlink; click on South Dakota image) (last visited Aug. 20, 2010).

¹³¹ *State Fact Sheets: South Dakota*, U.S. DEPT OF AGRIC. ECON. RESEARCH SERV., <http://www.ers.usda.gov/statefacts/sd.htm> (last updated Sept. 10, 2010).

¹³² *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (follow “Data Sets” hyperlink; follow “Geographic Comparisons Tables” under “Census 2000 Summary File 1 (SF 1) 100-Percent Data”; select “United States: Urban/Rural and Inside/Outside Metropolitan Area” then follow “Show Result” hyperlink) (last visited Aug. 20, 2010).

¹³³ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (follow “Data Sets” hyperlink; follow “Annual Population Estimates” hyperlink; follow “Detailed Tables” hyperlink under “2009 Population Estimates”; select “Place” under “select a geographic type”; select “South Dakota” under “select a state”; select “Sioux Falls city” under “select one or more geographic areas”; follow “Add” hyperlink; follow “Show Result” hyperlink) (last visited Aug. 20, 2010).

¹³⁴ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (follow “Data Sets” hyperlink; follow “Annual Population Estimates” hyperlink; follow “Detailed Tables” hyperlink under 2009 Population Estimates; select “Place” under select a geographic type; select “South Dakota” under select a state; select “Rapid City city” under select one or more geographic areas; follow “Add” hyperlink; follow “Show Result” hyperlink) (last visited Aug. 20, 2010).

¹³⁵ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (follow “Data Sets” hyperlink; follow “Annual Population Estimates” hyperlink; follow “Detailed Tables” hyperlink under “2009 Population Estimates”; select “Place” under “select a geographic type”; select “South Dakota” under “select a state”; select “Aberdeen city” under “select one or more geographic areas”; follow “Add” hyperlink; follow “Show Result” hyperlink) (last visited Aug. 20, 2010).

and 2009, with growth of 7.6% compared to 9.1%.¹³⁶ South Dakota remains racially homogeneous, with 87.9% of the population white, 8.5% American Indian, 2.9 % Hispanic, 1.2% African American, and 0.9% Asian.¹³⁷ Persons with a bachelors degree or higher in South Dakota is below the national average of 24.4% at 21.5%.¹³⁸ A largely middle-class state, the average household income of \$46,244 falls short of the national average at \$52,029.¹³⁹

South Dakota consistently ranks as the state with the lowest rate of unemployment. In July of 2010, the figure was 4.4%,¹⁴⁰ compared to a national average of 9.5%.¹⁴¹ Yet in Shannon County, South Dakota, home of the Pine Ridge American Indian Reservation, unemployment exceeds 11.6%.¹⁴² The county's residents are 84.8% American Indian.¹⁴³ In addition, 46.0% of Shannon County residents are living below the poverty line, compared to the state average of 12.7%¹⁴⁴ and the national average of 13.2%.¹⁴⁵ South Dakota's general economic stability tends to mask the economic devastation of less affluent areas of the state.

While South Dakota's economy was once overwhelmingly dominated by farming and ranching, it has become much more diversified in recent decades. The largest industry sector is finance and insurance, which accounts for 19% of the state's gross domestic product (GDP).¹⁴⁶ The farm economy constituted \$6.1 billion in 2007.¹⁴⁷ "Other important industries include manufacturing, health care and social assistance, retail trade, real estate/rental/leasing, forestry, fishing, and hunting."¹⁴⁸ The sectors employing the most South Dakotans are government, educational and health services, retail, and tourism.¹⁴⁹

¹³⁶ *State and County Quickfacts: South Dakota*, *supra* note 129.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *South Dakota: Economy at a Glance*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, <http://www.bls.gov/eag/eag.sd.htm> (last visited Aug. 20, 2010).

¹⁴¹ *United States: Economy at a Glance*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, <http://www.bls.gov/eag/eag.us.htm> (last visited Aug. 20, 2010).

¹⁴² *Local Area Unemployment Statistics*, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, <http://www.bls.gov/lau/> (follow "TXT" hyperlink under "County Data - Table") (last visited Aug. 20, 2010) (June 2010 data).

¹⁴³ *State and County QuickFacts: Shannon County, South Dakota*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/46/46113.html> (last visited Aug. 20, 2010).

¹⁴⁴ *Id.*

¹⁴⁵ *State and County QuickFacts: South Dakota*, *supra* note 129.

¹⁴⁶ *South Dakota Economy*, SOUTH DAKOTA BUREAU OF FIN. & MGMT., <http://www.state.sd.us/bfm/economy.htm> (last visited Aug. 20, 2010).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

b. Queer South Dakotans

The 2000 U.S. Census included a question regarding same-sex households that provides a useful demographic tool in accounting for queer South Dakotans. Eight hundred twenty-six couples in South Dakota identified as same-sex—389 male and 437 female.¹⁵⁰ Contrary to popular expectations, same-sex couples were found to be predominately rural: 66% reported living in a rural area, compared to 34% living in an urban area.¹⁵¹ Forty-one percent of same-sex couples are raising children.¹⁵² By 2005, the estimate of gay, lesbian, and bisexual people in the state (single and coupled) was 10,554.¹⁵³

The Williams Institute's analysis summarizes: "[i]n many ways, the nearly 1,000 same-sex couples living in South Dakota are similar to married couples. According to Census 2000, they live throughout the State, are racially and ethnically diverse, have partners who depend upon one another financially, and actively participate in South Dakota's economy."¹⁵⁴

South Dakota's same-sex households are demographically and geographically diverse. Fifty-three percent of same-sex couples reporting were female, while 47% were male.¹⁵⁵ Same-sex couples in South Dakota are, on average, younger than their married counterparts, with thirty-five as the average age for same-sex couples compared to forty-nine for married couples.¹⁵⁶ The state's same-sex couples are more ethnically diverse than married couples: 27% of same-sex couples were nonwhite compared to 9% of married couples.¹⁵⁷ Same-sex couples reported living in all but one county of South Dakota.¹⁵⁸ The counties reporting the largest number of same-sex couples tracks the urban centers, with Minnehaha County (Sioux Falls) reporting 184 couples, Pennington (Rapid City) reporting 82, and Brown (Aberdeen) reporting 33.¹⁵⁹ However, the county with the highest proportion of same-sex couples was Shannon County, where 0.90% of all

¹⁵⁰ DAVID M. SMITH & GARY J. GATES, HUMAN RIGHTS CAMPAIGN, GAY AND LESBIAN FAMILIES IN THE UNITED STATES: SAME-SEX UNMARRIED PARTNER HOUSEHOLDS 6 (2001), available at http://www.urban.org/uploadedPDF/1000491_gl_partner_households.pdf.

¹⁵¹ *Your Community – South Dakota: State Overview*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/3259_3324.htm (last visited Aug. 20, 2010).

¹⁵² See ADAM P. ROMERO ET AL., THE WILLIAMS INST., CENSUS SNAPSHOT: SOUTH DAKOTA 1 (2008), available at <http://www.law.ucla.edu/williamsinstitute/publications/SouthDakotaCensusSnapshot.pdf>.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

households were same-sex.¹⁶⁰ This is nearly triple the proportion for Minnehaha County (Sioux Falls), which reported 0.32%.¹⁶¹

The economic situation of same-sex couples in South Dakota is markedly different than their heterosexual peers. Men residing in same-sex households earn 20% less than married men, while women residing in same-sex households earn 66% less than married women.¹⁶² When incomes are combined, median same-sex household income is 61% less than the median household income for married couples.¹⁶³ Finally, same-sex couples are less likely to be property owners, with just 29% of same-sex households owning their homes compared to 84% for married couples.¹⁶⁴

The economic disparities are particularly acute when it comes to child-rearing. Forty-five percent of same-sex homes raising children under the age of 18 have only one wage earner, compared with 23% for married households.¹⁶⁵ The median household income for same-sex couples raising children is just \$8,100—84% less than married parents.¹⁶⁶

The legal atmosphere for queer South Dakotans is varied. Single queer persons are allowed to adopt children, and there is no explicit prohibition on queer couples adopting.¹⁶⁷ South Dakota allows the amendment of birth certificates for gender identity purposes, among others.¹⁶⁸ South Dakota courts will generally not consider a parents' sexual orientation when awarding child custody or visitation.¹⁶⁹ South Dakota's hate crimes law does not expressly include sexual orientation or gender identity.¹⁷⁰ Sexual orientation and gender identity are not expressly protected by South Dakota's non-discrimina-

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 2.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 3.

¹⁶⁷ See *South Dakota Adoption Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/1768.htm (last updated Dec. 14, 2009); S.D. CODIFIED LAWS § 25-6-2 (1994).

¹⁶⁸ See S.D. ADMIN. R. 44:09:05:02 (2000); *South Dakota Birth Certificate Law: Gender Identity Issues*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/9116.htm (last updated Sept. 1, 2005).

¹⁶⁹ See *Van Driel v. Van Driel*, 525 N.W.2d 37, 39–40 (S.D. 1994) (affirming the trial court's decision to award custody to the mother despite the fact that she was in a same-sex relationship, reasoning that the same-sex relationship alone does not demonstrate a harmful effect on the child); *but see* *Wolff v. Wolff*, 349 N.W.2d 656, 658 (S.D. 1984) (overruling the award of custody to a father who subsequently entered into a same-sex relationship with a juvenile and where the child witnessed sexual conduct, reasoning that "maintaining and exposing the child to an active male homosexual . . . is not conducive to raising this boy in a wholesome home environment"). See also *South Dakota Custody and Visitation Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/1784.htm (last updated Mar. 27, 2007).

¹⁷⁰ See S.D. CODIFIED LAWS § 22-19B-1 (2002); *South Dakota Hate Crimes Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/1794.htm (last updated Mar. 26, 2007).

tion law.¹⁷¹ Under South Dakota's healthcare laws, a same-sex partner can make medical decisions for an incapacitated partner.¹⁷² However, adult children, siblings, and parents of the incapacitated partner have priority ahead of the same-sex partner.¹⁷³ South Dakota does not have a safe schools law that addresses sexual orientation or gender identity.¹⁷⁴

Finally, South Dakota does not grant marriage licenses to same-sex couples, nor does it recognize same-sex marriages validly issued in other jurisdictions.¹⁷⁵ This position was affirmed by constitutional amendment in 2006, which passed a popular referendum by a margin of just 2%.¹⁷⁶ Of the eight state constitutional amendments regarding same-sex marriage that passed by popular vote in 2006, South Dakota's passed by the smallest margin—by just 12,000 votes.¹⁷⁷ Interestingly, and contrary to popular stereotype, South Dakota's ballot initiative passed in 2006 by the same margin as California's Proposition 8¹⁷⁸ in 2008.¹⁷⁹ "Liberal" Californians voted a lot like "conservative" South Dakotans.

2. Aberdeen: "The Hub City"

For more than a century, Aberdeen has been the intersection of life in northeast South Dakota. Located in a low-lying area that rival cities in the late-nineteenth century characterized as a "frog pond," the city quickly be-

¹⁷¹ See S.D. CODIFIED LAWS § 20-13-10 (2002), S.D. CODIFIED LAWS § 20-13-23 (2002), S.D. CODIFIED LAWS § 20-13-24 (2002), S.D. CODIFIED LAWS § 20-13-20 (2002); *South Dakota Non-Discrimination Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/1801.htm (last updated Mar. 26, 2007).

