

## ARMING AMERICA'S MOST DANGEROUS ABUSERS: HOW DOMESTIC VIOLENCE LAWS HAVE FAILED THE LGBTQIA COMMUNITY

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*"The idea that a woman can be the one who's abusive throws a wrench in the traditional view . . . . The idea that only men can be batterers makes it a lot harder for men to get access to shelter."*<sup>1</sup>

- Tre'Andre Valentine, Community Programs Coordinator  
at The Network/La Red

### ABSTRACT

*This Note will address the impact of North Carolina's exclusionary domestic violence statute, which prohibits same-sex couples from accessing the same resources available to opposite-sex victims of domestic violence and forces same-sex couples to seek aid under a "household member" application. Beginning with the history of domestic violence laws, this Note will track the growth of domestic violence regulations and resources, up through the landmark case of Obergefell v. Hodges, which equalized access to resources for same-sex victims across most forums, but unfortunately stood as a stalling point for same-sex equality in places where the decisions of legislatures are rooted in ignorance or homophobia. By analyzing the resources generally accessible to opposite-sex domestic violence victims, this Note argues that these resources must be equally accessible to same-*

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1. Maya Shwayder, *A Same-Sex Domestic Violence Epidemic Is Silent*, ATLANTIC (Nov. 5, 2013), <https://www.theatlantic.com/health/archive/2013/11/a-same-sex-domestic-violence-epidemic-is-silent/281131/>.

*sex victims of domestic violence on public policy, equal protection, and public health grounds.*

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## INTRODUCTION

Domestic violence has no sexual orientation. Some studies have found that “abuse is as common in same-sex relationships as in their heterosexual counterparts,”<sup>2</sup> while others argue that intimate partner violence is *more* prevalent between same-sex partners.<sup>3</sup> Yet domestic abuse services are failing lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA) communities across America.<sup>4</sup>

Just ask Patrick Dati. Patrick Dati is a survivor of same-sex domestic violence who begins his story with the painful memory of being raped by serial killer John Wayne Gacy when he was just a child.<sup>5</sup> “The secret of my childhood trauma drew me into a cycle of victimization. I entered into several abusive relationships, and fear compelled me to stay.”<sup>6</sup> The fear and victimization that Dati endured as a child carried him through two abusive relationships.<sup>7</sup> After coming out of the closet and gathering the strength to leave his mentally abusive second wife, he recounts nightmarish stories of the “relentless mental and physical abuse” he faced at the hands of his boyfriend.<sup>8</sup> “The breaking point came literally, when my then-boyfriend threw me down the stairs and severely fractured my arm. That drove me into a deep depression and a suicide attempt.”<sup>9</sup>

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2. Carolyn B. Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention*, 120 PENN ST. L. REV. 337, 338 (2015).

3. Nadine J. Kaslow et al., *Interventions for Abused African-American Women and Their Children*, in *INTERPERSONAL VIOLENCE IN THE AFRICAN-AMERICAN COMMUNITY: EVIDENCE-BASED PREVENTION AND TREATMENT PRACTICES* 49 (Springer Science ed., 2006).

4. Kevin L. Ard & Harvey J. Makadon, *Addressing Intimate Partner Violence in Lesbian, Gay, Bisexual, and Transgender Patients*, 26 J. GEN. INTERNAL MED. 930, 930–32 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3138983/>; Shannon Harvey, *Domestic Abuse Services Are Failing LGBT Victims*, CONVERSATION (June 4, 2014, 11:42 AM), <http://theconversation.com/domestic-abuse-services-are-failing-lgbt-victims-27556> (discussing similar failures in domestic violence resources for UK residents of the LGBT community).

5. Patrick Dati, *This Gay Man Breaks the Silence on His Domestic Abuse Horror Story*, ADVOCATE (June 1, 2017, 5:29 AM), <https://www.advocate.com/commentary/2017/6/01/gay-man-breaks-silence-his-domestic-abuse-horror-story>.

6. *Id.*

7. *Id.*

8. *See id.*

9. *Id.*

Although Dati felt that there was no way out, he made a life-saving call to a domestic violence hotline which he says “connected [me] to vital resources that saved my life.”<sup>10</sup>

Patrick Dati’s story has a happy ending: he is now the first openly gay male survivor working with the Elite Speakers Bureau, an organization founded by the late Nicole Brown Simpson’s sister which provides inspirational speakers on any number of topics.<sup>11</sup> Some stories, however, do not stop when an abuse victim gets out of the relationship. For David, another domestic abuse survivor, “[a] new phase of harassment and stalking that included a wide range of manipulations and threats . . . followed” his escape from an abusive partner.<sup>12</sup> Some survival stories have no end, because survival often begins a lifelong battle with trauma that might be even more difficult to escape than a physically or mentally abusive situation.<sup>13</sup> Through the new lens of struggling to cope and learning how to live again, stories of domestic violence survival often begin after the abuse has ended.<sup>14</sup>

Unfortunately, many victims of same-sex domestic violence are unable to tell their own stories. Just ask the unnamed body that the New Orleans Police Department carried out of a mansion following an early morning standoff.<sup>15</sup> Later identified by neighbors and friends as “Cleve” (although never publicly identified by police), Cleveland Guillot Junior’s story can only

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10. *Id.*

11. *Id.*; see Patrick Dati, ELITE SPEAKERS BUREAU, <http://www.theelitespeakersbureau.com/patrick-dati> (last visited Mar. 25, 2019).

12. ACON’s Lesbian and Gay Anti-Violence Project, *Terrified to Go Home*, in TALES FROM ANOTHER CLOSET: PERSONAL STORIES OF DOMESTIC VIOLENCE IN SAME-SEX RELATIONSHIPS 4-5 (2011).

13. Carole Warshaw, *Thinking About Trauma in the Context of DV Advocacy: An Integrated Approach*, NAT’L CTR. ON DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH (2013), <http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2012/01/ThinkingAboutTrauma.pdf>.

14. See *id.* (arguing that, to treat more holistically, trauma models must account for the present and future traumas that a survivor might experience, considering issues such as mental illness, substance abuse, and interpersonal relationships as well as the triggers associated with these issues).

15. Ramon Antonio Vargas, *NOPD: Man Found Dead Inside Bourbon Street Home; Roommate Taken into Custody*, ADVOCATE (Apr. 4, 2017, 10:43 AM), [http://www.theadvocate.com/new\\_orleans/news/crime\\_police/article\\_7793ef6a-194d-11e7-b062-b36a51d04917.html](http://www.theadvocate.com/new_orleans/news/crime_police/article_7793ef6a-194d-11e7-b062-b36a51d04917.html).

be shared in the third-person, and his death might have been prevented had Louisiana decided earlier to protect same-sex domestic violence victims in the same way it protects those of the opposite sex.<sup>16</sup> Cleve was murdered by his same-sex partner, a man who would have never been eligible to purchase a gun if his former assaults were documented as domestic abuse instead of simple assaults.<sup>17</sup> Only a few months later, Louisiana finally updated its domestic violence statute to apply to “dating partners,” defined as “any person who is involved or has been involved in a sexual or intimate relationship with the offender.”<sup>18</sup> If these changes were enacted sooner, maybe Cleve’s partner would have been denied the gun that ultimately killed Cleve.

Partly because of heteronormativity,<sup>19</sup> and partly because of a lack of viable information,<sup>20</sup> there are few hard statistics on the increased rate of murders among same-sex domestic violence victims who live with abusers that have access to firearms.<sup>21</sup> The

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16. *Id.*; see Grace Toohey, *Legislators Work to Close ‘Loopholes’ in Domestic Violence Laws That Don’t Cover Same-Sex Couples, Dating Partners*, ADVOCATE (Apr. 17, 2017, 6:15 PM), [http://www.theadvocate.com/baton\\_rouge/news/crime\\_police/article\\_ad297e30-206c-11e7-8240-6f611f00ca1e.html](http://www.theadvocate.com/baton_rouge/news/crime_police/article_ad297e30-206c-11e7-8240-6f611f00ca1e.html).

17. See Vargas, *supra* note 15; H.B. 753, 2014 Leg. Reg. Sess. (La. 2014) (restricting gun ownership if convicted of domestic abuse but remaining silent on simple assault).

18. H.B. 223, 2017 Leg. Reg. Sess. (La. 2017).

19. Heteronormativity is a troubling, confounding variable in same-sex statistics because it leads to under-reporting as well as reporting in a different way. For example, officers untrained in same-sex relations may see a domestic assault between a same-sex couple as a simple assault or may not report at all if the officer cannot determine the aggressor. See Marissa Higgins, *Why Is It So Hard to Recognize Domestic Abuse in Same-Sex Relationships?*, WASH. POST (July 22, 2016), [https://www.washingtonpost.com/news/soloish/wp/2016/07/22/why-is-it-so-hard-to-recognize-domestic-abuse-in-same-sex-relationships/?utm\\_term=.eb3f50e289db](https://www.washingtonpost.com/news/soloish/wp/2016/07/22/why-is-it-so-hard-to-recognize-domestic-abuse-in-same-sex-relationships/?utm_term=.eb3f50e289db).

20. LA. DEP’T OF CHILDREN & FAMILY SERVS., LOUISIANA DOMESTIC VIOLENCE PREVENTION COMMISSION 2014-15 ANNUAL REPORT 10–11 (2015), <http://www.dcfslouisiana.gov/assets/docs/searchable/WomensPolicy/La%20Domestic%20Violence%20Prevention%20Commission%202014-15%20Report%20final.pdf> (“The subcommittee found that there is no uniform statewide collection of data by parishes to provide the following data elements: . . . To truly have a sense of the prevalence of domestic violence and any service gaps within the state, collecting this data is key.”).

21. For a very brief introduction into the issue of heteronormativity limiting access and resources to needy SSDV victims, see Shwayder, *supra* note 1; see also Nora Dunne, *Domestic Violence Likely More Frequent for Same-Sex Couples*, NW. NOW (Sept. 18, 2014), <https://news.northwestern.edu/stories/2014/09/domestic-violence-likely-more-frequent-for-same-sex-couples>.

rates of domestic abuse with guns in abusive men/abused women heterosexual relationships, however, are heavily studied and may provide a baseline for researchers until data is available for same-sex relationships.<sup>22</sup> Those numbers are startling: women in domestic violence situations are five times more likely to be murdered by an intimate acquaintance than a male stranger, and 51% of murdered female domestic partner violence victims are killed with firearms (particularly handguns).<sup>23</sup> Even more alarming is a 2004 study of battered women, which found that 74.1% of respondents reported that their partner had brandished a firearm while “threaten[ing] to shoot or to kill” them during a domestic abuse situation.<sup>24</sup>

While *Obergefell v. Hodges*<sup>25</sup> and *United States v. Windsor*<sup>26</sup> were massive early triumphs in the twenty-first century’s push toward sex and gender equality,<sup>27</sup> this Note questions whether celebration for same-sex rights is appropriate considering the current state of marriage statutes across America, and partic-

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22. See CATHERINE DONOVAN ET AL., COMPARING DOMESTIC ABUSE IN SAME-SEX AND HETEROSEXUAL RELATIONSHIPS 2 (2006), <http://www.equation.org.uk/wp-content/uploads/2012/12/Comparing-Domestic-Abuse-in-Same-Sex-and-Heterosexual-relationships.pdf> (“While domestic abuse in heterosexual relationships has been of increasing public concern in the UK since the 1970s, domestic abuse in same-sex communities has only more recently become apparent. A number of factors may be seen to have contributed to the greater invisibility of same sex domestic abuse, including fears of making obvious such problems within communities already considered ‘problematic’ in a homophobic society.”).

23. See VIOLENCE POLICY CTR., WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2011 HOMICIDE DATA (FEMALES MURDERED BY MALES IN SINGLE VICTIM/SINGLE OFFENDER INCIDENTS) 3–6 (Sept. 2013), <http://www.vpc.org/studies/wmmw2013.pdf>; see also *Domestic Violence & Firearms*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Mar. 25, 2019) (“Abused women are five times more likely to be killed if their abuser owns a firearm, and domestic violence assaults involving a gun are 12 times more likely to end in death than assaults with other weapons or physical harm.”).