¹⁷² See S.D. CODIFIED LAWS §§ 34-12C-1 to 34-12C-8; *South Dakota Healthcare Laws*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/9731.htm (last updated Apr. 30, 2008).

¹⁷³ S.D. CODIFIED LAWS § 34-12C-3.

¹⁷⁴ *South Dakota Schools Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/1804.htm (last updated Mar. 26, 2007).

¹⁷⁵ See S.D. CODIFIED LAWS § 25-1-1 ("Marriage is a personal relation, between a man and a woman . . ."); S.D. CODIFIED LAWS § 25-1-38 ("Any marriage contracted outside the jurisdiction of this state, except a marriage contracted between two persons of the same gender, . . . is valid in this state."); S.D. CONST. art. XXI, § 9 ("Only marriage between a man and a woman shall be valid or recognized in South Dakota. The uniting of two or more persons in a civil union, domestic partnership, or other quasi-marital relationship shall not be valid or recognized in South Dakota."); *South Dakota Marriage/Relationship Recognition Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/1798.htm (last updated Feb. 5, 2007).

¹⁷⁶ See CARRIE EVANS, HUMAN RIGHTS CAMPAIGN FOUNDATION, EQUALITY FROM STATE TO STATE 2006 12 (2006), available at <http://www.hrc.org/documents/StateToState2007.pdf>.

¹⁷⁷ *Id.*

¹⁷⁸ CAL. SEC'Y OF STATE, TEXT OF PROPOSED LAWS 128 (2008), available at <http://voterguide.sos.ca.gov/past/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop8>.

¹⁷⁹ See CAL. SEC'Y OF STATE DEBRA BOWEN, STATEMENT OF VOTE: 2008 GENERAL ELECTION 13 (2008), available at http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf.

came a regional “hub” as railway lines converged to create a new city.¹⁸⁰ Hence, Aberdeen acquired and continues to bear the nickname of “The Hub City.” Today, Aberdeen is the third largest city in South Dakota with 24,992 residents.¹⁸¹ It is the seat of Brown County, a 1,700 square mile area in northeastern South Dakota that is home to 35,204 people.¹⁸² The county is 94.5% white and 3.1% American Indian.¹⁸³ Brown County is less impoverished than the state as a whole, with 11.4% living below the poverty line compared to the state average of 12.7%.¹⁸⁴ The 2000 census reported 33 same-sex couples living in Brown County, making gay and lesbian households 0.23% of total coupled households.¹⁸⁵ All other counties in northeastern South Dakota also had couples identifying as same-sex.¹⁸⁶

B. Personal Narratives

1. David Fischer: Local Gay Activist¹⁸⁷

At the age of fifty-three, David Fischer moved into a new home. His previous house, which he had lived in for six years and shared with his wife of twenty-six years, brought back too many memories of their past marriage. Born in Eureka, South Dakota, a small town forty-five miles northwest of Aberdeen, and raised in Fargo, North Dakota, a larger city three hours north of Aberdeen, David met his wife while attending North Dakota State University. He and his wife, having raised one daughter, moved to Aberdeen in 1997, where David assumed a position as a nurse anesthetist at St. Luke’s Hospital. Today, at the age of sixty, David lives in a converted loft-like condominium in the restored Ward Hotel on Main Street in Aberdeen.

A feature story that ran in the *Aberdeen American News* on the Sunday following Thanksgiving 2003 recounted David’s struggles over his sexuality and announced his initiatives to start a local support group for gays. It opened: “With his whole little heart and soul, David D. Fischer used to ask God to make him like other little boys.”¹⁸⁸ David’s frustrations carried

¹⁸⁰ DON ARTZ, *THE TOWN IN THE FROG POND: STORIES OF BUILDERS, BUILDINGS, AND BUSINESS IN ABERDEEN’S HISTORIC COMMERCIAL DISTRICT 5–6* (1991).

¹⁸¹ *American FactFinder*, *supra* note 135.

¹⁸² *State & County QuickFacts: Brown County, South Dakota*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/46/46013.html> (last updated Aug. 16, 2010).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ ROMERO ET AL., *supra* note 152, at 4.

¹⁸⁶ *Id.* The counties of McPherson reported 2, Edmunds reported 3, Faulk reported 2, Spink reported 7, Marshall reported 6, Day reported 8, Clark reported 6, and Roberts reported 16. *Id.*

¹⁸⁷ Unless otherwise noted, the following details come from interviews conducted by the author. Interviews with David D. Fischer, in Aberdeen, S.D. (Dec. 29, 2003 & Aug. 16, 2010).

¹⁸⁸ Elissa Grossell, *Local Man Starting Support Group for Gays*, ABERDEEN AM. NEWS, Nov. 30, 2003, at 1B.

throughout his childhood and adult life, coming to a head when he moved to Aberdeen thirteen years ago. In a personal correspondence to Linda Schauer, South Dakota State Director for Concerned Women for America and frequent contributor to the *Aberdeen American News*' Public Voice section, David wrote:

I was raised in a very conservative religious home in a very conservative community. I was directed to choose the "straight and narrow path" to heaven as taught by my Baptist church All through my adolescence I had feelings that something evil was inside of me and that I was a person that deserved to be hated. I grew up hating myself, never allowing my mind to reason why. If feelings of same sex attraction arose I remember saying to myself "these are feelings, David, that you will outgrow" or "I bet every boy feels this way once in a while."¹⁸⁹

Denying his sexuality became the only option to fitting in, but an uneasy one:

[D]enying who I was led me to ever continuing struggles with depression and thoughts of suicide for much of my life. I married at the age of 24, became the father of a wonderful girl and tried to find happiness within my family. We were married for 25 years when the ordinary struggles of life and my depression became so severe I knew the only possibility for survival was to finally look deep enough within and force myself to exhume the truth from the grave I had dug for it.¹⁹⁰

David's frustrations peaked after moving to Aberdeen, when suicide increasingly became a viable option to end his suffering. In a defining moment on his exercise bike, David realized once and for all that he was a gay man. His wife was in complete shock. "And at first . . . she was wonderful about it. David read countless books on homosexuality and self-esteem. He began corresponding on the Internet with other men."¹⁹¹ Over the following year, she slowly detached herself from him, moved into an apartment, and eventually asked for a divorce. David recalled thinking that their love would pull them through. "I loved her more than I could ever love anyone else . . . I never stopped loving her. I'll go to my grave thinking what a wonderful woman she was."¹⁹²

David has realized over the years that there is a lack of support for gay people in the Aberdeen area. "'There's a lot of gay people here, that don't even know they're gay.' . . . Here in Aberdeen, people are expected to live

¹⁸⁹ Letter from David D. Fischer to Linda Schauer, South Dakota State Director for Concerned Women for America (July 26, 2001) (on file with author).

¹⁹⁰ *Id.*

¹⁹¹ Grossell, *supra* note 188, at 4B.

¹⁹² *Id.* (quoting David D. Fischer).

the 'straight life,' It was the same way . . . growing up."¹⁹³ David's gay support group held its first meeting in 2003, when ten people gathered at an Aberdeen restaurant. Since then, the gatherings grew smaller and eventually fizzled out. David noted that many of the participants, being closeted, opposed meeting in a public area where their sexuality might be revealed. Subsequent gatherings took place in private homes, but many group participants were reluctant to invite unknown guests into their homes. David laughed, saying "there are lots of weird people in this town." He feels that "because he is out, [gay] people don't want to associate with him."

David has visited many large cities, such as Minneapolis and San Francisco, where sections of the city are dedicated as gay space. "It makes me sad that I don't really have that here," he said.¹⁹⁴ Originally, David considered moving to the Minneapolis area, but was reluctant: "I am not strong enough to make such a move at this point in my life." David is currently considering a move to Fargo, where he originally grew up and where he has family. He remarks that Fargo is "growing nicely" and that there is so much going on there. He knows the city well and "feel[s] so comfortable there."

David admits an attachment to the Midwest and to nature. Although he has traveled extensively and loves the ocean, he is a Midwesterner at heart. Despite all the places he has seen, he is always "drawn back to this area." David equates the prairie with the ocean: "when you go out onto the prairie it's like our ocean When in the middle you can see nothing but hills and prairies." David's favorite place in the world is Glacier National Park in Montana: "It is so beautiful that when I go there I believe there might be a God."

While David has explored the possibility of relocating to Minneapolis or Fargo, David described how he has a "big support network in the Hub City."¹⁹⁵ He has not experienced any grief, and seemed elated to announce that the publication of the *Aberdeen American News* feature piece in 2003, which included David's picture and telephone number, did not result in any harassment. David is politically active not only in the Aberdeen community, but across the state. In 2006, David became involved in South Dakotans Against Discrimination, a political organization formed to oppose a ballot initiative to amend the South Dakota constitution to define marriage as between a man and a women. Although the initiative prevailed,¹⁹⁶ David and other activists were "mobilized." They channeled their energy to form Equality South Dakota,¹⁹⁷ a nonprofit advocacy organization that is part of

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See *supra* notes 175–177 and accompanying text.

¹⁹⁷ See EQUALITY SOUTH DAKOTA, <http://www.eqsd.org/> (last visited Oct. 16, 2010).

the national Equality Federation.¹⁹⁸ As David explained, there was a “surge of energy and motivation, so we formed Equality South Dakota.”

David is thus an example of a rural-dwelling gay man who both confirms and rebukes queer metronormative assumptions. On the one hand, he has experienced considerable trauma that he blames on his upbringing in a rural place and a conservative family. He desires to be a part of a visible queer community, which he assumes would require moving to an urban environment. Yet, he sees himself as too “weak” to relocate, affirming a popularly embraced perception of rural queers as “stuck” or “trapped.” At the same time, however, David has found considerable support in Aberdeen and as a founding member of Equality South Dakota. He is a public manifestation of a seemingly underground queer community who has risen above considerable challenges to make a place for himself in South Dakota as an out gay man.

2. *Mike: Semi-Closeted Gay Male*¹⁹⁹

Mike, at the age of forty-four, is a gay male who has lived in Aberdeen all of his life. Self-employed as a landlord of multiple rental properties, Mike is only out to other gay people in Aberdeen and a few friends. Mike attended Northern State University (“NSU”) in Aberdeen. He worked while in school to make ends meet: “I was so busy during college that I didn’t have time to deal with the gay issue.”

In his early twenties, Mike began drinking heavily. He wrecked two cars as a result of drunk driving and began participating in Alcoholics Anonymous (“AA”). Confusion over his sexual identity was the major factor leading to his alcoholism. For Mike, alcohol freed him and allowed him to act on sexual tendencies, to “act on gay things” that he would not do when sober.

Although Mike stopped drinking after his first stint in AA, he began drinking again after twelve years. However, this time he became active in two AA groups. The first was one in Aberdeen that met weekly. The second was a group for gay men and women that met in Sioux Falls, the largest city in South Dakota, every other week. Mike made the 200-mile trek to Sioux Falls for a number of years because it provided a more comfortable environment in which he could work through issues of sexuality and alcoholism.