24. Susan B. Sorenson & Douglas J. Wiebe, *Weapons in the Lives of Battered Women*, 94 AM. J. PUB. HEALTH 1412, 1414 (2004), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448464/>. Unfortunately, there are no equivalent studies to use for same-sex relationships here.

25. 135 S. Ct. 2584 (2015) (holding same-sex couples have a right to marry under the Due Process and Equal Protection Clauses of the Fourteenth Amendment).

26. 570 U.S. 744 (2013) (holding the Defense of Marriage Act unconstitutional).

27. For a discussion on the importance of the *Obergefell* discussion, and the “dancing, in the streets among many other places” that followed the opinion’s release, see Louis Michael Seidman, *The Triumph of Gay Marriage and the Failure of Constitutional Law*, 2015 SUP. CT. REV. 115, 115 (2015).

ularly considering North Carolina's continued exclusion of same-sex couples from its domestic violence statute. While some states have still failed to update their marriage laws to include same-sex couples following *Obergefell*,<sup>28</sup> this Note argues that something much more harmful is falling under America's radar. Some states have similarly left their domestic violence statutes untouched,<sup>29</sup> providing resources that only suit the needs of heterosexual couples.<sup>30</sup> Specifically, North Carolina has failed to update its laws in an inclusive manner, meaning that unmarried, child-free same-sex domestic violence victims do not have equal access to life-saving domestic violence victim resources. When child custody,<sup>31</sup> gun rights,<sup>32</sup>

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28. For example, a valid but unenforced Michigan statute still states, "Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy . . . [a] marriage contracted between individuals of the same-sex is invalid in this state." MICH. COMP. LAWS § 551.1 (1996) (still in effect). This is not a singular incidence. In Kentucky, marriage is *still* defined as "one (1) man and one (1) woman united in law for life." KY. REV. STAT. ANN. § 402.005 (1998) (still in effect). In fact, Pennsylvania's statutes currently define marriage as "[a] civil contract by which one man and one woman take each other for husband and wife." 23 PA. CONS. STAT. § 1102 (1996) (still in effect).

29. Failure to update the domestic violence laws is sometimes a good thing, like in Pennsylvania where gender neutrality allows the laws to remain equally accessible for same and opposite-sex couples after same-sex marriage legalization. *See, e.g.*, 23 PA. CONS. STAT. § 6102(a) (defining "family or household member" using terms such as "[s]pouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners," which allows same-sex victims unfettered access to domestic violence protection).

30. Other states' intentional exclusion of same-sex couples has led to some unintended consequences. In South Carolina, "household member" is limited to spouses, former spouses, persons with a child in common, and "a male and female who are cohabiting or formerly have cohabitated." S.C. CODE ANN. § 16-25-10(3) (2017). Invoking the Equal Protection Clause, South Carolina's Supreme Court recently held this exclusionary language unconstitutional . . . by removing the offending provision *entirely*. *Doe v. State*, No. 27728, 2017 S.C. Lexis 113, at \*21 (S.C. July 26, 2017). After several editorials and urging from parties on all sides, the court needed to hastily release a substituted opinion, holding the application unconstitutional, and leaving the clause in but applicable to same and opposite-sex couples equally. *See Doe v. State*, 808 S.E.2d 807, 816–18 (S.C. 2017). The court's fervor, and the state's homophobia, created a period of several months where cohabiting couples of any orientation were excluded from the state's domestic violence legal protection. *See* Mary Ann Chastain, *Same-Sex Domestic Violence Court Win Has Unintended Problem*, NBC NEWS (July 28, 2017, 4:09 PM), <https://www.nbcnews.com/feature/nbc-out/same-sex-domestic-violence-court-win-has-unintended-problem-n787496>; *see also* *Court Ruling Blows Up SC Domestic Violence Laws*, FITSNEWS (July 27, 2017), <https://www.fitsnews.com/2017/07/27/court-ruling-blows-up-sc-domestic-violence-laws/>.

31. *See infra* Section II.C.4.

32. *See infra* Section II.C.3.

police knowledge,<sup>33</sup> and enforcement are tied to the word of the law, North Carolina's failure to update same-sex domestic violence statutes puts a vulnerable same-sex population in greater danger than its opposite-sex counterpart.<sup>34</sup> Federal, state, and local laws must be updated and revised to be gender neutral, and the first of these laws should be North Carolina's domestic violence statute.<sup>35</sup> North Carolina's law is particularly egregious because it blatantly denies same-sex domestic violence victims access to the resources available to their opposite-sex counterparts. This Note will address the disparate treatment that unmarried, same-sex domestic violence victims can expect to face in North Carolina.

To understand the issues facing same-sex domestic violence victims, Part I of this Note introduces the birth, growth, and current state of domestic violence laws for opposite and same-sex couples. The birth and growth of opposite-sex domestic violence (OSDV) laws—which have been a template for same-sex domestic violence (SSDV) laws where SSDV laws have been adopted—is an excellent starting point to understanding the issues diminishing the efficacy of SSDV laws and resources (if those resources even exist). An introduction to the issues facing same-sex couples would be incomplete without providing a breakdown of state adoptions of SSDV laws.

Second, Part II provides an analysis on the failures of SSDV laws. This Note argues in support of a call to action. Specifically, homosexual men do not have a "safe harbor" for when the storm hits: the public sector has failed them by not adopting life-saving SSDV laws in a timely manner and not providing effective training to police officers on the intricacies of SSDV laws. Further, the private sector has failed them by assuming that the needs of homosexual domestic violence victims are met

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33. See *infra* Section II.D.

34. See Krystal D. Mize & Todd K. Shackelford, *Intimate Partner Homicide Methods in Heterosexual, Gay, and Lesbian Relationships*, 23 *VIOLENCE & VICTIMS* 98, 102 (2008) ("In fact, in a study of Chicago homicides, [the researchers] reported that male victims of intimate partner homicide were more likely to be killed in domestic gay relationships than in heterosexual relationships.").

35. See *infra* Conclusion.



by the current infrastructure, despite the fact that homosexual men have incredibly limited resources to help protect and rebuild their lives when they are victims of domestic violence crises.

## I. BACKGROUND

### A. *An Introduction to Domestic Violence Laws*

The definition of domestic violence<sup>36</sup> continues to be highly controversial.<sup>37</sup> Broadly, “domestic violence” (sometimes called “intimate partner violence”)<sup>38</sup> refers to acts of physical or sexual violence, emotional/psychological abuse, or controlling behaviors that happen between intimate partners or between members of a household.<sup>39</sup> Acts of domestic violence are governed by state statute, and many states disagree on what domestic violence entails.<sup>40</sup> Generally, the difference between non-domestic violence and domestic violence lies in the procedural method of prosecution.<sup>41</sup> The primary procedural difference is the responding police officer’s power to make a

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36. Domestic violence is a traditional term for what is sometimes now called “intimate partner violence.” Domestic violence refers to violence within a household unit, while intimate partner violence is a narrower term referring to certain acts of violence between intimate partners. Nat’l Inst. of Justice, *Intimate Partner Violence*, OFF. J. PROGRAMS, <https://www.nij.gov/topics/crime/intimate-partner-violence/Pages/welcome.aspx> (last modified Mar. 30, 2017); see CLAUDIA GARCIA-MORENO ET AL., UNDERSTANDING AND ADDRESSING VIOLENCE AGAINST WOMEN, WORLD HEALTH ORG. 1 (2012), [http://apps.who.int/iris/bitstream/10665/77432/1/WHO\\_RHR\\_12.36\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/77432/1/WHO_RHR_12.36_eng.pdf).

37. Claire Wright, *Torture at Home: Borrowing from the Torture Convention to Define Domestic Violence*, 24 HASTINGS WOMEN’S L.J. 457, 464 (2013) (“Although commentators generally agree that the financial cost of domestic violence is too high, confusion and debate abound regarding many other aspects of domestic violence. For example, its definition, incidence, gender symmetry, and cause(s) are all highly controversial.”).

38. This article is going to use the term domestic violence, which encompasses intimate partner violence, to refer to both phenomena, except where otherwise stated.

39. GARCIA-MORENO ET AL., *supra* note 36, at 1 n.1; Nat’l Inst. of Justice, *supra* note 36.

40. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 810 (1993) (stating that domestic violence is a complex issue requiring lawyers to become familiar with court decisions across the country to provide meaningful advocacy to battered women).

41. Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552, 559–60 (2007).

warrantless arrest.<sup>42</sup> Traditionally, misdemeanor assaults (which make up the majority of domestic violence incidents) would not lead to arrest, but every state has now removed this limitation, authorizing a warrantless arrest when officers are responding to a domestic violence situation.<sup>43</sup> Statutes authorizing police and judicial responses to domestic violence, however, are often only as good as the police officers and judges assigned to the case.<sup>44</sup>

### B. *The Birth of Opposite-Sex Domestic Violence Laws*

Historically, the law has attempted, but failed, to protect victims of domestic violence.<sup>45</sup> The first inclination toward domestic violence protection in American history is memorialized in the 1641 Massachusetts Body of Liberties, the first legal code written by English colonists on American soil.<sup>46</sup> The document granted married women freedom from “bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assault.”<sup>47</sup> Before this liberty, women were viewed as an extension of their male spouses, and some commenters have suggested that men being responsible for their wife’s actions led to a laissez-faire response to domestic violence so that men could use physical violence to reprimand

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42. *Id.*

43. *Id.* at 559 (“Because many domestic violence incidents constitute only misdemeanor assaults, the traditional in-presence requirement often prohibited police from making arrests at the scene without a warrant. By 1995, however, every state in the country permitted police to make warrantless arrests in all domestic violence cases, despite traditional limitations in other misdemeanor cases. Some states have gone further by enacting ‘mandatory arrest’ statutes that require, rather than merely authorize, arrest whenever probable cause exists in domestic violence cases.”).

44. *See infra* Part II (arguing the importance of training police and judges on what is truly domestic violence).

45. *See generally* Nancy Egan, *The Police Response to Spouse Abuse: A Selective, Annotated Bibliography*, 91 LAW LIBR. J. 499, 500 (1999) (noting that though domestic violence laws existed in America, most laws were weak or rarely enforced).

46. *See* WILLIAM H. WHITMORE, A BIBLIOGRAPHICAL SKETCH OF THE LAWS OF THE MASSACHUSETTS COLONY FROM 1630 TO 1686, at 31, 51 (1890), <http://www.mass.gov/anf/docs/lib/body-of-liberties-1641.pdf> (establishing an early domestic violence law in Massachusetts).

47. *Id.*

their spouse "if necessary."<sup>48</sup> While tremendous changes have occurred between these early laws and now, legislation, criminalization, and enforcement of domestic violence laws and protections did not become widespread until a few decades ago.<sup>49</sup>

Thanks to the hard work of women's rights activists in the later parts of the nineteenth century, every state now criminalizes domestic violence to some degree.<sup>50</sup> The degree of protection afforded to victims in each state varies.<sup>51</sup> The breadth of an OSDV statute's protection can be observed by whether it: (1) puts an end to abusive behavior, (2) restricts contact with the victim, (3) removes firearms or deadly weapons from the perpetrator, (4) grants temporary child custody or support, or spousal support, (5) grants victims exclusive use of personal property or a shared domicile, (6) requires treatment, additional support, or restitution for expenditures, or (7) requires continuance of insurance benefits or prohibits substance use (the rarest provisions).<sup>52</sup>

Possibly the most pivotal piece of domestic violence protection legislation is the Violence Against Women Act (VAWA).<sup>53</sup> VAWA was signed into law by President Bill Clinton in 1994 and created a framework of federal aid offered to women who were victims of abuse or intimate partner violence (meaning that both cohabiting and non-cohabiting

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48. See Egan, *supra* note 45; see also Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1661–62 (explaining former standards of domestic violence issues in this country).

49. See Egan, *supra* note 45, at 500–02 (providing an overview of the growth of domestic violence legislation from the 1600s to the 1980s).

50. Christina Meneses, Network for Pub. Health Law, *Injury Prevention: Domestic Violence and Same Sex Relationships Fact Sheet*, [https://www.networkforphl.org/\\_asset/lmb0yo/Master-List-of-SameSex-Domestic-Violence-Protections-Updated-1262012.pdf](https://www.networkforphl.org/_asset/lmb0yo/Master-List-of-SameSex-Domestic-Violence-Protections-Updated-1262012.pdf) (last visited Apr. 2, 2019).

51. *Id.*

52. *Id.* at 2.

53. See generally Sarah LeTrent, *Violence Against Women Act Shines a Light on Same-Sex Abuse*, CNN (Mar. 14, 2013, 11:06 AM), <http://www.cnn.com/2013/03/14/living/same-sex-domestic-violence-and-vawa/index.html> (noting that "[t]he Human Rights Campaign sees the reauthorization [of this 1994 Bill] as a landmark achievement").

victims were offered some access to resources).<sup>54</sup> The Act was reauthorized in 2000, 2005, and 2013.<sup>55</sup> After a lengthy debate between House Republicans seeking to limit same-sex access and the Senate Majority,<sup>56</sup> the 2013 reauthorization of VAWA included protections for same-sex victims of domestic violence.<sup>57</sup> Through each iteration, one primary reason for passing VAWA was Congress's belief that states were not doing enough to protect and provide resources to victims of domestic violence.<sup>58</sup>

### C. Adding Same-Sex Protections into the Fold

In 2013, VAWA finally began to look beyond the gendered constraints of its name. The 2013 VAWA Reauthorization, signed into law by President Barack Obama, was the first iteration of the Act to include assistance for SSDV victims, although the name of the Act was not revised to include men.<sup>59</sup> The signing of the Reauthorization, considered "a day of the advocates, [and] a day of the survivors" by President Obama,<sup>60</sup> added broad, inclusive language, such as

[n]o person in the United States shall, on the basis of . . . gender identity, [or] sexual orientation . . .

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54. The Women's Legal Def. & Educ. Fund, *History of the Violence Against Women Act*, LEGAL MOMENTUM, <http://www.legalmomentum.org/history-vawa> (last visited Apr. 14, 2019) [hereinafter *History of VAWA*].

55. See Lynn Rosenthal, *Ensuring LGBT Victims of Domestic Violence Can Access Critically Needed Services and Protections*, WHITE HOUSE: PRESIDENT BARACK OBAMA (May 15, 2012, 11:06 AM), <https://obamawhitehouse.archives.gov/blog/2012/05/15/ensuring-lgbt-victims-domestic-violence-can-access-critically-needed-services-and-pr> (stating VAWA was reauthorized in 2000 and 2005); see also LeTrent, *supra* note 53 (stating VAWA was reauthorized in 2013 by President Obama).

56. See Rosenthal, *supra* note 55.

57. See generally Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (reauthorizing VAWA of 1994, including gender neutral provisions and access for same-sex victims, though not enforcing equal protection for genders under the act).

58. See *History of VAWA*, *supra* note 54.

59. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 101, 127 Stat. 54, 66 (2013); see LeTrent, *supra* note 53 (noting that VAWA's reauthorization is more inclusive to the LGBTQI community).

60. LeTrent, *supra* note 53.

be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Violence Against Women Act of 1994.<sup>61</sup>

This change in the law opened the door for gravely-needed grant money to flow to domestic abuse organizations that focused on same-sex abuse victims and survivors.<sup>62</sup>

These changes were not the result of a forgetful Congress—Democrats in Congress had attempted to extend VAWA grant coverage to LGBTQIA initiatives since 2011 but could not get the more inclusive bill past House and Senate Republicans until 2013, the same year in which *Windsor* was decided.<sup>63</sup>

#### D. *A Breakdown of the Current Status of Same-Sex Domestic Violence Laws*

Currently, there is no universal standard for any domestic violence law, let alone SSDV laws. While other states have been forced by their judicial branches to alter or apply equally their domestic violence statutes, North Carolina remains the only state to specifically exclude SSDV victims from its domestic violence laws.<sup>64</sup> States can be broken up into three categories:

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61. Compare Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013) (expanding the language of VAWA to include all gender identities and sexual orientations), with Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (1994) (limiting the act's protections to women only).

62. See Ashley LeBrun, Note, *Are We There Yet?—VAWA 2013: Same-Sex Legal Acceptance*, 39 SETON HALL LEGIS. J. 101, 103-04 (2015) (discussing the reauthorization's impact on funding for SSDV abuse survivors).

63. See Lois Kazakoff, *Violence Against Women Act Sent to Obama*, SFGATE (Feb. 28, 2013, 5:54 PM), <https://blog.sfgate.com/opinionshop/2013/02/28/violence-against-women-act-sent-to-obama/> (explaining the breakdown of Democrats and Republicans that voted on the reauthorization).

64. See N.C. GEN. STAT. § 50B-1 (2015); see also Meneses, *supra* note 50. See generally COMM'N ON DOMESTIC & SEXUAL VIOLENCE, AM. BAR ASS'N, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOs) (2014), [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/Resources/statutorysummarycharts/2014%20CPO%20Availability%20Chart.aucthecheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Resources/statutorysummarycharts/2014%20CPO%20Availability%20Chart.aucthecheckdam.pdf) (detailing each states' laws pertaining to civil protection orders as well as

First, the majority of states have affirmatively enacted SSDV legislation or have consistently included inclusionary language such that they did not need to update their statutes following *Obergefell*'s recognition of same-sex marriage (hereinafter "affirmative states").<sup>65</sup> Second, following *Obergefell*, the judicial branches of some states without affirmative domestic violence laws held their OSDV laws mandatorily applicable to same-sex couples, typically after protracted legal battles surrounding equal protection (hereinafter "judicially-inclusive states").<sup>66</sup> While many states' judiciaries reached the same decision before *Obergefell*,<sup>67</sup> those states are included in the affirmative list because their legislatures proactively changed their state statutes before *Obergefell* was decided. Lastly, North Carolina is the only state that does not explicitly extend its OSDV laws to same-sex couples, and whose judiciary has not required such an extension.<sup>68</sup> Thus, North Carolina earns its own category as the state that has explicitly excluded same-sex victims from its domestic violence laws.

### 1. *Affirmative states*

Initially, domestic violence statutes excluded same-sex couples because the statutes were written with spouses in

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whether the CPO statutes are applicable to same-sex partners) [hereinafter Domestic Violence CPOs].

65. ANGELA VIGIL, COMM'N ON DOMESTIC & SEXUAL VIOLENCE, AM. BAR ASS'N, REPORT TO THE HOUSE OF DELEGATES RESOLUTION 109B, at 2, 6 (May 4, 2015), [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/LGBT/109B.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/LGBT/109B.authcheckdam.pdf).

66. *E.g.*, *Doe v. State*, 808 S.E.2d 807, 817 (S.C. 2017); *see also Storch v. Sauerhoff*, 757 A.2d 836, 841 (N.J. Super. Ct. Ch. Div. 2000) (holding that same-sex cohabitants fell within the status of household member—while this case did not *de facto* create same-sex access to all of the protections afforded to OSDV victims, it is one example of many where courts needed to grapple with the application of domestic violence statutes before legislatures changed their laws to affirmatively accept SSDV victims as within their ambit).

67. *See, e.g.*, *Goodridge v. Dep't Pub. Health*, 798 N.E.2d 941, 969 (Mass. 2003).

68. *But see* S.C. CODE ANN. § 16-25-10(3)(d) (2015) (stating that the only unmarried couples who are eligible to benefit from South Carolina's domestic violence protections are those comprised of "a male and female who are cohabiting or formerly have cohabited"). After *Doe*, legislation has been introduced to remove "a male and female" from the statute, replacing it with "persons," which will leave North Carolina as the only state whose domestic violence legislation explicitly refers to opposite-sex couples only without being overturned judicially.

mind.<sup>69</sup> Until 2015, marriage equality was not universal across the states,<sup>70</sup> and so same-sex couples were frequently left unprotected by spouse-oriented domestic violence laws.<sup>71</sup> Hawaiian legislators, seeing this disconnect between public policy and statutory language, pioneered a new method in order to protect their same-sex couples from a domestic violence lock-out.<sup>72</sup> The legislature “acknowledge[d] that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by such legal restrictions from marrying . . . such as . . . two individuals who are of the same gender.”<sup>73</sup> Thus, Hawaii amended its domestic violence laws to apply to a new class of people—“reciprocal beneficiaries”—who could declare their relationship as a reciprocal beneficiary relationship in order to gain some of the rights of married couples without being legally married, so long as the parties are “legally prohibited from marrying one another.”<sup>74</sup> Though Hawaii was at the time the only state whose legislature proactively extended the boundaries of its domestic violence laws, the judiciaries of other

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69. See Sheila M. Seelau & Eric P. Seelau, *Gender-Role Stereotypes and Perceptions of Heterosexual, Gay and Lesbian Domestic Violence*, 20 J. FAM. VIOLENCE 363, 363 (2005) (analyzing state domestic violence statutes, and finding that, at that time, “many statutes do not cover unmarried persons . . . [and although gender-neutral language in 37 jurisdictions implies protection of gay and lesbian domestic abuse victims, only four states have made this coverage explicit”).

70. See generally *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (holding same-sex couples have a fundamental right to marry).

71. See Seelau & Seelau, *supra* note 69, at 363. (explaining four states explicitly included same-sex couples in domestic violence statutes).

72. See Tara R. Pfeifer, Comment, *Out of the Shadows: The Positive Impact of Lawrence v. Texas on Victims of Same-Sex Domestic Violence*, 109 PENN ST. L. REV. 1251, 1262 (2005).

73. H.B. 118, 19th Leg. (Haw. 1997).

74. *Id.* (applying domestic violence protection to same-sex couples—who were legally barred from marrying in Hawaii at the time before the bill’s passing).

states (Illinois,<sup>75</sup> Kentucky,<sup>76</sup> and Ohio<sup>77</sup>) had already achieved a similar goal.<sup>78</sup>

While nearly all states have domestic violence laws that apply to cohabiting peoples, and all states have domestic violence laws that apply to married couples, by 2012, only twenty-one states had ratified laws purposely meant to apply to every orientation.<sup>79</sup> This does not mean, however, that those states have considered the unique circumstances that same-sex individuals face during a domestic violence incident—none of these states have created special provisions accommodating same-sex parties beyond ensuring that domestic violence laws apply to same-sex parties in a similar fashion as to opposite-sex parties.<sup>80</sup>

When Justice Kennedy finally handed down his now historic opinion in *Obergefell*,<sup>81</sup> most states implicitly entered this category of affirmative states by virtue of how those states' laws were already written.<sup>82</sup> Although unmarried same-sex couples were left out in the cold if their state's statute did not include a

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75. See *Glater v. Fabianich*, 625 N.E.2d 96, 99 (Ill. App. Ct. 1993) (finding that the state's domestic violence prevention act "was designed to prevent abuse between persons sharing intimate relationships," and thus the same-sex plaintiff and defendant fell within the statute's "family or household members" provision).

76. See *Ireland v. Davis*, 957 S.W.2d 310, 312 (Ky. Ct. App. 1997) (holding that equal protection requires "equal treatment under the law for same-sex or homosexual victims of domestic violence").

77. See *State v. Hadinger*, 573 N.E.2d 1191, 1193 (Ohio Ct. App. 1991) (concluding that nothing in Ohio's statute restricted the domestic violence laws from applying to same-sex couples).