Mike described his sexual revelation as a process that spans many decades, and it continues to be an ongoing process. When he was a student at NSU, he would peruse psychology books in search of any reference to ho-

¹⁹⁸ See EQUALITY FEDERATION, <http://www.equalityfederation.org/> (last visited Oct. 16, 2010).

¹⁹⁹ Unless otherwise noted, all information here was acquired through an interview conducted by the author. Interview with Mike, in Aberdeen, S.D. (Mar. 15, 2004). To protect the identity of the interviewee, “Mike” is used as a pseudonym.

mosexuality: "I would immediately turn to the back and look up homosexuality." Mike also recalled his visits to an adult bookstore on 1st Avenue in Aberdeen that closed in 1994. He would sneak through the back door, so as not to be seen, and peak around corners to see if anyone was there. He described the atmosphere as "very cruisy." Mike would meet guys at the bookstore and take them either into movie preview booths, where pornographic films could be purchased and watched, or home with him. Another bookstore in Aberdeen sold three gay magazines. Mike would wait until everyone left the store, usually immediately prior to closing, before he would enter and make his purchase. He would not order magazines to his house, fearing that the postman would discover their homosexual nature.

Mike recounted other venues for meeting gay men in the area. In the late 1980s, at the age of twenty-eight, he would cruise down Main Street when the bars were closing and frequently picked up drunk men. On Sunday nights, a group of six to ten gay men loitered on the steps of the museum, located downtown on Main Street. Main Street became an easy and accessible space in which men met in bookstores, on the streets, and in their cars.

In the mid-to-late 1990s, a highway rest stop near Bath—a small town seven miles east of Aberdeen—became a popular meeting place for men after the 1st Avenue adult bookstore closed. The stop had two outhouses that were surrounded by trees and were highly secluded. Mike recalled that, in 2000, police began patrolling the park, writing down license plate numbers of the parked vehicles, and often harassing the men. The rest stop has since been closed.

Mike describes the Internet as a resource that accelerated his coming out process. "I would be more lost without it," he said. It is "helping me come out of the closet more." He first started going online in 1997 at the NSU library. At the time, Mike was considering moving to a larger city, to "a place with a gay life," and used the Internet to research options. In 1999, he bought a computer, which afforded a privacy that the library could not offer. Mike originally ventured online in search of relocating to an urban environment with a highly visible gay population, but ended up discovering the existence of an extensive gay network right in the Aberdeen area that was linked through cyberspace.

Mike soon became a paid subscriber to gay-oriented chatrooms and porn-sites, and he placed online personal ads. Mike used Internet chatrooms to cruise and pick up people in the Aberdeen area, and eventually he began meeting up with men from all over eastern South Dakota. When asked how often he met in person for sexual encounters with people he first met online, he responded: "twice a year [with] people in my age category. I pretty much know all the gay men in this area, so the possibility of meeting someone new is pretty slim. I have to travel out of the area to meet someone new." He recalled one episode where he met a man in a hotel in Mitchell, a town four hours south of Aberdeen. In another attempt to meet someone,

Mike rented a hotel room in Sisseton, a small town one and a half hours northeast of Aberdeen. To his disappointment, the other man failed to show. In 2000, Mike felt that he was spending too much time on the Internet. This realization, coupled with an anticipated move to Sioux Falls, prompted him to pack up his computer and put it in storage. He reclaimed the computer a few years later and is now again able to surf the net in the privacy of his own home.

Mike has participated in David Fischer's gay support group. He grew tired of it though, noting that turnout was low and that only the same few people attended. Mike believes that two-thirds of all gay people in the area are closeted and that David Fischer, in being very open and vocal, is a perceived threat.²⁰⁰

Mike appears to conform more to the rural queer stereotype than David. His struggles are numerous and are complicated by the fact that he lives in a rural area. For example, he blames his alcohol abuse on the depression associated with being gay and feeling lonely. He prefers to attend gay AA meetings, but the distance is simply too far to participate frequently. His addiction to the Internet is also attributed to the same loneliness he feels. Yet, when given the chance to participate in David Fisher's group he balks. He fears that he will lose anonymity, which can be difficult to maintain in small town America. His story confirms many notions of rural queers as isolated, but also demonstrates how rural queers create social networks on-line, travel to nearby cities, and continue to reside in rural places.

3. *Jill: Trans Farmer*²⁰¹

"How many transsexual farmers are there in South Dakota?" Jill answered her own question: "just one, she's right here." Jill underwent sex reassignment surgery in 2003, while in her early forties. The parents of two children, Jill and her female spouse of over two decades lived in an exquisite home on a multi-thousand-acre farm. Jill, formerly Shawn, had lived in South Dakota most of her life and continuously for the past two decades. She and her father maintained a large farming operation in the state for many years.

Jill had been planning her transition from the male to female gender "every day for 40 years." The breaking point came one fall in the early 2000s:

²⁰⁰ Compare this view to David Fischer's view, as expressed above, that his degree of "outness" and vocalness in the community deters others from associating with him. See *supra* Part III(B)(1).

²⁰¹ The actual names, locations, and dates have been concealed to protect the anonymity of Jill and her family. Unless otherwise noted, all information here was acquired through an interview conducted by the author. Interview with Jill, in S.D. (2004).

[That] day I got into my combine with this black feeling I drove down the road with the combine . . . [because] we had to move about 10 miles that day from one field to another, [as] we were harvesting soybeans I had been struggling so hard for so many years and suppressing and fighting and diverting attention away from it. I kept telling myself “no you can’t have it.” And that day I just said that I can’t do it anymore. I don’t want to live if I can’t be who I am I considered killing myself and I decided that I owe two little kids a parent [W]hat would be worse than having a transsexual parent would be to have a parent who killed herself I just decided: Let’s say I lose my house, let’s say I lose my spouse, let’s say I lose my parents and friends and my career, and let’s say I lose everything I am and have, can I still deal with that and would I still do it? And the answer came back yes. To the point where *I was willing to give up everything to have this one thing because it was the only thing that would save me.*²⁰²

Jill’s then-partner, Linda, has been supportive, but it was not always easy. “She knew from 12 years ago the whole story and she knew all along that she fell in love with somebody who had a really feminine nature.” Jill feels that Linda’s religious and conservative upbringing had adversely affected her ability to understand: “If she would have not come from such a strict conservative background, it would have been really easy for her So when shit really hit the fan she was kind of torn between a really religious strict Republican family which she knew would disapprove and a really deep abiding love for me.”

Jill’s parents have been very supportive. She and her father continued to operate the farm together for a number of years after her transition. “Almost nothing changed in that respect,” said Jill, “He calls me ‘she’ now instead of ‘he.’ He’s been really cool, really good.”

When Jill decided to start transitioning, she asked Linda where they were going to live, “because we can’t live here This is . . . South Dakota. You can’t do it here. Everybody in this town knows me. They know the old me,” believed Jill. Linda was firm. She would not uproot her family and move away. Jill yielded and decided to undergo the process in her hometown, making frequent trips to a metropolitan area where she met specialists and became highly connected with the trans community.

Jill tailored her transition to what she perceived to be the most effective approach in a rural state. She felt “forced to transition a different way than other people do.” Most transitions take five to six years or more and involve certain step-by-step procedures: therapy, hormones, living full time as the opposite gender, and, finally, sex reassignment surgery. Jill’s transition took less than three years and skipped the stage of living full time in her new

²⁰² Emphasis added.

gender for one year. “The day you walk outside in a dress instead of pants and a suit or a ladies blouse and earrings instead of blue jeans and a t-shirt . . . is the hardest day of your life if you are a transsexual. *And to do that here I saw [as] basically impossible.*”²⁰³

Jill’s transition was very gradual. At over six feet tall and 200 pounds, Jill slowly began a process that radically altered her appearance. She shaved her handlebar mustache and began growing her hair long, “two things that nobody had seen for 20 years.” Jill then started wearing earrings. Friends and family perceived these changes as evidence of a mid-life crisis. In 2002, Shawn, now Jill, asked his attorney to legally change his name to Jill. In order for somebody to change his or her name in the county, it must first be published in the local newspaper three times. Jill describes this as a “catalyst” that aided her transition. Changes in her appearance and behavior caused people to ask questions. Word of her transition was able to “filter through the community like oil over water. Eventually enough people realized what was happening and they were all just waiting for the other shoe to drop. ‘When are you going to start wearing skirts, Shawn?’”

For Jill, this method worked very well in her South Dakota community:

What they [the gender therapy community] want you to do is to make one day specific when “I know next Monday I will be showing up in a skirt and nylons and I’m going to be Jane.” That is how the gender therapy community wants you to transition—when are you going to go full time? Pick a day and then you are full time, just like that. And I knew that would not work in [this South Dakota community], I just knew it wouldn’t work in [this community]. And so what I did was just gradually allow the world to see that this person is gradually going through a transition.

Although Jill’s transition from the male to the female gender was not easy for her and her family, she was met with much more acceptance than she anticipated. Jill was pleasantly surprised by the reception she received within her community:

I don’t know what it is. A lot of people have been really accepting and understanding, even though they don’t understand. A lot of people just say, and South Dakota is famous for this, “she ain’t hurting nobody, just let her do what she wants to do.” South Dakota kind of has a “hands off” policy where as long as you aren’t hurting anybody, you should be able to do what you want.

It was precisely this close-knit community that made her transition easier. Knowing the “old” Jill has made it easier for people to accept the “new” Jill. “I think a lot of them said ‘Shawn was always a nice guy and Jill will be a nice girl.’ So there is an advantage there as opposed to doing it

²⁰³ Emphasis added.

in a big and impersonal city.” Jill did not experience any harassment or harm in her community. She believed that her reputation within South Dakota earned her respect in ways that the anonymity of large urban environments cannot afford:

Living as a male, when I did, I tried to be very respectful. I tried to be fair. I tried to be polite, and I tried to treat people like they would want to be treated. And I think that what comes around goes around in [this community]. If I’d have been a real son of a bitch, I don’t think it would be the same. I think people would be mean a lot more. And I’m glad I wasn’t a son of a bitch!

For Jill, the Internet provided a pivotal function in her gender transformation. The Internet has served an educational and informational role, providing lists of surgeons, therapists, voice trainers, and make-up specialists. It has given her direction in how to dress and where to find size thirteen shoes “if you are a big girl.” Not only has it served a practical role by disseminating valuable information, the Internet has provided an escape route from isolation by providing emotional support. Some of the websites are priceless, said Jill, “and they are from people who have been where you are right now.” She continued, “You are sitting there thinking ‘I’ve got to transition but I can’t transition.’ And you look and find out this person was where I am, and all of a sudden you don’t feel like the only person in the world with a freaky problem.”

Jill emphasized the importance of the Internet for her and other trans people:

The best thing that has ever happened to transsexuals is the Internet. I have a lot of books, I have a whole shelf full . . . but, the Internet has just been a huge, huge resource for all of us. And, I think, a great deal of why I didn’t transition earlier in my life was because the Internet didn’t exist.

However, the Internet alone was not sufficient to connect Jill with other trans individuals. While living in South Dakota, Jill traveled to spend four to five days a month in an urban environment where she met with experts in the gender therapy community and had many transsexual friends. Jill regarded her metropolitan journeys as her “connection with the outside world.” However, these limited trips were not enough, and, since 2004, Jill sold her family farm holdings and moved to a large city.²⁰⁴ Despite positive experiences transitioning in South Dakota, the city offered resources and opportunities unavailable in her small community. Jill lives in her urban environment free of public awareness of the fact that she “changed gen-

²⁰⁴ E-mail from Jill to author (Aug. 25, 2010, 6:27 PM EST) (on file with author).

ders.”²⁰⁵ She is currently pursuing a degree and plans to start a new career in a few years.²⁰⁶

C. *Convergence & Divergence: David, Mike & Jill*

The experiences of a vocal gay man, a semi-closeted gay man, and a transsexual woman, all from South Dakota, highlight the various ways that sexuality is embodied in rural America. These narratives defy stereotypes of rural queers as non-existent, and of rural communities as intolerant or oppressive. At the same time, they demonstrate that, to varying degrees, there is truth to rural queer stereotypes. While each South Dakotan identified various challenges and degrees of isolation—which is not necessarily unique to rural queers—they lauded community acceptance. Although their stories at times conform to rural queer stereotypes, these vivid and colorful insights into the lives of rural queers militate against strict adherence to such stereotypes. Instead, these narratives instruct us to consider rural queer realities. The remainder of this section looks at the convergences and divergences of rural queer life as told through these three stories to reveal that rural queer identity is dynamic.

1. *Community Acceptance*

Overall, David, Mike, and Jill have felt acceptance from their rural communities. Mike and Jill note that South Dakota is famous for its “live-and-let-live” attitude. Their views on this point differ, however. Mike’s perception of the “live-and-let-live” attitude remains confined to the closet. His perception of what will be tolerated is limited to the private realm; he believes that his sexual identity will be accepted (or rather, tolerated) insofar as he does not talk about it.

Jill’s interpretation of the hands-off attitude is much more expansive. Jill feels accepted not because people ignore that she is transgender, but precisely because it is not ignored; it is out in the open. Whereas Mike perceived gossip about his sexuality as a threat, Jill welcomed it. For Jill, community-wide acknowledgement of her situation has led to an openness that has facilitated acceptance. This is not to say that she flaunted her trans identity in an aggressive and confrontational manner; that is far from the reality of her situation. Rather, Jill tailored a specific approach to transitioning that she felt would best fit South Dakota. The local press, in publishing her legal name change, facilitated Jill’s process and gave way to openness in ways that other environments would not have.

To Jill’s surprise, transitioning in South Dakota proved highly successful. Acceptance was greater than she anticipated, especially from her spouse

²⁰⁵ *Id.*

²⁰⁶ *Id.*

and family. People accepted Jill because they had always liked and been treated well by Shawn.

David has felt acceptance, especially from his daughter and coworkers. Over his thirteen years in Aberdeen, David has come to acknowledge his sexuality. Like Jill, he has gained acceptance by publicly acknowledging his sexuality. As a vocal gay rights advocate, David's opinions have appeared regularly in the Public Voice section of the local newspaper. The *Aberdeen American News* feature story on David in 2003 was met only with acceptance and understanding. Despite having his phone number published with the piece, David received no harassing phone calls.

Queer metronormativity would have us believe that only an urban city environment could provide a sufficient support network, but the experiences of these three queer South Dakotans challenge that assumption. In varying degrees, all three profiles demonstrate a great amount of acceptance and little or no harassment.

2. *Isolation*

At the same time that David, Mike, and Jill lament the lack of queer communities in South Dakota, they have utilized many available resources to construct queer spaces. While isolation remains a buzzword employed by all three, they are quick to articulate the supportive friendships they have developed. When detailing their personal experiences they construct a picture that is far from isolated.

These biographical profiles both challenge and confirm notions of gay migration. The migration theory depends on the assumption that queer identities and behavior are created in urban environments and those who wish to subscribe to this culture must flock to these centers.²⁰⁷ At the time of the original interviews in 2003 and 2004, David, Mike, and Jill had all considered or were considering moving to various nearby urban centers. David debated moving to Minneapolis, but perceived himself to be too "weak." Mike explored many options, even visiting Minneapolis, but found himself tied down to the property he owned. Jill suggested that her family relocate to Minneapolis, but her spouse refused. The three exhibited a sense of isolation and a desire to reside in urban areas where more people similar to them live.

While residing in their rural dwellings, David, Mike, and Jill all demonstrated a willingness to temporarily migrate—to travel. David has frequented gay venues in San Francisco, Sioux Falls, Fargo, and Minneapolis. Mike, too, has traveled extensively to meet with men from the Internet and to Sioux Falls to participate in a gay Alcoholics Anonymous group. Jill spent a significant amount of time in an urban environment over the years, perceiving the city as her outlet to the rest of the world.

²⁰⁷ See *supra* Part II(A).

By 2010, when these narratives were updated, much had changed. Jill has left her family farm for an urban lifestyle and David currently has his condo for sale, planning to move to Fargo if and when it sells. These narratives suggest that despite finding community acceptance and queer networks, the urban pull was simply too strong.

While their relocations appear to confirm the thesis of gay migration, David, Mike, and Jill have challenged it in various ways. First, by staying put for so long they refused to accept that only urban areas can foster queer communities and carved out their own spaces in South Dakota. While all three cited isolation, they were not without hope that the rural communities could provide a niche for queer sociability. David's efforts to form social and political organizations, Mike's experiences with same-sex sexual spaces near Main Street, and Jill's positive community reactions to her transition demonstrate queer spaces and community in rural America.

3. *Conclusion*

These South Dakota narratives construct an expansive reading of rural queer identity that both confirms and rebukes popular stereotypes. They demonstrate that there is a degree of truth to perceptions of rural queers as isolated, unaccepted, and urban-oriented. Yet, they also demonstrate that these popular notions are not the entire story; queer people in rural areas have succeeded at creating successful lives and communities. This dynamic reading is important because it helps to identify and instruct a more expansive view of rural queer realities. An analytical polemic that concedes to stereotypes, at the one extreme, will be inaccurate, and a complete refutation of such stereotypes, on the other extreme, will over-idealize. Rather, these narratives instruct a more informed view of rural queer realities.

IV. RURAL QUEERS IN JUDICIAL RHETORIC

The U.S. judicial system is one structure responsible for queer ruralism. When courts employ stereotypes of a particular subset of the population, it has the effect of institutionalizing and perpetuating the stereotype. The previous section demonstrated how rural queers both confirm and undermine popular stereotypes, instructing us to take a more dynamic view of rural queers. This section looks critically at judicial actors who ignore rural queer realities and engage rural queer stereotypes, thereby providing an important example of how queer ruralism manifests as a potent form of structural discrimination.

This section follows Professor Pruitt's approach to analyzing judicial rhetoric. Professor Pruitt has adopted James Boyd White's definition of "rhetoric" to mean "the central art by which community and culture are

established, maintained, and transformed.’”²⁰⁸ She applies this to consider “how lawyers, judges, and other legal actors constitute, establish, transform, and ultimately re-make the rural.”²⁰⁹

In addition to the use of general rural stereotypes, this section specifically considers how judicial actors constitute the *rural queer*. It does so by analyzing judicial opinions to see how concepts of queer ruralism arise in judicial proceedings. What emerges is the usage of queer and rural stereotypes that often reinforce rural as backwards, unaccepting, uneducated and intolerant, and the rural queer as non-existent or out of place. When courts describe a case involving a queer individual as taking place in a rural area, they often do so to set up a tension between queer and rural.²¹⁰ This description—or “marking”—of the geography as rural can be seen to connote intolerance of queer people, and imply that the queer does not belong. Like judicial rhetoric that employs rural stereotypes generally,²¹¹ this type of judicial rhetoric has constitutive force. It is both informed by and informs stereotypes of queer and rural; it is both a product of queer ruralism and a contributing institutional force.

A recent example of rural judicial rhetoric comes from Justice Scalia’s plurality opinion in *F.C.C. v. Fox Television Stations, Incorporated*, which upheld the Federal Communication Commission’s (“FCC”) indecency rules against a challenge that the rulemaking process failed to comply with the Administrative Procedure Act.²¹² Justice Breyer dissented, expressing concern that the FCC’s rules would prove particularly onerous for small broadcasters who are unable to afford “bleeping” technology.²¹³ These mostly non-urban broadcasters would be subject to greater liability without recourse to the technology that could help limit their liability, thereby reducing local coverage.²¹⁴

Justice Scalia responded to Justice Breyer’s concern of increased liability for small broadcasters:

We doubt, to begin with, that small-town broadcasters run a heightened risk of liability for indecent utterances. In programming that they originate, their down-home local guests probably employ vulgarity less than big-city folks; and small-town stations generally cannot afford or cannot attract foul-mouthed glitteratae from Hollywood.²¹⁵

²⁰⁸ Pruitt, *Rural Rhetoric*, *supra* note 10, at 166 (quoting James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Culture and Communal Life*, 52 U. CHI. L. REV. 684, 684 (1985)).

²⁰⁹ *Id.* at 166.

²¹⁰ See *infra* Parts IV(B), V(A).

²¹¹ See *supra* Part I(B).

²¹² 129 S. Ct. 1800, 1812 (2009).

²¹³ *Id.* at 1835 (Breyer, J., dissenting).

²¹⁴ *Id.* at 1835–37.

²¹⁵ *Id.* at 1818 (majority opinion).

For Justice Scalia and his plurality, the FCC need not worry about small broadcaster's financial ability to comply with the indecency regulations simply because their audiences are "small-town" and therefore less likely to be "vulgar."²¹⁶ Justice Scalia could not more clearly embrace the rural idyllic stereotype. The effect of this judicial rhetoric is disconcerting. This casual and gratuitous assertion sweeps the very real legal concerns of broadcasters in rural areas under the rug; it provides cover for ignoring rural realities. Here, those realities are the financial ability of rural broadcasters to comply with federal regulation.

Justice Breyer points out this absurdity and refuses to embrace the stereotype of the rural ideal: "The plurality's 'doubt[s]' rest upon its views . . . that vulgar expression is less prevalent (at least among broadcast guests) in smaller towns . . ." ²¹⁷ Justice Breyer responds to this point by "confess[ing] ignorance" "about the prevalence of vulgarity in small towns."²¹⁸ In so doing, he demonstrates his refusal to blindly engage rural stereotypes.