78. Pfeifer, *supra* note 72, at 1262–63.

79. See Meneses, *supra* note 50 (recounting the jurisdictions whose domestic violence legislation "explicitly appl[ied] to same-sex couples" as Connecticut, Delaware, Washington, D.C., Maine, Maryland, Massachusetts, New Jersey, New York, New Hampshire, Rhode Island, Vermont, Iowa, Illinois, Ohio, Pennsylvania, Florida, California, Hawaii, Nevada, Oregon, and Washington).

80. See, e.g., *Domestic Violence in the LGBT Community: A Fact Sheet*, CTR. FOR AM. PROGRESS (June 14, 2011, 9:00 AM), <https://www.americanprogress.org/issues/lgbt/news/2011/06/14/9850/domestic-violence-in-the-lgbt-community/> (calling for local, state, and federal funding in order to educate law enforcement and community service providers about the needs of the LGBT community, as well as for establishing SSDV prevention programs and providing support to organizations that already carry out these aims).

81. See 135 S. Ct. 2584 (2015).

82. See VIGIL, *supra* note 65, at 4–6.



cohabiting/intimate relationship clause, those couples were still equal, since unmarried, childless, opposite-sex couples typically fell within the same legal dead zone.<sup>83</sup> At this point, there were only three states<sup>84</sup> left with exclusionary language—North Carolina,<sup>85</sup> South Carolina,<sup>86</sup> and Louisiana.<sup>87</sup>

## 2. *Judicially-inclusive states*

Judicially-inclusive states have applied their domestic violence laws to same-sex couples not by statute, but on constitutional grounds.<sup>88</sup> These states' legislatures failed, or refused, to update their statutes on their own, but impact litigation carried out by equal rights organizations like the American Civil Liberties Union successfully sued for equal protection amongst all domestic violence victims.<sup>89</sup>

Since the fight for same-sex marriage equality really hit its stride in the early 1990s,<sup>90</sup> many states expressly edited their domestic violence statutes to be exclusive of same-sex couples

83. *See id.* at 6.

84. Montana, formerly an exclusionary state, struck the language, “with a person of the opposite sex,” from its statute defining partners for the purpose of domestic violence laws shortly before *Obergefell* in 2013. S.B. 306, 63d Reg. Sess. (Mont. 2013).

85. North Carolina's statute still carries the exclusionary language. *See* N.C. GEN. STAT. § 50B-1 (2015); *see also infra* Section I.D.3.

86. South Carolina, despite its judiciary overturning the exclusion, has not yet updated the state's statute (although equally protective proposals have been introduced into the current session). *See Doe v. State*, 808 S.E.2d 807, 817 (S.C. 2017); *see also* S.C. CODE ANN. § 16-25-10(3)(d) (2015); *infra* Section I.D.2.

87. Interestingly, one of the least same-sex friendly states, Louisiana, appears to have reacted promptly to the changes following *Obergefell* and same-sex marriage legalization. In 2017, Louisiana legislature amended their statutory code to remove all references that limited domestic violence statutes to parties “of the opposite sex”—those exclusionary terms were replaced with different iterations of “household member,” which is inclusionary of same-sex victims. H.B. 223, 2017 Leg., Reg. Sess. (La. 2017); *see also* LA. STAT. ANN. § 14:35.3 (2017) (outlining the changes made to the statute).

88. *See supra* notes 75–78 and accompanying text. Hereinafter, judicially-inclusive state refers to this specific phenomenon, where judicial opinions supersede statutory language and the statute has not yet been updated to comport with judicial opinion.

89. *See supra* notes 75–78 and accompanying text.

90. *See A Timeline of Same-Sex Marriage in the U.S.*, GEO. L. LIBR., <http://guides.ll.georgetown.edu/c.php?g=592919&p=4182201> (last updated Jan. 24, 2019, 9:50 AM).

when marriage equality became a hot-button issue.<sup>91</sup> Relatedly, even after marriage equality, several states continue to define marriage as “between one (1) man and one (1) woman.”<sup>92</sup> Three years have now passed since marriage equality, yet a plethora of states have neglected to remove unconstitutional statutory language from their marriage laws<sup>93</sup>—which makes one wonder whether the last two states with exclusionary language (North Carolina and South Carolina) might *ever* succeed in passing a law that removes “opposite sex” phrasing from their books.<sup>94</sup>

The primary issue with states that have not updated their laws occurs when trying to apply a state’s domestic violence statute to unmarried and sometimes non-cohabiting same-sex couples.<sup>95</sup> While nearly all states apply their domestic violence laws and protections to non-married couples, the statutory gap between what is normal protocol and what is legally required creates a wide net that traps most same-sex victims in a legal grey zone, which further complicates their already difficult situation.<sup>96</sup>

South Carolina is the only state that still falls within the judicially-inclusive zone.<sup>97</sup> South Carolina limits its protections for criminal domestic violence to “household member[s].”<sup>98</sup>

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91. See, e.g., *Doe v. State*, 421 S.C. 490, 499–501 (2017) (noting South Carolina’s statutory change to narrow the definition of “household member” and modify the domestic violence statute in order to exclude same-sex couples).

92. KY. REV. STAT. ANN. § 402.005 (1998); see, e.g., MICH. COMP. LAWS § 551.1 (1996) (“Marriage is inherently a unique relationship between a man and a woman . . . . A marriage contracted between individuals of the same-sex is invalid in this state.”); 23 PA. CONS. STAT. § 1102 (1996) (stating that marriage is “[a] civil contract by which one man and one woman take each other for husband and wife”); MO. REV. STAT. § 451.022 (2018) (“Any purported marriage not between a man and a woman is invalid.”).

93. See MICH. COMP. LAWS § 551.1; see also 23 PA. CONS. STAT. § 1102.

94. S.C. CODE ANN. § 16-25-10(3)(d) (2015); N.C. GEN. STAT. § 50B-1(b) (2015).

95. See *infra* Part II.

96. See, e.g., Kathleen Finley Duthu, *Perspective: Why Doesn’t Anyone Talk About Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23, 24 (1996) (“Although it is generally accepted that domestic violence occurs in at least the same proportion in homosexual relationships, the crimes appear to be even more underreported than in heterosexual relationships and much less research and fewer resources have been dedicated in the area.”); Niji Jain, Comment, *Engendering Fairness in Domestic Violence Arrests: Improving Police Accountability Through the Equal Protection Clause*, 60 EMORY L.J. 1011, 1047–48 (2011).

97. Compare *supra* Section I.D.1, with *infra* Section I.D.3.

98. S.C. CODE ANN. § 16-25-10(3).

Household members include: “(a) a spouse; (b) a former spouse; (c) persons who have a child in common; or (d) *a male and female* who are cohabiting or formerly have cohabited.”<sup>99</sup> The original acts, titled the Criminal Domestic Violence Act<sup>100</sup> and the Protection from Domestic Abuse Act,<sup>101</sup> do not use consistent definitions for “household members,” but neither definition employs sexual orientation specific language.<sup>102</sup>

A decade later, however, the South Carolina legislature amended its original bill.<sup>103</sup> This new bill modified the definition of household member, removing the “and persons cohabiting or formerly cohabiting” clause from the statute,<sup>104</sup> and replacing it with “and a male and female who are cohabiting or formerly have cohabited.”<sup>105</sup> This language survived four amendments, remaining in the statute to this day.<sup>106</sup> Until *Doe v. State*—an equal protection case that finally remedied South Carolina’s disparate treatment of unmarried, childfree same-sex couples<sup>107</sup>—this language was enforced, making South Carolina an exclusionary state like its northern neighbor.

Finally, the Supreme Court of South Carolina was asked to determine the constitutionality of South Carolina’s domestic violence laws, and took that chance in *Doe* to rectify the exclusionary language with the Due Process and Equal Protection Clauses of the Fourteenth Amendment.<sup>108</sup> The *Doe* court ultimately issued two opinions: on its first try, the court held the provision unconstitutional and severed the entire clause from the statute.<sup>109</sup> Severing it from the statute led, however, to a horrific, unexpected result—the newly chopped

99. *Id.* at § 16-25-10(3)(a)–(d) (emphasis added).

100. S.C. CODE ANN. § 16-25-10.

101. S.C. CODE ANN. § 20-4-10. Both acts were codified through one bill. 1984 S.C. Acts 2029; 1984 S.C. Acts 2031.

102. *See supra* note 98 and accompanying text.

103. 1994 S.C. Acts 5929.

104. 1984 S.C. Acts 2030.

105. 1994 S.C. Acts 5929.

106. *See* S.C. CODE ANN. § 16-25-10(3)(d).

107. 808 S.E.2d 807, 809 (S.C. 2017).

108. *Id.* at 809–10.

109. *Doe v. State*, No. 27728, 2017 S.C. Lexis 113, at \*18–21 (S.C. July 26, 2017).

up domestic violence provision no longer covered unmarried, childless domestic violence victims of any orientation.<sup>110</sup> Realizing that the state legislature was six months away from reconvening, the court issued a substituted opinion, fixing its error by holding that the provision was unconstitutional as applied, and henceforth must be applied equally to same-sex and opposite-sex couples.<sup>111</sup> Finally, unmarried, childless same-sex parties were protected under the same domestic violence laws that just two decades earlier impliedly included them.<sup>112</sup> South Carolina recently introduced legislation which attempts to rectify the unconstitutional provision by substituting “a male and female” for the gender-neutral “persons,” but despite the judicial decree in *Doe*, the bill failed.<sup>113</sup>

### 3. Exclusionary state: the sad, unfair statutory situation in North Carolina

Currently, two states explicitly exclude unmarried same-sex couples from their domestic violence statutes via gender-specific language.<sup>114</sup> As previously discussed, South Carolina’s judiciary has rectified the unequal application of the state’s domestic violence laws.<sup>115</sup> North Carolina, however, has no promising amendments in the pipeline—although its judiciary will soon consider whether the state’s domestic violence statute is constitutional.<sup>116</sup> Unlike its southern neighbor state, however,

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110. See Chastain, *supra* note 30.

111. *Doe*, 808 S.E.2d at 816–17.

112. See 1984 S.C. Acts 2029.

113. See S.B. 778 (2017), 122b Gen. Assemb., 2d Reg. Sess. (SC. 2017).

114. See N.C. GEN. STAT. § 50B-1 (2015); S.C. CODE ANN. § 16-25-10(3)(d) (2015); see also Lisa Needham, *North Carolina Domestic Violence Laws Don’t Protect People in Same-Sex Relationships*, REWIRE.NEWS (Jan. 18, 2019, 12:12 PM), <https://rewire.news/article/2019/01/18/north-carolina-domestic-violence-laws-dont-protect-people-in-same-sex-relationships/>.

115. See *supra* Section I.D.2.

116. The North Carolina Court of Appeals will, however, soon consider whether the language of North Carolina’s domestic violence statute is unconstitutional. In January of 2019, while this Note was being edited for publication, the ACLU of North Carolina signed onto *M.E. v. T.J.*, another case where a same-sex partner has been denied access to a restraining order after surviving a domestic violence situation. See *Domestic Violence Protections for LGBTQ People*, ACLU N.C., <https://www.acluofnorthcarolina.org/en/cases/domestic-violence-protections-lgb>

North Carolina's statutory language might be safe from judicial interference for the time being because "household members" is an undefined statutory term.<sup>117</sup> "Household members" would necessarily include same-sex partners, but only so long as they are living together. The language of the statute reads:

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

...

(2) Are persons of opposite sex who live together or have lived together;

...

(5) Are current or former household members; [or]

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.<sup>118</sup>

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tq-people (last visited Mar. 14, 2019). As the ACLU fights to bring North Carolina into the future by erasing the discrimination described in this note, it is important to remember that *access* to the legal system is only the first of many steps needed to provide equality and safety to SSDV survivors.