In addition to embracing rural stereotypes generally, courts specifically engage stereotypes of rural queers. What unfolded in a 2006 Georgia child custody battle is illustrative of judicial rhetoric regarding rural queers. The mother of a six-year-old child determined that she was not fit to care for her daughter and requested that physical custody be granted to Elizabeth Hadaway.²¹⁹ The Wilkinson County Superior Court granted the request, determining that it was "in the best interest of the child that legal and physical custody of the child be placed in the plaintiff Elizabeth Hadaway."²²⁰

A home evaluation was conducted in anticipation of an adoption proceeding, where it was discovered that Elizabeth Hadaway "lived with a female partner with whom she shared a bedroom."²²¹ Nonetheless, the child services evaluator approved Elizabeth Hadaway for adoption.²²² Yet, in the adoption proceedings, the Wilkinson County Superior Court denied the adoption petition and revoked custody, finding that "the adoption would not be in the best interest of the child."²²³ In reaching its determination, the court cited "*stigma* that the child may face growing up in a *small, rural town* with two women, in whose care she was placed at the age of six, who openly engage in a *homosexual relationship*."²²⁴ The child was returned to her biological mother but demonstrated significant "distress."²²⁵ The biological

²¹⁶ *Id.*

²¹⁷ *Id.* at 1836–37 (Breyer, J., dissenting).

²¹⁸ *Id.* at 1837.

²¹⁹ *In re Hadaway*, 659 S.E.2d 863, 864 (Ga. Ct. App. 2008).

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ Brief of Appellants at 14, *In re Hadaway*, 659 S.E.2d 863 (Ga. Ct. App. 2008) (citing an unpublished opinion of the Wilkinson County Superior Court) (emphasis added).

²²⁵ *In re Hadaway*, 659 S.E.2d at 865.

mother said she “just couldn’t break the bond between [Hadaway] and the child, and that she wanted the child to be raised” by Hadaway.²²⁶ The child was returned to Elizabeth Hadaway. Upon doing so, the Wilkinson County Superior Court ordered custody of the child be taken by the Wilkinson County Department of Family and Children Services.²²⁷ Shortly thereafter, Elizabeth Hadaway obtained an order from a Bibb County judge—a nearby county where she had recently moved—ordering the child returned to her custody.²²⁸ Elizabeth Hadaway now has custody of the child.²²⁹

The Wilkinson County Judge’s reasoning for denying the adoption is incredibly rich. Numerous courts have denied queer people the ability to adopt children. In fact, this is the law in a number of states.²³⁰ However, the argument is typically that queer people are not fit to raise children. Namely, the usual argument is that it is not in the best interest of the child to be raised by a homosexual or two persons of the same sex. But this is not what the Wilkinson County Judge said. Rather, the Judge cited the “*stigma*” associated with being raised in a “*small, rural town*” by someone who “*openly engages in a homosexual relationship.*” The court’s rhetoric is powerful. It

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ See *In re Hadaway—Case Profile*, AM. CIVIL LIBERTIES UNION (Mar. 24, 2008), http://www.aclu.org/lgbt-rights_hiv-aids/re-hadaway-case-profile.

²²⁹ *Id.*

²³⁰ Florida, for example, expressly prohibits both single LGBT people and LGBT couples from adopting, and even prohibits a same-sex partner from adopting his or her partner’s child. FLA. STAT. § 63.042(3) (2004). The Eleventh Circuit upheld this law as constitutional. *Lofton v. Sec’y of the Dep’t of Children and Family Servs.*, 358 F.3d 804 (11th Cir. 2004). Recently, however, a Florida state appeals court affirmed a lower court decision overturning the law as unconstitutional under the Florida constitution. Fla. Dep’t of Children & Families v. *In re Matter of Adoption of X.X.G & N.R.G.*, No. 3D08-3044, 2010 WL 3655782 (Fla. Dist. Ct. App. Sept. 22, 2010). See also Curt Anderson, *Court Affirms Overturning Fla. Gay Adoption Ban*, WASH. TIMES (Sept. 22, 2010), <http://www.washingtontimes.com/news/2010/sep/22/court-affirms-overturning-fla-gay-adoption-ban>. Mississippi prohibits same-sex couples from adopting. MISS. CODE ANN. § 93-17-3 (1972). North Carolina law precludes unmarried couples from jointly adopting. N.C. GEN. STAT. ANN. § 48-2-301 (West 2010) (“If the individual who files the petition is unmarried, no other individual may join in the petition.”). Utah law prevents all unmarried, cohabitating adults from jointly adopting, and prohibits a same-sex partner from adopting the child of his or her partner. UTAH CODE ANN. § 78-30-1(3) (West 2010) (“A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. For purposes of this subsection . . . ‘cohabiting’ means residing with another person and being involved in a sexual relationship with that person.”). Arkansas voters passed a ballot measure in 2008 making it illegal for an individual “cohabiting outside of a [valid] marriage” to adopt. *Proposed Initiative Act No. 1 – Certified*, ARK. SEC’Y OF STATE, http://www.votenaturally.org/electionresults/index.php?ac:show:contest_statewide=1&elecid=181&contestid=5 (last updated Dec. 2, 2008). In April 2010, an Arkansas circuit court judge ruled that the law was unconstitutional under the Arkansas constitution. *Cole v. Ark. Dep’t of Human Servs.*, No. 60CV-08-14284 (Ark. Cir. Ct. Apr. 16, 2010), available at <http://acluarkansas.org/content/pressrelease/ACLU-AR-2010-Order-Striking-Down-Act1.pdf>. The decision has been stayed pending appeal to the Arkansas Supreme Court. *Arkansas Adoption Law*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/your_community/953.htm (last visited Aug. 21, 2010).

juxtaposes the rural with the queer to create a tension that generates a stigma so great as to harm a child and frustrate adoption. The rural queer is a paradox—an experiment of a sort—and allowing a child to be raised in this paradox directly contravenes the child’s best interest. On one level, the Judge’s rhetoric engages stereotypes of the rural as intolerant, unaccepting, and “stigmatizing”—rural stereotypes. On another level, the Judge gives purchase to queer metronormativity by implying that the rural queer who “openly engage[s] in a homosexual relationship” is out of place and incompatible with rural life.

The Georgia custody incident is emblematic of the ways in which courts have simultaneously engaged rural and queer stereotypes, giving credence to a distinct form of structural discrimination: queer ruralism. The remainder of this section parses out the general themes of court rhetoric: (1) rural queer as invisible, and (2) rural as intolerant of queers. These opinions come in two forms. Like the Georgia case, there are opinions that make casual and gratuitous usage of rural queer stereotypes. These are situations where courts explicitly draw conclusions about rural queers. But more numerous are the instances where courts are not blatant and assuming, but nonetheless feel obliged to mark the controversy as taking place in a “rural” area and involving a “queer.” Both kinds of opinions are important because they speak to how courts constitute rural queer identity. However, the rhetoric is not entirely demeaning. The subtle marking of a controversy concerning a queer as occurring in a rural area demonstrates that the court is specifically considering the unique situation of rural queer litigants, rather than rendering them invisible. So while some courts do continue to casually assume rural queer stereotypes, a promising body of judicial opinions can be read as rebuking stereotypes by considering rural queer realities. Both types are considered below.

A. *Rural Queer as Invisible*

A number of judicial opinions explicitly engage queer metronormativity. A Seventh Circuit opinion written by Judge Posner in 2001 is the most alarming because of its flippant assumption that rural queers simply do not exist in any sizeable number.²³¹

The Seventh Circuit case involved a county zoning ordinance.²³² Judge Posner begins by describing the geographical dimension of the conflict: “Williamsport, *population 1800*, is the county seat of Warren County, Indiana, a *rural county* in the west central part of the state.”²³³ This description situates the litigation, signaling that what follows must be read in the geo-

²³¹ *L C & S, Inc. v. Warren Cnty. Area Plan Comm’n*, 244 F.3d 601, 604 (7th Cir. 2001).

²³² *Id.* at 603–04.

²³³ *Id.* at 604 (emphasis added).

graphical context of rurality. In anticipation of opening a restaurant (where alcohol would be served) in Williamsport, the plaintiff had purchased a liquor license and leased a building.²³⁴ The building was zoned commercial, and accordingly the plaintiffs did not need permission of the zoning board to open a “tavern.”²³⁵ Judge Posner described what followed: “In 1998, before the plaintiffs’ restaurant had opened, rumors swept Williamsport that a topless bar, or perhaps *even a gay bar*, was coming to the town—and that in fact it would be opening in the building the plaintiffs had leased, so presumably would be operated by them.”²³⁶

In response to these “rumors,” the town council amended its zoning ordinance to, in effect, require the plaintiffs to obtain permission from the zoning commission before opening an establishment that served alcohol.²³⁷ Judge Posner questioned the plausibility of the rumors and appropriateness of the town council’s action: “So far as appears, there was no basis for the rumors. They were not even plausible, since topless (or at least fully topless) bars are illegal in Indiana and *small country towns are unlikely venues for openly homosexual conclaves.*”²³⁸

Judge Posner’s casual assertion may seem innocuous at first. It is true that queer establishments—like any niche venue—are more prevalent in areas with larger populations to draw from. But what is disconcerting is his blatant, gratuitous assumption that queer people are simply not present. Like the Georgia county municipal court judge,²³⁹ Judge Posner juxtaposes the rural and the queer, demonstrating how a wide spectrum of the judiciary employs stereotypes of the rural queer as invisible.

A case from the Northern District of California can similarly be read as dismissing rural queers and elevating the status of urban queers. *Online Partners.Com, Incorporated v. Atlanticnet Media Corporation* involved a trademark dispute between the plaintiff, who operated the website GAY.NET, and the defendant, who owned gaynet.com.²⁴⁰ In describing the GAY.NET trademark, the court said:

Plaintiff’s information and educational services under the GAY.NET trademark have received wide and favorable recognition throughout the United States and other countries for providing quality education and information services to the gay community. *This is very important, particularly in the rural communities throughout the United States, where, unlike San Francisco, such*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* (emphasis added).

²³⁷ *Id.*

²³⁸ *Id.* (emphasis added).

²³⁹ See *supra* notes 219–227 and accompanying text.

²⁴⁰ No. Civ. A. C98-4/46SI NE., 2000 WL 101242, at *2 (N.D. Cal. Jan. 20, 2000).

*information and educational services may not be openly available to members of the public.*²⁴¹

The judicial rhetoric is not degrading and, in fact, the argument that rural communities benefit disproportionately from online communications is documented.²⁴² What is interesting is the direct comparison between the urban queer in San Francisco and the rural queer elsewhere. The court could be seen as buying into and perpetuating the metronormative assumption of the rural queer as isolated and in need of being rescued.

On the other hand, the opinion could be lauded for attending to the specific needs and concerns of rural queers. Unlike Judge Posner, who simply refused to recognize the existence of rural queers,²⁴³ the California district court does recognize that queers dwell in rural areas. Moreover, it explicitly acknowledged that the needs of rural queers are often distinct from urban queers. The South Dakota narratives demonstrated that isolation and access to educational resources are very real concerns for rural queers—whether part of a stereotype or not. This rhetoric provides a powerful example of how courts can be attentive to rural queer realities, even if they may appear at first to be engaging stereotypes.

B. *Rural as Intolerant of Queers*

A number of judicial opinions considered here have engaged ruralist rhetoric to elicit stereotypes of intolerance. Often, the location where the legal conflict occurred is described as “rural” when what the court really means is “intolerant” or “backwards.” Rural and intolerance at times become synonymous. This legal rhetoric can appear to be providing context to the situation in which these usually queer litigants find themselves. Although the courts are often not malicious, the effect of perpetuating stereotypes is disconcerting and entrenches the structural discrimination that constitutes queer ruralism. At the same time, these opinions can be read as marking a territory as rural only in passing, and signaling that the court is being attentive to the geography of a controversy. In this sense, courts should be praised for not simply presuming the urban.

A 2008 case from Florida received a significant amount of national attention. *Gillman ex rel. Gillman v. School Board for Holmes County, Florida* involved plaintiff Heather Gillman, a student at Ponce de Leon High

²⁴¹ *Id.* at *4 (emphasis added).

²⁴² The South Dakota narratives in Part III illustrate the benefit of the Internet to rural queers. See also Edward Stein, *Queers Anonymous: Lesbians, Gay Men, Free Speech, and Cyberspace*, 38 HARV. C.R.—C.L. L. REV. 159, 162–63 (2003) (arguing that because cyberspace is a particularly critical resource for queer individuals, attempts to regulate it should be subject to close scrutiny).

²⁴³ See *supra* notes 231–39 and accompanying text.

School in Ponce de Leon, Florida—population 457²⁴⁴—who sued the Holmes County School Board for violation of her First Amendment constitutional rights.²⁴⁵ Specifically, Gillman claimed that her First Amendment rights were violated when the high school prohibited “students from wearing or displaying t-shirts, armbands, stickers, or buttons containing messages and symbols which advocate the acceptance of and fair treatment for persons who are homosexual.”²⁴⁶ In a very thorough and well-reasoned decision, the U.S. District Court for the Northern District of Florida held that the high school’s actions violated Gillman’s First Amendment rights and constituted viewpoint discrimination.²⁴⁷

At the same time, however, the court engaged what could be read as stereotypical rhetoric. In its opening paragraph, the court provided geographic context by explaining that Ponce de Leon was “a public school in a *rural community* in the Florida panhandle serving approximately four hundred students in grades six through twelve.”²⁴⁸ The court proceeded to describe the controversy:

Gillman, who identifies herself as heterosexual, contends that the School Board and the principal of Ponce De Leon, David Davis, unlawfully prohibited her and other students from wearing or displaying t-shirts, armbands, stickers, or buttons containing slogans and symbols which advocate the acceptance of and fair treatment for persons who are homosexual. Banned from the school are rainbows, pink triangles, and the following slogans: “Equal, Not Special Rights,” “Gay? Fine By Me,” “Gay Pride” or “GP,” “I Support My Gay Friends,” “I Support Gays,” “God Loves Me Just the Way I Am,” “I’m Straight, But I Vote Pro-Gay,” “I Support Equal Marriage Rights,” “Pro-Gay Marriage,” “Sexual Orientation is Not a Choice. Religion, However, Is.”²⁴⁹

The court found it pertinent to situate pro-queer slogans within the rural geography. Although not explicitly stated, it is as if to signal—with a wink and a nod—the tension between small town and queer. It is as if the court wanted to say “intolerant” instead of rural, but knew that would be going too far. By substituting rural, the court relied on stereotype to elicit the same effect.

Conversely, this language could arguably also be read the opposite way. Unlike Judge Posner,²⁵⁰ the court recognized that the controversy oc-

²⁴⁴ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for “Ponce de Leon, FL”) (last visited Nov. 12, 2010) (based on 2000 census demographic information).

²⁴⁵ 567 F. Supp. 2d 1359, 1361 (N.D. Fla. 2008).

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 1378–79.

²⁴⁸ *Id.* at 1362 (emphasis added).

²⁴⁹ *Id.*

²⁵⁰ See *supra* notes 231–39 and accompanying text.

curred in a rural community and that queer people, or at least their supporters, were residents of the community.²⁵¹ Additionally, the court only briefly touches upon geography before arriving at the real issues.²⁵² In this regard, the opinion could be read as acknowledging and legitimizing the existence of rural queer constituencies.

In *Valdez v. Ward*, the Tenth Circuit similarly gave geographical context to a 2000 Oklahoma hate crime.²⁵³ In describing the events that lead up to a gruesome murder of a gay man, the court noted:

Mr. Valdez is a Mexican immigrant who has lived in Oklahoma for some time. One night in April of 1989, Mr. Valdez met the victim, Juan Barron, at a bar in *rural Oklahoma*. Mr. Barron was a homosexual who apparently showed a sexual interest in Mr. Valdez. Mr. Valdez, a married heterosexual, rejected Mr. Barron's advances.²⁵⁴

The rural geography set the stage for the brutal killing that eventually ensued. One could view this tension between the rural and the queer as the only way to explain Mr. Valdez's heinous actions. As the court described:

When the bar closed, Mr. Barron, Mr. Valdez, and his friend, Martin Orduna, went to Mr. Valdez's house. Mr. Valdez began preaching to Mr. Barron out of the Bible, attempting to convince Mr. Barron of the sinfulness of his homosexuality. When Mr. Barron rejected this proselytizing, Mr. Valdez brought out his gun. He began slapping Mr. Barron, telling him he was going to kill him and that according to the Bible homosexuals do not deserve to live. Ordering Mr. Barron to remove his clothes, Mr. Valdez gave him the option of death or castration, and continued to hit and slap him. When Mr. Barron started to fight back, Mr. Valdez shot him twice in the forehead and then hit him in the head with the gun. While Mr. Barron lay on the couch, Mr. Valdez retrieved a knife and cut his throat, finally killing him. Mr. Valdez threatened to kill Mr. Orduna if he told anyone about the murder, and demanded Mr. Orduna's assistance in disposing of the body. The two men carried Mr. Barron, the couch, and the surrounding rug to the backyard, where they set them on fire.²⁵⁵

Mr. Valdez is a rural dweller: he is religious, homophobic, and outrageously violent. To say that he is intolerant would be an understatement. The court evokes these stereotypes by situating this gruesome murder in a

²⁵¹ *Gillman*, 567 F. Supp. 2d at 1362.

²⁵² *Id.*

²⁵³ 219 F.3d 1222 (10th Cir. 2000).

²⁵⁴ *Id.* at 1227 (emphasis added).

²⁵⁵ *Id.*

rural locale, while at the same time perpetuating stereotypes of rural inhabitants as not merely intolerant, but brutally opposed to queer rural dwellers.

In *Mazart v. State*, a New York state court appears to more explicitly rely upon rural stereotypes.²⁵⁶ Plaintiffs brought a libel suit against the state of New York and the State University of New York at Binghamton,²⁵⁷ claiming that the University newspaper falsely identified them as “members of the gay community.”²⁵⁸ The court held that a libelous act had occurred because the assertion “did settle in the minds of a substantial number of persons in the University community.”²⁵⁹ In passing, the court flippantly stated: “No doubt the impact of the published letter on the collective mind of the University was considerably less than it might have been had the letter been published in a *conservative rural American village*.”²⁶⁰

The court compares the libel standard for Binghamton, NY with that of a “conservative rural American village.” But why would the standard be lower in a rural area? One reading is that the court relies on the stereotype of rural as intolerant and unenlightened—as backwards. Another reading, similar to Justice Scalia’s perception of rural innocence, is that the rural ideal is simply more sensitive to issues of homosexuality.

An Ohio appeals court directly questioned the tolerance of homosexuality in rural farming communities. *Glover v. Glover* involved a child custody battle between a wife and her husband,²⁶¹ who identified as bisexual, in rural Brown County, Ohio, population 43,842.²⁶² The husband “saw no problems resulting from his sexual orientation since he perceived the people of Brown County as ‘enlightened.’”²⁶³ A court-appointed clinical psychologist testified that recent studies demonstrated that children would not be adversely affected by their parent’s sexual orientation.²⁶⁴ However, the court questioned the application of these studies in a rural context: “[The psychologist] acknowledged her lack of prior experience in custody determinations, and while recognizing that some locales were more tolerant of *homosexuality* than others, she and appellee did not discuss his residence in a *rural, farming community*.”²⁶⁵ In this custody battle, the Ohio court thought it relevant to consider the level of “enlightenment” of a “rural, farming community.” The court assumed that studies of gay and lesbian parents that

²⁵⁶ 441 N.Y.S.2d 600 (N.Y. Ct. Cl. 1981).

²⁵⁷ Binghamton’s population is 42,385. *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for “Binghamton, NY”) (last visited Oct. 16, 2010) (based on 2006–2008 estimate).

²⁵⁸ *Mazart*, 441 N.Y.S.2d at 602.

²⁵⁹ *Id.* at 603.

²⁶⁰ *Id.* at 1096–97 (emphasis added).

²⁶¹ 586 N.E.2d 159 (Ohio Ct. App. 1990).

²⁶² *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for “Brown County, OH”) (last visited Oct. 16, 2010) (based on 2006–2008 estimate).

²⁶³ *Glover*, 586 N.E.2d at 164 (emphasis added).

²⁶⁴ *Id.*

²⁶⁵ *Id.* (emphasis added).

supported awarding custody to the bisexual father were inapplicable in the rural geography. In doing so, the court directly rejected the father's assertion that Brown County, although rural, was nonetheless enlightened. The court gratuitously relied upon and confirmed popular stereotypes of rural as intolerant.

A contrary reading of these cases, however, is that the courts are merely marking geography and considering the controversies within the context of rural queer realities. In fact, the South Dakotan narratives confirmed the perception that rural America is, at times, conservative and intolerant. This was certainly the motivation for Jill to tailor her transition to what she thought her rural community could handle. It was also true of Mike's discretion and resistance to coming out. At the same time, the narratives rebuked many of these concerns, as Jill and David have both received significant support and affirmation. If a court is going to attend to rural queer realities, it must take a much more expansive view of rural tolerance, the reality of which is far from the monolithic assumption of intolerance embraced in many of these decisions.

C. *Concluding Thoughts on Judicial Rhetoric*

Collectively, these judicial opinions demonstrate both the explicit and subtle rhetoric of the rural queer. Explicit rhetoric, such as Judge Posner's casual assumption that rural queers do not exist in any significant number, is dangerous.²⁶⁶ Professor Pruitt worries that "[i]f that which our nation collectively values about the rural has unduly swayed judicial rhetoric, that rhetoric may improperly influence the public policy agenda about rural places, thereby eclipsing the actual needs and concerns of those who live there."²⁶⁷ Rhetoric like that employed by Judge Posner reinforces queer metronormative assumptions and poses a threat to queer rural dwellers.

The more subtle rhetoric has a similar constitutive effect. Yet, in many instances this variety can be viewed positively because it demonstrates the judiciary's attention to geographical context and to rural queer realities. In these instances, courts signal their willingness to consider the unique circumstances of the rural queer by marking a controversy involving a queer litigant as taking place within a rural context. For this, courts should be lauded.

Both forms of judicial rhetoric regarding rural queers tend to borrow from popular stereotype while not fully taking into account rural queer realities. As we saw in the previous section, the rural queer is dynamic and cannot be defined by a particular stereotype. Judges would benefit greatly by taking a more nuanced approach when considering rural queer litigants who appear before them—by first acknowledging that they exist, that they

²⁶⁶ See *supra* text accompanying notes 231–39.