117. While the state's bar association argues that homosexual partners are included under this catch-all term, its reliance on *General Synod of the United Church of Christ v. Resinger*, 12 F. Supp. 3d 709 (W.D.N.C. 2014), is unfounded. Like South Carolina, North Carolina will not know whether this law passes equal protection muster until the judiciary weighs in on the statute itself. North Carolina Bar Association Foundation Continuing Legal Education, *Chapter I: Defending Domestic Violence Offenses*, in NORTH CAROLINA GENERAL PRACTITIONER'S GUIDE TO CRIMINAL LAW (2016). Even if same-sex parties can (and likely do) utilize the law under the "household" catch-all, that is not equal protection, and it denies SSDV victims access to the legal and public safeguards that they deserve.

118. N.C. GEN. STAT. § 50B-1.

Even after the legalization of same-sex marriage, North Carolina legislators have chosen to maintain the exclusionary “opposite-sex” language preventing same-sex couples from accessing domestic violence resources, predicated on the fact that North Carolina includes SSDV victims through the “household member” clause.<sup>119</sup> While North Carolina’s domestic violence statute is inclusionary with regard to unmarried OSDV victims, unmarried SSDV victims are left in the cold, without access to the same life-saving domestic violence protections that their opposite-sex counterparts may call upon when necessary.<sup>120</sup>

## II. UNMARRIED, NON-COHABITING SAME-SEX PARTNERS FALL OUTSIDE OF NORTH CAROLINA’S STATUTORY PROTECTION

At least one-fourth to one-third of LGBT people in relationships state that they have been or are currently the victim of domestic violence—“the same [percentage] as women in heterosexual relationships.”<sup>121</sup> A 2010 Centers for Disease Control and Prevention (CDC) study on domestic/intimate partner violence found higher rates of violence against lesbian, gay, and bisexual people than in the heterosexual population.<sup>122</sup> When faced with a domestic violence crisis, same-sex victims often face insurmountable issues in attempting to access victim support resources.<sup>123</sup> Before the 2013 reauthorization of VAWA, a survey by the National Coalition of Anti-Violence Programs found that 45% of LGBT persons seeking assistance were

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119. Christina Meneses, Network for Pub. Health Law, *Injury Prevention: Domestic Violence and Same Sex Relationships Fact Sheet, North Carolina*, [https://www.networkforphl.org/\\_asset/9088w5/NC-DV-Fact-Sheet-Final.pdf](https://www.networkforphl.org/_asset/9088w5/NC-DV-Fact-Sheet-Final.pdf) (last visited Apr. 2, 2019) [hereinafter North Carolina 50B].

120. See *infra* Part II.

121. See AM. BAR ASS’N, WHAT RIGHTS DO I HAVE AS AN LGBT VICTIM OF DOMESTIC VIOLENCE? 2 (2011), [https://www.americanbar.org/content/dam/aba/administrative/domestic\\_violence1/publications/ABA\\_LGBT-rights\\_Final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/publications/ABA_LGBT-rights_Final.authcheckdam.pdf).

122. See MIKEL L. WALTERS ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, NAT’L INTIMATE PARTNER & SEXUAL VIOLENCE SURVEY (NISVS): 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION 12–13 (Jan. 2013), [https://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_SOfindings.pdf](https://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOfindings.pdf) [hereinafter NISVS Survey].

123. See Rosenthal, *supra* note 55.

denied all services, and “nearly 55% were denied protection orders.”<sup>124</sup>

Even when SSDV victims have accessible resources, the CDC has noted that those resources are prevailingly oriented toward heterosexual women victims of domestic violence.<sup>125</sup> The CDC has further stated that current research “underscore[s] the broad range of violence experienced by LGB individuals in the United States and reiterate[s] the important need for immediate, but thoughtful, actions” to respond to the unique issues faced by same-sex victims of domestic violence.<sup>126</sup> With all of the issues that same-sex parties face in accessing domestic violence resources, North Carolina’s limitation on even considering some acts as domestic violence is particularly egregious. North Carolina and other states must update their statutes in order to ensure that same-sex couples have equal access to all legal domestic violence resources. Further, all states—but particularly judicially-inclusive and exclusionary states—must do more to ensure that all domestic violence victims are treated equally throughout the reporting process, including having thorough protocols for police. This Part will argue that North Carolina must update its statutes and apply its domestic violence protections equally and will further advocate for legislative action in order to render North Carolina comparable to affirmative and judicially-inclusive states.

*A. North Carolina’s Exclusionary Legislation Disenfranchises a Significant Portion of Its Citizens*

All states must take a hard look at their domestic violence resources, but North Carolina is most urged to modify its domestic violence laws, given the potentially significant number of citizens who are being disenfranchised due to the statute’s exclusionary language. At least 3.5% of the U.S.

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124. *Id.*

125. NISVS Survey, *supra* note 122, at 38.

126. *Id.*

population is estimated to be LGBTQIA,<sup>127</sup> though more recent research points to that number being at least 10%.<sup>128</sup> America's population rests around 330 million.<sup>129</sup> By even the most conservative estimate then, America's population includes over ten million LGBTQIA-identifying people.<sup>130</sup>

Using the more liberal—and likely more accurate—approximation of 9% of LGBTQIA-identifying people in America, the total number of LGBTQIA-inclined people in the United States increases to nearly 30 million people who might identify as LGBTQIA throughout their lifetime.<sup>131</sup> Assuming that one-third of this population is, will be, or has been the victim of a domestic violence situation<sup>132</sup> (which is also an underreported statistic due to the social stigma and shame associated with coming out as a victim of domestic violence), it would be safe to say that incidents of SSDV constitute a crisis, since that would mean that more than ten million same-sex citizens were or are currently victims of domestic violence. Numbers this large

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127. GARY J. GATES, UCLA WILLIAMS INST., HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, & TRANSGENDER? 6 (2011), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

128. Mac D. Hunter, *Homosexuals as a New Class of Domestic Violence Subjects Under the New Jersey Prevention of Domestic Violence Act of 1991*, 31 U. LOUISVILLE J. FAM. L. 557, 563 (1992–93); see Rose Eveleth, *What Percent of the Population Is Gay? More Than You Think*, SMITHSONIAN (Oct. 24, 2013), <https://www.smithsonianmag.com/smart-news/what-percent-of-the-population-is-gay-more-than-you-think-5012467/> (hypothesizing that up to 20% of the population is attracted to their own gender).

129. See *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> (last visited Apr. 14, 2019).

130. Three-hundred thirty million people in the general population times 3.4% representing the LGBT population equals 11,220,000 LGBT people in the American population pool. Even if we assume that only one partner in a relationship is abusive, and that each relationship would remain static, that still leaves 5,610,000 *possible relationships* that could include an SSDV victim. But if we apply the conservative estimate of one in four LGBT people admitting to being a victim of domestic violence, that means that there are currently 2,805,000 LGBT people living in America that have been or *are currently* victims of domestic violence.

131. See *supra* note 130 and accompanying text. The issue with identifying how many LGBT people currently live in the United States is that it is impossible to pinpoint exactly how many individuals currently live in the closet, or who are happy in a heterosexual relationship and would therefore not consider themselves bisexual, despite their true internal feelings. See generally Dashiell Bennett, *Do Gay People Really Make Up 3.5% of the Population?*, ATLANTIC (Feb. 18, 2013), <https://www.theatlantic.com/national/archive/2013/02/do-gay-people-really-make-35-population/318249/> (noting the difficulties with attempting to estimate the rates of homosexuality via survey methods and estimating 10% of the country identifies as LGBT).

132. See AM. BAR ASS'N, *supra* note 121, at 2.



make the current state of same-sex domestic violence a crisis—one that North Carolina is ignoring, merely because LGBTQIA individuals might choose not to get married or have children to conform to the heteronormative ideals of the state's legislature.<sup>133</sup>

*B. The Failure of North Carolina's Domestic Violence Laws Is a Public Health and Safety Issue*

You've now seen some of the stories and read some of the numbers, but the public health and safety crisis does not end there.<sup>134</sup> Domestic violence has been classified as a major public health issue for years.<sup>135</sup> "Victims of [intimate partner violence] may be at greater risk of experiencing chronic diseases . . . in addition to loss of productivity at work or school."<sup>136</sup> Massachusetts Representative Kate Hogan, chair of the Joint Committee on Public Health, has stated that "[d]omestic violence is a public health issue because it doesn't only cause an individual immediate debilitating harm, but also gives rise to chronic illness, mental health issues, homelessness, and a diminished capacity to be an active member of family and community life."<sup>137</sup>

Domestic violence is, and has always been, a major public health issue,<sup>138</sup> which makes the lack of legal resources and access faced by SSDV victims an even greater crisis.<sup>139</sup> Domestic

133. See generally *U.S. World and Population Clock*, *supra* note 129 (tracking the estimated population of the United States and the world second by second).

134. See Duthu, *supra* note 96, at 24 ("Even the 1995 National Crime Prevention Council report addressing violence against women acknowledged that researchers, service providers, and law enforcement officers have paid far less attention to the issue of domestic violence in gay and lesbian relationships.").

135. Hussein Manji, *Domestic Violence: A Human Health Crisis*, JOHNSON & JOHNSON (June 5, 2015), <https://www.jnj.com/2015/06/domestic-violence-a-human-health-crisis/>.

136. *Id.*

137. Renée Graham, *Domestic Violence Is a Growing Public Health Problem*, BOS. GLOBE (Nov. 3, 2017), <https://www.bostonglobe.com/opinion/2017/11/03/domestic-violence-growing-public-health-problem/GX3Vxjia32hVAhJyXzmiQL/story.html>.

138. See *id.*

139. See Radha Iyengar & Lindsay Sabik, *The Dangerous Shortage of Domestic Violence Services*, 28 HEALTH AFF. w1052, w1052-53 (2009) (discussing lack of resources and access for heterosexual victims).

violence “destroys families, endangers children, and upends communities every day,” according to Trinity White, a speaker at the Massachusetts Caucus of Women Legislators.<sup>140</sup> Framing domestic violence as a danger to families and children, however, is exactly what has gotten us into this mess in the first place—same-sex couples (as well as increasing amounts of opposite-sex couples) may or may not choose to conform to traditional heterosexual ideals of family and lifestyle. By looking at the issue of domestic violence strictly through the lens of family and children, legislators feel empowered to craft laws that prohibit same-sex populations from accessing domestic violence services.<sup>141</sup> North Carolina’s (and all other states’) legislators must consider newer, less traditional lifestyle arrangements of same-sex citizens when drafting domestic violence statutes. Public health crises require swift and thorough government intervention, and North Carolina must consider all of its citizens when drafting new, inclusive laws.

*C. Same-Sex Domestic Violence Victims Are Limited in Specific Resource Access*

The public health and legal resources provided to victims of domestic violence are vital to helping domestic violence victims get back on their feet.<sup>142</sup> Among the most important legal resources are: (1) police intervention that helps put an immediate end to abusive behavior; (2) access to immediate temporary restraining orders and other restrictive contact measures; (3) removal of deadly weapons, particularly guns, from the household; (4) granting of temporary custody over children placed in the middle of a domestic violence crisis; (5) payment of temporary child support or spousal support; (6) power to exclusively possess the shared residence; (7) access to federal domestic violence resources created by VAWA; (8) required domestic violence classes for abusers; and (9) coun-

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140. Graham, *supra* note 137.

141. See Duthu, *supra* note 96, at 31–36.

142. See Iyengar & Sabik, *supra* note 139, at w1052–54.

seling for victims.<sup>143</sup> These resources are at the heart of any equal protection claim raised against North Carolina, as well as the reason why North Carolina's legislators should have a change of heart and alter the state's domestic violence statutes to apply equally to all victims of domestic violence. The most salient of these resources—and the impact faced by same-sex couples who may not be able to utilize the resources—are discussed individually below.