²⁶⁷ Pruitt, *Rural Rhetoric*, *supra* note 10, at 240.

face unique challenges, and that, in many instances, they choose to remain in their rural homes, are happy, are sociable, and are accepted. With regard to rural issues generally, Professor Pruitt concludes that “[j]udges . . . need a more robust sense of rural realities and their relevance to the social science that is law.”²⁶⁸ The judiciary should follow the example of queer theorists and gay and lesbian historians, for example, who have begun to rebuke queer metronormativity and consider the particular histories and identities of rural queers. “Absent such knowledge, our laws will not do justice in, or for, rural Americans,”²⁶⁹ particularly for rural queer Americans.

V. QUEER RURALISM: IMPACT & EFFECTS

Ruralism and queer metronormativity intersect to create a particularly pernicious form of discrimination for queer rural dwellers: queer ruralism; that is, structural discrimination stemming from being queer and residing in a rural area. As rural dwellers, queers are subject to the deleterious consequences of ruralism discussed in Part I. But further, as Part II demonstrated, queers who do not participate in the great gay migration defy popular constructs of queer as an urban identity. The queer metronormativity theory is further complicated because it is assumed not just by heterosexuals, but also by queers. And it is not merely an assumption by urban dwellers, but by rural dwellers as well. In other words, metropolitan assumptions of queers are embraced by (1) urban heterosexual society, (2) rural heterosexual society, (3) urban queer society, and (4) rural queer society. Even rural queers, as we saw in the South Dakota narratives, are often misled by urban queer assumptions. If rural queers are “invisible” because they are rural, the fact that they are also queer makes them *doubly* invisible.

Acceptance and recognition of ruralism and queer ruralism as a form of discrimination is impeded by the fact that neither looks like typical discrimination. That is, they are not associated with a specific and overt discriminatory intent. As such, the problems confronting rural dwellers are perceived as simply disadvantages that can be overcome with individual effort and skill.²⁷⁰ This characterization masks the systemic pervasiveness of the problem.

Queer ruralism (and ruralism generally) is best cast as structural discrimination. Structural discrimination is created by the policies and behavior of a dominant group that are “neutral in intent” but that have a “differential and/or harmful effect” on a minority group.²⁷¹ Another definition captures not just formal policies, but social practices: structural discrimination “occurs when physical structures and social practices . . . are

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ See Bassett, *supra* note 2, at 331.

²⁷¹ Pincus, *supra* note 17, at 31.

designed for a single group [and] effectively exclude the members of another group.”²⁷²

Structural discrimination is most relevant where discriminatory acts are subtle or where the acts only have cumulative impact: “[s]ubtle discrimination often is equated with institutional or structural discrimination, and it also can be the product of cumulative acts that individually might be relatively innocuous but together produce substantial disadvantages for women and minorities.”²⁷³ As such, structural discrimination has been applied to a range of practices to explain disparate effects among minority groups, including workplace discrimination,²⁷⁴ racial discrimination,²⁷⁵ gender discrimination,²⁷⁶ and discrimination against the disabled.²⁷⁷ Structural discrimination is equally pertinent to queer ruralism, where formal policies and social practices, while not necessarily motivated by discriminatory intent, marginalize rural queers. As illustrated throughout this Article, these policies and practices are underpinned by stereotypes of rural as backwards or ideal and queers as exclusively metropolitan. For rural dwellers generally, this structural discrimination produces serious disadvantages.²⁷⁸ For rural queers in particular, the discrimination is even more acute.

How are rural queers discriminated against? Queer ruralism manifests in several ways to tangibly and materially affect the daily lives of queer rural dwellers. The discrimination is subtle—not necessarily associated with discrete or intentional action—but it nonetheless has substantial and identifiable consequences for rural queers. The remainder of this Article focuses on some of these areas, which are by no means exhaustive of the challenges faced by queer people dwelling in rural areas today.

²⁷² Michelle A. Travis, *Leveling the Playing Field or Stacking the Deck? The “Unfair Advantage” Critique of Perceived Disability Claims*, 78 N.C. L. REV. 901, 946 (2000).

²⁷³ Michael Selmi, *Was the Disparate Impact Theory a Mistake?*, 53 UCLA L. REV. 701, 778 (2006).

²⁷⁴ See Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 460 (2001); Tristin K. Green, *Discrimination in Workplace Dynamics: Toward a Structural Account of Disparate Treatment Theory*, 38 HARV. C.R.—C.L. L. REV. 91, 92 (2003) (arguing that subtle forms of workplace discrimination are effected “by the structures, practices and dynamics of the organizations and groups within which individuals work”).

²⁷⁵ See Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CAL. L. REV. 1, 3 (2006).

²⁷⁶ See generally VIRGINIA VALLAN, *WHY SO SLOW? THE ADVANCEMENT OF WOMEN* (1998) (arguing that structural inequalities contribute significantly to gender disparities).

²⁷⁷ See generally Michael A. Rebell, *Structural Discrimination and the Rights of the Disabled*, 74 GEO. L.J. 1435 (1986) (applying a structural discrimination framework to claims of discrimination by the disabled).

²⁷⁸ See *supra* Part I(B).

A. Healthcare & Education Disparities

1. HIV/AIDS Resources

Part I briefly discussed how rural healthcare is severely inadequate compared to urban healthcare.²⁷⁹ Many barriers unique to rural areas contribute to a disparity between rural and urban healthcare, including the difficulty of obtaining information, lack of public transportation, and high illiteracy rates.²⁸⁰ Of particular concern to queer people has been, and continues to be, access to quality HIV/AIDS prevention and treatment programs.²⁸¹ The quality of rural HIV/AIDS healthcare treatment is dismal compared to urban treatment.

The numbers speak for themselves. First, the prevalence of HIV in rural areas is increasing. In 2003, the most recent year for which data could be found, rural HIV infections constituted 7.6% of total cases, up from 5% in 1995.²⁸² Second, the quality of care for rural HIV patients is significantly lower than urban areas. A Centers for Disease Control (“CDC”) report in 2004 found that 38% of rural HIV patients are seeing doctors who have treated fewer than ten patients with the virus in the past, compared to just 3% in urban areas.²⁸³ 57% of rural HIV patients under a physician’s care are receiving highly active anti-retroviral therapy, in contrast with 73% in urban areas.²⁸⁴ Finally, and startling to an urban dweller, an individual with HIV in the rural South travels an average of eighty-six miles to see an infectious disease doctor.²⁸⁵

The situation is extreme: “In poor, rural areas of the United States, 40 percent of residents live without private health insurance. These areas also lack the AIDS care organizations When combined with a growing shortage of physicians and hospitals in rural America, people facing a seri-

²⁷⁹ See *supra* note 26 and accompanying text.

²⁸⁰ See Bassett, *supra* note 2, at 321.

²⁸¹ HIV/AIDS disproportionately impacts queer communities. See *infra* note 289 and accompanying text. Screening and prevention has been a top priority for LGBT community organizations. See *infra* note 290 and accompanying text.

²⁸² Pamela H. Foster & Ellis Frazier, *Rural Health Issues in HIV/AIDS: Views from Two Different Windows*, 19 J. HEALTH CARE FOR THE POOR AND UNDERSERVED 1, 10 (2008). I do not believe these percentages are drastically affected by reduction in rural populations generally. I have not found evidence addressing this question specifically. However, in order for the percentages of people with HIV/AIDS living in rural areas to be affected by residents moving to urban areas, those leaving rural areas would have to be disproportionately people who *do not have* HIV/AIDS. There is no reason to think that rural residents living with HIV/AIDS or those without HIV/AIDS would relocate to urban areas at different rates. If anything, I would conjecture that those living with HIV/AIDS are more likely to relocate to urban areas, considering the healthcare disparities presented here. If this were the case, the increase would be understated.

²⁸³ ST. LEGISLATURES, HIV AND AIDS ON THE RISE IN RURAL AMERICA 8 (Apr. 2004) (reporting on CDC findings).

²⁸⁴ *Id.*

²⁸⁵ *Id.*

ous disease like AIDS live in dire conditions.”²⁸⁶ Aspects of rural life that make HIV/AIDS uniquely challenging in rural areas include: geographic isolation, few specialists, lack of medical and support services, concerns about confidentiality, stigma, and poor economic conditions.²⁸⁷ Healthcare experts have demanded that “[p]revention strategies addressing these traits of rural communities must be part of any plan to confront the epidemic over the next few decades.”²⁸⁸

HIV/AIDS is particularly acute within the queer community. The epidemic has had a disproportionate impact on queer people, and it continues to be a top priority for community advocates.²⁸⁹ Yet, HIV/AIDS treatment and prevention programs that fail to take into account unique characteristics of rural queers—such as geographic isolation and stigma—will be inadequate. Urban communities have been successful at targeting the queer residents for testing, prevention, and treatment objectives.²⁹⁰ But if rural queers are rendered invisible, who will target them? That is, popular stereotypes of queers as exclusively urban will ignore a particularly vulnerable, at-risk, and disproportionately impacted segment of the rural population. In this sense, queer ruralism in the HIV/AIDS context compounds the discrimination and marginalization that rural queers face from both being rural and queer.

2. Resources for Queer High School Students

The Gay, Lesbian, and Straight Network (“GLSEN”) conducted the 2007 National School Climate Survey, which studied the experiences of queer youth in America’s high schools.²⁹¹ The survey produced startling differences between students who attend rural high schools and those who at-

²⁸⁶ Patrick Moore, Op-Ed., *AIDS is Not Just a Foreign Crisis*, NEWSDAY, Sept. 6, 2006, at A33.

²⁸⁷ See ST. LEGISLATURES, *supra* note 283 (discussing the unique challenges for rural dwellers seeking treatment of HIV/AIDS).

²⁸⁸ *Id.* at 11.

²⁸⁹ A recent study by the U.S. Centers for Disease Control and Prevention found that HIV diagnoses for men who have sex with men are more than forty-four times greater than other men and more than forty times greater than women. *CDC Analysis Provides New Look at Disproportionate Impact of HIV and Syphilis Among U.S. Gay and Bisexual Men*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 10, 2010), <http://www.cdc.gov/nchhstp/Newsroom/msmpressrelease.html>.

²⁹⁰ Numerous U.S. cities (such as Philadelphia, Washington D.C., Los Angeles, and New York) have community LGBT centers that offer a range of outreach, including HIV/AIDS prevention and testing. See *History & Mission*, MAZZONI CTR., <http://www.mazzonicenter.org/about/history-and-mission> (last visited Oct. 29, 2010) (Philadelphia); *Our Mission*, WHITMAN-WALKER CLINIC, http://www.wwc.org/about_wwc/mission.html (last visited Oct. 29, 2010) (Washington, DC); *Mission & Values*, L.A. GAY & LESBIAN CTR., http://www.lagaycenter.org/site/PageServer?pagename=YC_Who_We_Are (last visited Oct. 29, 2010) (Los Angeles); *About Us*, CALLEN-LORDE CMTY. HEALTH CTR., <http://www.callen-lorde.org/about.html> (last visited Oct. 29, 2010) (New York City).