### 1. *Immediate end to abusive behavior*

One of the greatest resources given to domestic violence victims who seek police intervention is immediate extraction from the domestic violence situation, thereby ending the abusive behavior, moving the victim to safety, and connecting the victim with resources like food, amenities, and housing, among others.<sup>144</sup> In North Carolina, certain crimes perpetrated during a domestic violence situation empower police officers to hold a possible abuser for up to forty-eight hours, over which time the judge may impose additional limitations or holding periods against the abuser.<sup>145</sup> Unmarried SSDV victims, however, are not entitled to this benefit, since the statute states that it only applies to crimes perpetrated against “a spouse or former spouse, a person whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in [clause 6, the heteronormative clause].”<sup>146</sup> Lack of equal access to these immediate intervention measures places same-sex victims at a significant risk in comparison to opposite-sex victims, since

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143. See Meneses, *supra* note 50 (naming some of these resources/actions as vital protections offered to domestic violence victims while compiling which states offered access to those resources in 2012); see also Domestic Violence CPOs, *supra* note 64.

144. See North Carolina 50B, *supra* note 119.

145. See N.C. GEN. STAT. § 15A-534.1 (2017).

146. *Id.* § 15A-534.1(a); see also N.C. GEN. STAT. § 50B-1(b)(6).

unmarried same-sex victims are at the mercy of the magistrate's decision whether to invoke the protection.<sup>147</sup>

## 2. *Restricted contact*

Typically called a "Temporary Protective Order" (TPO), restrictions on contact allow for victims of domestic abuse to gain immediate access to the clogged court system, where they can get a de facto restraining order placed against their abuser while the police and courts settle some legal issues relating to the domestic abuse event.<sup>148</sup> LaTasha, a domestic abuse survivor, shared her story of how being in close proximity to her partner led to her relationship becoming a continuous cycle of abuse.<sup>149</sup> "It was a pattern. We would break up for one week, get back together another. We must have broken up about [twenty] times" before the final break-up occurred, when LaTasha's girlfriend, Monique, punched her several times during a public event at an LGBTQIA community center, and LaTasha finally gathered the strength and resources to leave for good.<sup>150</sup>

LaTasha's story is incredibly prevalent in domestic abuse situations. In the same profile of same-sex abuse victims, Sam shared his story of being unable to leave his abusive partner, David.<sup>151</sup> "[I]t was too late to just up and go," Sam recounts, reflecting on their shared apartment lease and commingled lives and finances.<sup>152</sup> Without the ability to remove David from the premises and keep him removed, Sam was living a nightmare that many domestic abuse victims face: he couldn't let David go until David was ready to go on his own terms.<sup>153</sup>

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147. See Chris Brook, *In North Carolina, Domestic Violence Laws Still Discriminate Against LGBTQ People*, ACLU N.C. (Jan. 10, 2019, 2:00 PM), <https://www.acluofnorthcarolina.org/en/news/north-carolina-domestic-violence-laws-still-discriminate-against-lgbtq-people>.

148. *Domestic Violence: Orders of Protection and Restraining Orders*, FINDLAW, <https://family.findlaw.com/domestic-violence/domestic-violence-orders-of-protection-and-restraining-order.s.html> (last visited Apr. 14, 2019).

149. Shwayder, *supra* note 1.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

In situations like these, unmarried same-sex partners are at a tremendous danger and disadvantage because they do not have the same ability to restrict contact with abusive partners.<sup>154</sup> While married SSDV victims *may* apply for emergency relief via a TPO,<sup>155</sup> if unmarried same-sex victims were able to use the legal system to immediately end the abusive behavior,<sup>156</sup> they would already have their cases introduced to the judicial system and have compiled a factual record while it may still be days before an SSDV victim can even get in front of a judge.<sup>157</sup>

Unmarried opposite-sex partners, tethered together by living situation, marriage, child, or merely orientation, will have access to TPOs which allow them to begin disentangling their lives while they have a respite away from the mental and physical torment their partners put them through on a daily basis.<sup>158</sup> But the only way for unmarried, childless same-sex couples to reap this same benefit would be to go through a lengthy and expensive general restraining order process,<sup>159</sup> or (paradoxically) to get married and further tether themselves to their abusers.<sup>160</sup> This reflects back on the public health crisis related to domestic abuse, where poorly written, exclusionary laws are leading to further entanglement of domestic abuse perpetrators and their victims before access to safety is offered.

154. See, e.g., Joshua D. Talicska, *Out of One Closet and into Another: Why Abused Homosexual Males Refrain from Reporting Their Abuse and What to Do About It*, 8 MOD. AM. 21, 25 (2012).

155. See N.C. GEN. STAT. §§ 50B-1(b), 50B-2(b) (2017) (extending temporary restraining orders only to couples as defined by the statute).

156. See *supra* Section II.C.1.

157. N.C. GEN. STAT. § 50B-2(b) (requiring five days' notice before holding a hearing for emergency relief). Opposite-sex victims could be granted a five-day pseudo-TPO from a judge after an incident involving the police, while unmarried SSDV victims will face a much higher burden attempting to jump through all of these hoops. See *generally supra* Section II.C (noting some of the burdens SSDV victims face as opposed to their opposite-sex counterparts).

158. See N.C. GEN. STAT. § 15A-534.1(a)(2) (establishing what kind of protections a recipient may receive in the form of conditions to a defendant's bail); see also *id.* § 50B-2(c).

159. See N.C. GEN. STAT. §§ 15A-534.1(a)(2), 50B-2(c).

160. See, e.g., Needham, *supra* note 114 (noting South Carolina as an example of this paradox because "unmarried people who are dating or living together must be of the opposite sex in order for one party to get an order for protection, while married people in both opposite- and same-sex marriages can obtain those orders"). Spouses, regardless of orientation, are entitled to temporary protection orders following a domestic violence crisis in North Carolina. N.C. GEN. STAT. § 50B-1.

### 3. Removal of deadly weapons and firearms

The most pivotal protection available for most domestic abuse victims is a prohibition on deadly weapons and firearms,<sup>161</sup> along with the removal of the weapons from the abusive domicile.<sup>162</sup> Reflecting back on the rates of handgun and firearm abuse that domestic abuse victims admit to,<sup>163</sup> it has become pivotal in many states that the domestic abuser's weapons are removed from the property so as to protect the victim from a violent death at the hands of his or her abuser.<sup>164</sup> While not all states share this restriction on domestic abusers,<sup>165</sup> all states should alter their laws to allow the removal of any firearms while in the midst of a domestic abuse situation.<sup>166</sup>

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161. See Linda E. Saltzman et al., *Weapon Involvement and Injury Outcomes in Family and Intimate Assaults*, 267 J. AM. MED. ASS'N 3043–47 (1992).

162. SHANNON FRATTAROLI, CTR. FOR GUN POLICY & RESEARCH, JOHNS HOPKINS SCH. OF PUB. HEALTH, REMOVING GUNS FROM DOMESTIC VIOLENCE OFFENDERS: AN ANALYSIS OF STATE LEVEL POLICIES TO PREVENT FUTURE ABUSE 11–18 (2009), <https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/RemovingGunsfromIPVOffenders7Oct09.pdf>.

163. See *Guns and Domestic Violence*, EVERYTOWN, <https://everytownresearch.org/guns-domestic-violence/> (last visited Apr. 14, 2019) (providing statistics on gun related domestic violence in the United States).

164. See FRATTAROLI, *supra* note 162, at 30; see also ALEXIA COOPER & ERICA L. SMITH, BUREAU OF JUSTICE STATISTICS, OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES, 1980-2008, at 20 (2011), <https://bjs.gov/content/pub/pdf/htus8008.pdf> (“In 2008, 53% of all female intimate homicide victims were killed with guns while 41% were killed with other weapons.”).

165. See Michael Luo, *In Some States, Gun Rights Trump Orders of Protection*, N.Y. TIMES (Mar. 17, 2013), [https://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html?pagewanted=all&\\_r=0](https://www.nytimes.com/2013/03/18/us/facing-protective-orders-and-allowed-to-keep-guns.html?pagewanted=all&_r=0) (elaborating on some states' varying legislation).

166. See, e.g., Elizabeth R. Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 337–38 (2006) (“Our results have several important policy implications. One is that laws restricting access to firearms by individuals subject to a restraining order are an effective way to reduce [intimate partner homicide] rates. Furthermore, policy makers need to consider that certain characteristics of the laws impact their effectiveness.”); April M. Zeoli & Daniel H. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large U.S. Cities*, 16 INJURY PREVENTION 90, 95 (2010) (“This study adds to a small, but growing, body of research that provides evidence that state laws restricting those under DVROs from accessing firearms and allowing the warrantless arrest of DVRO violators saves lives . . . .”); *Domestic Violence & Firearms*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/> (last visited Apr. 14, 2019).

Already constrained by the laws of the state that the abuse victim is in,<sup>167</sup> same-sex unmarried domestic abuse victims are placed in an incredibly dangerous situation when weapons cannot legally be removed from the premises because the abuse does not fall within the domestic violence framework.<sup>168</sup> North Carolina does not allow same-sex couples who are not “current or former household members” to access the state’s domestic violence framework; thus, absent another compelling legal reason, SSDV perpetrators’ access to firearm purchases will not be limited unless the abuser and victim live together.<sup>169</sup> No states allow for the removal of deadly weapons from the property of a simple assault or battery event, so reaping the benefit of the domestic abuse statute of the state is very often the only chance victims have to decrease the odds that their partners will kill them with a firearm in response to the victim calling the police.<sup>170</sup> Reclusive victims like Cleveland Guillot Junior might still be alive today if the police would have entered

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167. For example, New Jersey recently passed legislation stating that “[w]hen a defendant is found guilty of a crime or offense involving domestic violence, the court shall inform the defendant that the defendant is prohibited from *purchasing, owning, possessing, or controlling* a firearm . . . . The court shall order the defendant to arrange for the immediate surrender to a law enforcement officer of any firearm that *has not already been seized or surrendered.*” N.J. STAT. ANN. § 2C:25-27(c)(1) (2017) (emphasis added). Compare New Jersey’s strict seizure laws against Delaware (another affirmative state), which sets no requirements, but allows the court to order “the respondent to temporarily relinquish . . . firearms.” DEL. CODE ANN. tit. 10 § 1045 (2017). Finally, another affirmative state, Alabama, does not even explicitly authorize the removal of firearms when responding to a domestic violence incident. *Domestic Violence & Firearms in Alabama*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <http://lawcenter.giffords.org/domestic-violence-and-firearms-in-alabama/> (last updated Sept. 16, 2018).

168. See N.C. GEN. STAT. § 50B-1 (2017).

169. *Id.*; see also *id.* § 50B-3(a)(11) (granting the judge or magistrate the option to include a firearm purchase prohibition into a protective order). Non-cohabiting opposite-sex couples fall within the domestic violence framework under the “opposite-sex dating relationship” inclusion. Thus, same-sex non-cohabiting couples are unequally disenfranchised from abuser firearm purchase limitations. See Alexandra Villareal, *North Carolina: No Protections for Same-Sex Domestic Violence Victims*, *GUARDIAN* (Feb. 6, 2019), <https://www.theguardian.com/us-news/2019/feb/06/north-carolina-same-sex-domestic-violence-laws> (noting that T.J., the defendant at the center of the new North Carolina domestic violence challenge, both had access and used that access to firearms to continue to abuse her former partner).

170. See *Prohibited People: State by State*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/state-law/50-state-summaries/prohibited-people-state-by-state/> (last updated Sept. 16, 2018).

the premises and removed his partner's weapons before the deadly standoff occurred.<sup>171</sup>

Allowing domestic abuse perpetrators to retain access to deadly weapons simply because the victim they abuse is not of the opposite sex is a public health crisis.<sup>172</sup> The North Carolina state legislature is allowing dangerous, often mentally-unwell people to maintain their "rights" to weapons that could lead to things much worse than a private domestic abuse event.<sup>173</sup>

#### 4. *Temporary custody*

A grant of temporary custody is one of the few resources available to both unmarried same-sex domestic abuse victims and unmarried opposite-sex victims.<sup>174</sup> Nontraditional families, however, may have nontraditional family structures (or may not have completed a two-party adoption).<sup>175</sup> While children and animals are not the same, animals and pseudo-familial relationships are just one more way that abusers tend to retain control over their victims even after the victimized party seeks emergency intervention.<sup>176</sup> Because only flesh and blood legal

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171. See Toohey, *supra* note 16. Note that Guillot's death occurred while Louisiana's statutes categorized the state as an exclusive one.

172. See generally Sean Cahill, *4 Specific Prescriptions for Ending the Public Health Crisis Around Guns?*, WGBH NEWS (Feb. 28, 2018), <https://news.wgbh.org/2018/02/28/4-specific-prescriptions-ending-public-health-crisis-around-guns> (suggesting there is a public health crisis revolving around gun use in the United States, which could be cured, in part, by limiting gun access to domestic abusers, and that marginalized communities, like the LGBTQ community, are particularly at risk).

173. See N.C. GEN. STAT. §§ 50B-1, 50B-3(a)(11). This is reflected in the internationally embarrassing amount of public mass slaughters that occur in America every year. See Bonnie Berkowitz et al., *The Terrible Numbers That Grow with Each Mass Shooting*, WASH. POST, [https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/?utm\\_term=.462f0be5e5f8](https://www.washingtonpost.com/graphics/2018/national/mass-shootings-in-america/?utm_term=.462f0be5e5f8) (last updated Feb. 16, 2019).

174. See N.C. GEN. STAT. § 50B-1(b)(4) (defining a "personal relationship" which falls under the domestic violence statute as between partners who "have a child in common," regardless of cohabitation).

175. For a discussion on traditional and non-traditional family structures, see PEW RESEARCH CTR., *PARENTING IN AMERICA: OUTLOOK, WORRIES, ASPIRATIONS ARE STRONGLY LINKED TO FINANCIAL SITUATION* 15–16 (2015), [http://assets.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17\\_parenting-in-america\\_FINAL.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/3/2015/12/2015-12-17_parenting-in-america_FINAL.pdf).

176. See *Dynamics of Abuse*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/dynamics-of-abuse> (last visited Apr. 14, 2019).



children may trigger these sections of each state's domestic abuse statutes, unmarried, non-cohabiting, childless same-sex domestic abuse victims are not in a position to protect loved family members from their abusers in the same way as their opposite-sex counterparts, unless those family members are legal children.<sup>177</sup>

### 5. *Temporary child support*

Temporary child support, depending on the state, is one resource that could be equally accessible between same-sex and opposite-sex domestic violence victims.<sup>178</sup> Because all states are gender and sexual orientation neutral in regard to partners who legally share children (whether married or unmarried), temporary child support, where available, will be accessible to SSDV victims.<sup>179</sup> Although outside of the scope of this Note, an argument must be made that this resource should be accessible to every eligible party in every state.<sup>180</sup> Since domestic violence deeply relies on manipulation and control, every domestic violence victim should be able to gain temporary child support where required so that domestic violence victims can further free themselves from the grip of their abusers.<sup>181</sup>

### 6. *Temporary spousal support*

Another victory in the war on SSDV victim resource allocation is the granting of temporary spousal support. Since even the exclusionary state of North Carolina must allow same-sex

177. See N.C. GEN. STAT. §§ 50B-1, 50B-3(a)(8) (asserting, together, these statutory limitations create a presumption that same-sex partners who do not live together do not receive the protection warranted).

178. See, e.g., N.C. GEN. STAT. § 50B-1; S.C. CODE ANN. § 16-25-10(3) (2015).

179. See generally Domestic Violence CPOs, *supra* note 64 (defining domestic violence in all fifty states—notably, each state includes persons who share a child as covered under its state's domestic violence law).

180. See Meneses, *supra* note 50 (listing some states that, as of 2012, provided temporary child support for custodian parents after a domestic violence incident).

181. For a discussion of the frequency and severity of manipulation in domestic abuse relationships, see Orin Strauchler et al., *Humiliation, Manipulation, and Control: Evidence of Centrality in Domestic Violence Against an Adult Partner*, 19 J. FAM. VIOLENCE 339, 341–43 (2004).

spouses equal access to domestic violence resources by virtue of being married, same-sex spouses receive the same resources in this venue as their opposite-sex counterparts.<sup>182</sup> The issue here, as with the temporary child support resource,<sup>183</sup> is that both same-sex and opposite-sex domestic violence victims are not privy to this resource in every state.<sup>184</sup> Interestingly, North Carolina (despite its exclusionary, outdated domestic violence laws) empowers judges to include both spousal and child support in a temporary protective order, at the discretion of the judge.<sup>185</sup>

### 7. *Power to possess residence*

Unmarried SSDV victims have the same power to possess their residences as their opposite-sex counterparts in North Carolina.<sup>186</sup> While arguably not as pivotal as banning access to firearms, the power to possess the shared residence is a crucial resource necessary to domestic violence victims of any make-up.<sup>187</sup> Without the power to possess a residence, and especially in tandem with the lack of access to TPOs, an abuser may return to the shared domicile after being detained by the police without any legal limitation.<sup>188</sup> Thus, the abuser may return to manipulate or to further abuse the partner who sought emergency assistance—but this time, the abuser will be even angrier after having been arrested.<sup>189</sup> While this privilege is not accessible in all states,<sup>190</sup> it is a deeply necessary resource for all

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182. See N.C. GEN. STAT. § 50B-1(b)(1).

183. See *supra* Section II.C.5.

184. See Meneses, *supra* note 50 (finding that as of 2012, less states statutorily granted temporary spousal support for spousal victims of domestic violence than child support).

185. N.C. GEN. STAT. § 50B-3(a)(6), (7).

186. *Id.* § 50B-3(a)(2), (3).

187. Margaret E. Johnson, *A Home with Dignity: Domestic Violence and Property Rights*, 2014 BYU L. REV. 1, 16–17.

188. *Id.*

189. *Id.* at 17 (“[T]he goals of ending domestic violence, supporting each party’s dignity, and affirming the importance of home are critical for a legal system to properly address domestic violence when the parties live together.”).

190. See Meneses, *supra* note 50 (compiling state laws and finding that, in 2014, six states—Hawaii, Iowa, Maine, New York, Oklahoma, and Wyoming—did not have explicit provisions

domestic violence victims, and it is one that North Carolina same-sex victims may thankfully utilize if they were permitted to access the domestic violence laws.<sup>191</sup> Lack of power to exclude the abusive party from the domicile would directly lead to preventable murders occurring amongst both opposite- and same-sex partners, so it is a great success that all states provide this resource to victims either explicitly or implicitly.<sup>192</sup>

#### 8. *Power to possess personal property exclusively*

Depending on the laws of the state, the power to possess personal property exclusively can be very important for abused victims who are trying to put their lives back together.<sup>193</sup> North Carolina has statutorily authorized its court system to “[p]rovide for possession of personal property of the parties” in protective orders for domestic abuse victims when the judge believes it is prudent.<sup>194</sup> Like custody<sup>195</sup> and removal of firearms,<sup>196</sup> however, North Carolina’s exclusionary domestic violence definition limits same-sex victims from accessing judicial relief when the same-sex couple is not married or cohabiting.<sup>197</sup> Some less commonly considered personal pro-

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granting domestic abuse victims the power to possess the household exclusively); *see also* HAW. REV. STAT. ANN. § 586-5.5 (2017) (empowering the court to “provide further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse,” thus implicitly granting the privilege, subject to judicial discretion and case law); IOWA CODE § 236.4 (2017) (enacting similar provisions); ME. REV. STAT. ANN. tit 19a § 4007 (2017) (including this protection explicitly); N.Y. CRIM. PROC. § 530.12 (McKinney 2015); OKLA. STAT. ANN. tit. 22, § 60.3 (2017); WYO. STAT. ANN. § 35-21-105 (2018).

191. *See* N.C. GEN. STAT. § 50B-3(a)(6), (7) (allowing same-sex couples the power to possess residence).

192. *See supra* note 50 and accompanying text. North Carolina has recently enacted legislation that provides the abused party a right to exclude the abusive party from the residence at the court’s discretion, thereby providing an update to Meneses’ research. *See* N.C. GEN. STAT. § 50B-3(a)(2).

193. *See* Johnson, *supra* note 187, at 13–14 (arguing that property and dignity, especially for African American women, are inextricably intertwined with one another).

194. N.C. GEN. STAT. § 50B-3(a)(8).

195. *See supra* Section II.C.4.

196. *See supra* Section II.C.3.

197. *See generally supra* Section II.C (arguing that SSDV victims are not privy to equal protection under North Carolina’s laws because unmarried, childless, non-cohabiting opposite-sex couples receive benefits that are not conferred to same-sex couples).

party that must be shared or can be controlled by the abusive party includes: cell phones, pets,<sup>198</sup> vehicles, necessary household items, and more.<sup>199</sup> Removing an abuse victim's access to a cellular device can limit his or her ability to call for help.<sup>200</sup> Maintaining control over a shared pet could cause abuse victims to remain with their abusers for the safety and benefit of the pet.<sup>201</sup> Limiting or controlling access to privately held or shared vehicles might mean that abuse victims could lose their jobs due to lack of transportation.<sup>202</sup> All of these things will further allow domestic abusers to maintain control over their victims and manipulate them into staying or submitting to the abusive behavior. The power to possess personal property exclusively *must* be given to domestic abuse survivors of all genders and sexual orientations if the states wish to actually make a positive impact in reducing the amount of domestic violence injuries as well as the amount of domestic violence victims who remain stuck in abusive situations.<sup>203</sup>

Specifically, unmarried, non-cohabiting, childless SSDV victims in North Carolina are at a distinct disadvantage compared to their opposite-sex counterparts when it comes to personal property possession. Same-sex partners may share a

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198. Some states have included explicit provisions in their domestic violence statutes to include pets under the court's ambit of relief options when crafting a temporary restraining order for a domestic violence victim. *See, e.g.*, N.C. GEN. STAT. § 50B-3(a)(8) (specifically mentioning pets in this statute).

199. *See* Melissa Jeltsen, *The Insidious Form of Domestic Violence that No One Talks About*, HUFFINGTON POST (Oct. 21, 2014, 5:55 PM), [https://www.huffingtonpost.com/2014/10/21/domestic-violence\\_n\\_6022320.html](https://www.huffingtonpost.com/2014/10/21/domestic-violence_n_6022320.html); *see also* Lisa Weintraub Schifferle, *Technology Tips for Domestic Violence and Stalking Victims*, FTC (Feb. 5, 2015), <https://www.consumer.ftc.gov/blog/2015/02/technology-tips-domestic-violence-and-stalking-victims>.

200. *See generally* *Learn More: What Is Domestic Violence?*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/learn-more> (last visited Apr. 14, 2019) (noting that some signs of abusive behavior could be stalking or monitoring a victim through his or her phone and controlling who a victim is seeing or where a victim is going, among many other signs).

201. *See* Strauchler et al., *supra* note 181, at 350–51.

202. *See* Jeltsen, *supra* note 199.