²⁹¹ THE GAY, LESBIAN, & STRAIGHT NETWORK, THE 2007 NATIONAL SCHOOL CLIMATE SURVEY (2007), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1306-1.pdf.

tend urban or suburban high schools. The study found that students in small towns or rural locales experienced the highest number of homophobic remarks compared to urban or suburban locales.²⁹² Rural teachers were least likely to intervene after hearing a homophobic remark: “21.7% of students in urban areas said that school staff intervened most of the time or always when hearing homophobic remarks, compared to 15.2% of students in small towns or rural areas and 16.3% of students in suburban areas.”²⁹³ Additionally, rural queers reported much higher levels of victimization than their urban or suburban counterparts (a score of 5.81 for rural queers compared with 4.93 for suburban and 4.82 for urban).²⁹⁴

What is equally alarming is that rural high school queers, who are the most likely to be harassed, have the fewest resources available to them. The disparity is drastic and worth considering in full:

Compared to urban and suburban school students, LGBT students in small town and rural schools were:

- Half as likely to have a Gay-Straight Alliance . . . ;
- Less likely to have curriculum, textbooks or other assigned readings that included LGBT topics . . . ;
- Less likely to have access to LGBT-related information in their school libraries or through the Internet using school computers . . . ;
- Less likely to report having school staff who were supportive of LGBT students . . . ; and

With regard to comprehensive school anti-harassment policies, small town and rural school students were significantly less likely than students in suburban schools to report that their school had this type of policy.²⁹⁵

High school experiences for rural queers differ dramatically from their urban counterparts. The invisibility of rural queers is pervasive—not just in popular, scholarly, or judicial rhetoric—and can be seen played out in rural high schools. Queer ruralism has material and tangible consequences for rural queer teenagers. They are victimized more than their urban peers and have fewer resources at their disposal. Level of victimization has direct, tangible effects on academic performance: students who report higher degrees of victimization report lower grades and are less likely to report plans to attend college.²⁹⁶ Since rural queers are victimized more than urban queers, they are more likely to have lower academic performance and fewer educational aspirations.

²⁹² *Id.* at 71.

²⁹³ *Id.*

²⁹⁴ *Id.* at 71–72.

²⁹⁵ *Id.* at 104.

²⁹⁶ *Id.* at 83–86.

In its extreme, the victimization of rural queers—in the form of bullying—has been directly linked to teen suicide. A tragic story comes from Greensburg, Indiana (population 10,260²⁹⁷), where fifteen-year-old Billy Lucas recently hanged himself in his family's barn.²⁹⁸ Billy was bullied at school, where many of his classmates called him names: "People would call him 'fag' and stuff like that, just make fun of him because he's different basically," and "[t]hey said stuff like 'you're like a piece of crap' and 'you don't deserve to live.'"²⁹⁹ While the prevalence of queer teen suicide nationwide is extremely high, with reports that one-third of all queer teens attempt suicide,³⁰⁰ the problem is particularly acute in rural areas. As the *New York Times* noted in reporting on a number of recent suicides by gay teens, including Billy Lucas's: "while suicide by gay teenagers has long been a troubling trend, experts say the stress can be even worse in rural places, where a lack of gay support services—or even openly gay people—can cause a sense of isolation to become unbearable."³⁰¹

B. Political Marginalization

Queer ruralism has the effect of excluding rural queer political priorities. This political marginalization does not manifest in the way ruralism does generally, as discussed in Part I, but has a unique queer component: rural queers are marginalized by national queer organizations who fail to consider their rural queer constituencies. Rather, national political organizations pay homage to their urban constituencies.

The anecdotal evidence of this political marginalization is rich. For example, when Professor Tobias Wolff appeared before a gathering of LGBT voters in Northwest Iowa on behalf of the Obama campaign prior to the Iowa caucuses, he asked what the political priorities for queer Iowans were.³⁰² In response, he was told that "[y]ou have to understand Sioux City is not the same kind of environment where the LGBT community has a

²⁹⁷ *American FactFinder*, U.S. CENSUS BUREAU, <http://factfinder.census.gov> (search for "Greensburg, IN") (last visited Oct. 29, 2010) (using 2006–2008 data).

²⁹⁸ *Bully Drives Student to Suicide*, ADVOCATE.COM (Sept. 14, 2010), http://www.advocate.com/News/Daily_News/2010/09/14/Bullying_Drives_Student_to_Suicide.

²⁹⁹ *Indiana Teen Commits Suicide After Anti-Gay Bullying at School*, TOWELROAD.COM (Sep. 14, 2010), <http://www.towleroad.com/2010/09/indiana-teen-commits-suicide-after-anti-gay-bullying-at-school.html>.

³⁰⁰ Anthony D'Augelli, *Mental Health Problems Among Lesbian, Gay, and Bisexual Youths Ages 14 to 21*, 7 *CLINICAL CHILD PSYCHIATRY & PSYCHOL.* 7, 433 (2002).

³⁰¹ Jesse McKinley, *Suicides Put Light on Pressures of Gay Teens*, N.Y. TIMES, Oct. 3, 2010, at A9. See also Dan Savage, *Savage Love: Give 'Em Hope*, THE STRANGER (Sept. 23, 2010), <http://www.thestranger.com/seattle/SavageLove?oid=4940874> (lamenting Billy Lucas' suicide and stating: "Many LGBT kids who do kill themselves live in rural areas, exurbs, and suburban areas, places with no gay organizations or services for queer kids.").

³⁰² See Janine Kahn, *Last Night: Tobias Wolff at SF LGBT Community Center*, SFWEEKLY.COM (July 30, 2008), http://blogs.sfweekly.com/thesnitch/2008/07/last_night_tobias_wolff_at_the.php.

voice,” and that “[t]he only thing I can tell you that I’ve heard people talk about is a hate crime that was committed a couple years ago.”³⁰³

One specific example of priority-setting that has assumed an urban underpinning is marriage equality. There has been significant criticism that the national organizations should have put other priorities, such as employment discrimination or family law reform, ahead of marriage campaigns.³⁰⁴ Marriage, it is thought, is a luxury of affluent urban queers.³⁰⁵ Rural queer realities suggest that issues like employment law and child custody law are what matter. In Part IV, we considered court rhetoric of rural queers, much of it arising in the context of child custody disputes. In fact, family law appears likely to be a higher priority for rural queers than urban queers. *The Gay and Lesbian Atlas*, published in 2004, used 2000 census data to conclude that predominately rural states have the highest concentration of same-sex households with children.³⁰⁶ This is a function of rural states having the highest concentration of households with children generally. Mississippi, South Dakota, Alaska, and South Carolina lead the pack.³⁰⁷

In addition to concerns about family law or hate crimes, many rural states continue to fight for basic employment nondiscrimination protection.³⁰⁸ For example, some have viewed the Iowa Supreme Court rule in favor of gay marriage as a potential hindrance to more basic legal protections for rural queers. As *Mother Jones* reported:

Tom Fiebigler, a Democratic state senator from North Dakota, has mixed emotions about the events of April 3. On that morning, he learned that Iowa was to become the first state in the Midwest to recognize same-sex marriages. In the afternoon, he watched as his own state’s House of Representatives voted 54-to-34 to kill a bill

³⁰³ *Id.*

³⁰⁴ Dr. Anonymous, *Really Good Article*, Comment to *Essay: The Value of Constructive Criticism in the LGBT Movement*, OPENLEFT (Feb. 26, 2010, 4:48:10 AM), <http://openleft.com/diary/17570> (“When will we have a million person march for LGBT rights—and one that extends to a broad progressive LGBT platform and not just same-sex marriage, DADT, and a few other items that are of varying degrees of importance but definitely don’t reflect the full range of concerns that LGBT people have. [sic]”); *Queer Kids of Queer Parents Against Gay Marriage: Resist the Gay Marriage Agenda*, WORDPRESS.COM (Oct. 9, 2009, 10:31 PM), <http://queerkidssaynomarriage.wordpress.com> (“We are seeing a gay political agenda become single-issue to focus on marriage and leave behind many very serious issues such as social, economic, and racial justice.”); Safo, *Gay Marriage is a Distraction*, QUEERTODAY.COM (Nov. 9, 2008), <http://queertoday.com/profiles/blogs/gay-marriage-is-a-distraction> (“Sorry but I am sick of queers talking about same-sex marriage like it’s all that important. The queer community has much more pressing issues that we are dealing with . . .”).

³⁰⁵ See Ryan Thoreson, *Marriage Can Wait*, MOTHER JONES (Apr. 16, 2009), available at <http://www.motherjones.com/politics/2009/04/marriage-can-wait> (providing anecdotal evidence from legislators and activists in a number of rural Midwestern states to demonstrate that basic legal protections must precede gay marriage, as they did in many New England states that are now posed for same-sex marriage recognition).

³⁰⁶ GARY J. GATES & JASON OST, *THE GAY AND LESBIAN ATLAS* 43–53 (2004).

³⁰⁷ *Id.*

³⁰⁸ See Thoreson, *supra* note 305.

that would have protected North Dakotans from being fired, denied credit, or evicted because of their sexual orientation or gender identity. As the father of a gay son and the bill's chief sponsor in the Senate—where it passed 27-to-19 in a bipartisan vote—Fiebigler views the Iowa ruling as “kind of bittersweet.”³⁰⁹

North Dakota is not alone. As *Mother Jones* reported:

the Midwest is primed for a bumper crop of basic anti-discrimination bills—legislation unthinkable just a few years ago—needed to build foundations for marriage equality down the road. Sure, marriage is nice and all that, but it's nicer still to have laws that make it illegal for a gay man's boss to say, “Hit the road, faggot.”³¹⁰

This anecdotal evidence suggests a divergence between rural and urban queer priorities. What is important for a gay man in South Dakota may differ dramatically from that of a gay man in San Francisco. As the data demonstrates, rural queers are likely to regard issues of family law as more important than urban queers. And basic protections, such as protection from hate crimes or employment discrimination, are urgent. Political priorities, however, that are deaf to their rural constituencies will fail to account for these divergences.

CONCLUSION

Queer ruralism is a particular form of structural discrimination against queer rural dwellers. It is the confluence of ruralism and queer metronormativity. Queer ruralism is constituted by rhetoric of rural as backwards and rural queer as non-existent. This rhetoric is frequently adopted by the judicial branch, which has the effect of perpetuating and institutionalizing queer ruralism. Courts should be encouraged to consider rural queer realities, and many are doing so, by taking an expansive view of rural queers that is not entirely informed by stereotypes. Gay and lesbian studies have discredited queer metronormativity and are considering actual circumstances of queers within their geographic context. Real life narratives of several South Dakotans challenge the validity of urban queer assumptions, while at the same time confirming that rural queers face many challenges that overlap with stereotypes of rural queers as isolated. This realization instructs a more expansive recognition of rural queer realities. Queer ruralism has real, tangible, and material effects for queer rural Americans. This Article considered just a few examples in the areas of healthcare, education, and political access. Until we begin to take account of rural queer realities, rural queers will continue to reside at the margins of society and the law.

³⁰⁹ *Id.*

³¹⁰ *Id.*