203. California's guidance documents for victims of domestic abuse mention access, retrieval, and utilization of shared personal property, underscoring the importance of maintaining control over personal property for domestic violence abuse victims. *See Domestic Violence*, CAL. CTS., <http://www.courts.ca.gov/selfhelp-domesticviolence.htm> (last visited Apr. 14, 2019).

phone plan, a pet, or even a car between their separate or shared households, and these communal pieces of property may merely provide abusers further ammunition to manipulate and control their victims.<sup>204</sup>

*D. Police Need to Be Trained to Respond to Same-Sex Domestic Violence Calls, and This Starts at the Statutory Level*

Police are at an advantage in responding to domestic violence calls because an individual police officer typically works in just one district of one state, and therefore only needs to know the pivotal policies controlling the district that gives them a badge.<sup>205</sup> For OSDV victims, there is often a misconception that the abuse goes only in one direction—male abuser to female victim.<sup>206</sup> While this misconception is incredibly harmful to opposite-sex male victims of domestic abuse, it has even more deleterious effects during SSDV events.<sup>207</sup>

Typically (but not always), a peace officer responding to a domestic violence situation will infer that the abuser—regardless of who calls for emergency intervention—is the masculine party in an OSDV occurrence, and thus will seek to remove the masculine party from the shared domicile, even when he is the victim.<sup>208</sup>

204. See Strauchler et al., *supra* note 181, at 344–48.

205. See generally H. Troy Nicks, *Extended Jurisdiction of Law Enforcement Officers*, RADFORD U., <https://www.radford.edu/content/cj-bulletin/home/november-2016-vol-11-no-1/extended-jurisdiction-of-law-enforcement-officers.html> (last visited Apr. 14, 2019) (discussing a police officer's jurisdiction and the officer's responsibility within that jurisdiction).

206. See Ramsey, *supra* note 2, at 341–42 (presenting a comprehensive analysis of state and local batterer intervention programs “to show that, although these standards are starting to be more inclusive, they still tend to impose a ‘one-size-fits-all’ formula designed for heterosexual male offenders”).

207. *Id.* at 340–41, 405–06 (arguing that the stereotype of the heterosexual male abuser “impedes efforts to coordinate effective responses to intimate-partner abuse and entrenches gendered hierarchies,” as well as ignores the “differing facets of same-sex abuse” that make intervention programs for heterosexual male abusers “inadequate for gay and lesbian batterers”).

208. See Jain, *supra* note 96, at 1047–48 (“Empirically, police officers are highly unresponsive to male victims of intimate partner violence, whether they are in a heterosexual or same-sex relationship.”); Carla M. da Luz, *A Legal and Social Comparison of Heterosexual and Same-Sex Domestic Violence: Similar Inadequacies in Legal Recognition and Response*, 4 S. CAL. REV. L. & WOMEN'S STUD. 251, 270–71 (1994) (“Shelters and services were originally created specifically

Imagine an SSDV occurrence between two women. Imagine that you are the police officer who is called to respond to this event. You walk up to the premises with very little information on what is occurring or has occurred inside—you just have a name and an address and a number telling you what kind of police-classified event you will be breaking up. Your typical protocol is premised on extricating the masculine party from the situation and then independently questioning the feminine party on what happened and whether she needs emergency resources.<sup>209</sup> But when you enter and see two women, what would you do? Do you take them both into the station? Do you leave them alone? If you're in North Carolina, are you going to ask to see their shared child, rental agreement, or marriage license before you classify the situation as a domestic assault instead of a simple assault?<sup>210</sup>

To make matters even more difficult, reflect on what kind of domestic abuse you imagined. Was there a woman with a black and bruised eye and another woman with a violent disposition, or was it a much more likely situation where both women are clearly cut and scraped (because in reality, at least some percentage of domestic abuse situations will occur where the

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for heterosexual women abused by their heterosexual partners—men. Men as victims and women as abusive partners were not contemplated in developing these services and programs . . . . The problem is worse for men due to the lack of shelters for gay or heterosexual men.”); Coralie Wright, *The Absent Voice of Male Domestic Abuse Victims: The Marginalisation of Men in a System Originally Designed for Women*, 8 PLYMOUTH L. & CRIM. J. REV. 333, 337 (2016) (“[Heterosexual male domestic violence victim survey] participants expressed their discontent at the treatment they received from the police. For example, they were faced with suspicion from the police . . . and a quarter of male victims were even arrested themselves.” (emphasis added)).

209. See FLA. LAW ENF'T RESEARCH COAL., RESPONDING TO DOMESTIC VIOLENCE, MODEL POLICY NUMBER TWO FOR FLORIDA LAW ENFORCEMENT: NOVEMBER 1999, at 2–4 (1999) (creating guidelines for law enforcement response to domestic abuse situations). Notably, although the policy tends to remain gender neutral for the most part, the introduction section to the policy specifically states that the policy was funded in order to “develop[] and implement[] more effective law enforcement policies for preventing and responding to *domestic violence against women* in Florida.” *Id.* at 1 (emphasis added).

210. See N.C. GEN. STAT. § 50B-1(b)(6) (2015) (excluding non-cohabiting lesbian couples from the “dating relationship” definition of domestic violence).

victimized party fights backs, even if just to stun the abusive party long enough to call for emergency assistance)?<sup>211</sup>

Even where protocols exist, police officers might have a difficult time handling these situations. When the script that you follow is flipped, and when traditional protocol breaks down, same-sex domestic abuse victims are at the mercy of peace officers who might have never even spoken to an openly homosexual person when off the job, let alone responded to an SSDV situation.<sup>212</sup> Police officers need to be trained on a unified response system to domestic violence—one that is both sensitive and malleable, so that an officer can use their best judgment to determine what has occurred, who needs assistance, and what assistance should be immediately provided.

*E. A Final Call to Action: Fixing Homophobic Legislation and Shoring Up Safe Harbors for Male Domestic Violence Victims*

There are two salient changes that must occur to stymie the growing rates of SSDV, and both changes are in the hands of federal, state, and local legislatures to implement.

First, and most importantly, North Carolina's homophobic, exclusionary definition of "domestic violence" must be erased, and the legislature must update the state's domestic violence statute to cover *all* persons in a "dating relationship," without

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211. Gay and lesbian couples are more likely to fight back against their abuser. See Lee Vickers, *The Second Closet: Domestic Violence in Lesbian and Gay Relationships: A Western Australian Perspective*, 3 MURDOCH U. ELECTRONIC J.L. ¶¶ 10, 15–16 (1996), <http://classic.austlii.edu.au/au/journals/MurUEJL/1996/37.html> (finding that police officers tend to view SSDV calls as "mutual or consensual combat"). The issue is compounded when considering the myth that same-sex partner abuse constitutes a "fair fight" because of gender homogeneity. See da Luz, *supra* note 208, at 283 ("When police officers or judges look at two members of the same-sex, it may be difficult to identify a victim. They may consider an incident of partner abuse as an incident of fair and mutual combat. As a result, the police officer may not arrest one of the partners and the judge may not issue a protection order or may issue a mutual protection order.").

212. Recent research has found that 20% of the black population in America as well as 20% of Americans over sixty-five years old *do not even know someone who is gay or lesbian*. The statistics breaking down familiarity with a transgender person are even more abysmal. See PEW RESEARCH CTR., *WHERE THE PUBLIC STANDS ON RELIGIOUS LIBERTY VS. NONDISCRIMINATION* 29 (2016), <http://assets.pewresearch.org/wp-content/uploads/sites/11/2016/09/Religious-Liberty-full-for-web.pdf>.

any consideration of gender. Clarifying what legal resources same-sex couples can utilize will likely increase SSDV victims' use of them, as well as the ability of SSDV resource centers to recommend these resources. Remedying the homophobic and antiquated statutes will hopefully prompt legislators to take a vested interest in ensuring that their police officers are prepared to carry out the equalized domestic violence laws in an equal way. If North Carolina fails to change its statute by its own volition, then the judiciary is the optimal venue to enact change. Just like in South Carolina's case of *Doe v. State*,<sup>213</sup> North Carolina's statute is ripe to be challenged on constitutional grounds.<sup>214</sup>

Second, legislators across the entire country (but particularly in states like North and South Carolina) need to overhaul the non-legal resources for SSDV victims. It is important to note that not all SSDV victims are created equal in the eyes of domestic violence relief organizations.<sup>215</sup> While women and feminine-presenting people constitute the majority of those who seek access to domestic violence resources,<sup>216</sup> this has created a dearth of resources accessible to male and masculine-identifying individuals.<sup>217</sup> Same-sex victims of domestic abuse are at a disadvantage due to their lack of access to legal resources freely available to OSDV victims. This disparate impact further increases the harm that some same-sex victims will face not only because of their sexual orientation but also

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213. 808 S.E.2d 807, 809 (S.C. 2017).

214. As of January 2019, North Carolina appears to be going in the same direction as South Carolina. See *supra* note 117 and accompanying text (discussing current litigation over the constitutionality of North Carolina's domestic violence laws). However, even after judicial intervention, South Carolina has still failed to update its statutory language, which has become a confusing and frustrating situation. South Carolina's unwillingness to modify its statutory language, even after being held unconstitutional, is one example of why legislative intervention is much more preferable than judicial intervention here.

215. See *supra* Section I.D for a preliminary discussion of the difficulties men (both heterosexual and homosexual) face when trying to access domestic violence resources.

216. See *Male Victims of Abuse Face Stigmas: The So-Called "Stronger Sex" Reluctant to Speak Up When Battered*, DOMESTICSHELTERS.ORG (Jan. 12, 2015), <https://www.domesticshelters.org/articles/escaping-violence/male-victims-of-abuse-face-stigmas>.

217. See *id.*; see also Wright, *supra* note 208, at 336–40 (finding that same-sex domestic abuse receives significantly less attention and resources than that of opposite-sex domestic abuse).



because of their gender.<sup>218</sup> It is important to note that sex-based separation of abuse victims will not and cannot work the same way for both masculine and feminine same-sex couples.<sup>219</sup> While separating women who are in OSDV situations from men stands as a rehabilitative method, removing a woman in an SSDV situation and putting her among other women does not have the same rehabilitative purposes and may increase the woman's anxiety. This same issue would theoretically apply to homosexual male relationships. All of these reasons support the conclusion that legislators need to make a concerted effort toward creating unique resources for same-sex victims based on the unique needs of the population.

#### CONCLUSION

All domestic violence victims are in an unenviable and unfortunate position. SSDV victims face compounding factors greatly limiting their ability to escape from abusive situations and access life-changing resources.<sup>220</sup> A concerted effort must be made to further research on domestic violence across the spectrum, but particularly in regard to domestic violence occurring in same-sex relationships.

As a salient example of the ways domestic violence laws and resources have failed same-sex victims, North Carolina still maintains what are likely to be unconstitutional and discriminatory exceptions barring same-sex victims from accessing life-saving resources to escape a domestic violence situation.<sup>221</sup>

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218. Wright, *supra* note 208, at 339–40 (noting that resources for male victims of domestic violence are geographically sparse, and typically fail to provide unique support oriented toward the sexual and gender needs of the population—rather, they are re-skinned resources from the woman as domestic violence victim archetype).

219. ERIN C. MILLER ET AL., *THE LGBTQ DOMESTIC VIOLENCE PROJECT, TRAUMA-INFORMED APPROACHES FOR LGBTQ SURVIVORS OF INTIMATE PARTNER VIOLENCE: A REVIEW OF LITERATURE AND A SET OF PRACTICE OBSERVATIONS* 7–8 (2016), [http://www.glbtdvp.org/wp-content/uploads/2016/06/TIP-for-LGBTQ-Survivors\\_LitReview.pdf](http://www.glbtdvp.org/wp-content/uploads/2016/06/TIP-for-LGBTQ-Survivors_LitReview.pdf).

220. *Id.* at 7–11; DONOVAN ET AL., *supra* note 22, at 11–22.

221. *See generally* N.C. GEN. STAT. § 50B-1 (2015) (including loopholes in legislation barring same-sex couples from accessing resources and other services); *see also supra* Part II (discussing the many ways North Carolina laws fail to provide protection orders, housing, and other support for SSDV victims).

Many other states have been dragged from their homophobic pasts into the present by their legislatures and judiciaries, and future research must examine those states to truly understand how well they are allocating resources to these needy populations.

At the end of the day, what truly matters is the individual. North Carolina is a large state with a growing population. While North Carolina grows, the same-sex population within its borders grows too. These same-sex people are not a monolith: they are individuals, tax-paying citizens, equal to their heterosexual counterparts in every way. Or at least they should be. The harsh reality is that same-sex citizens, even after *Obergefell*, are not equal, not within society and especially not within the legal system. North Carolina has an imperative to move out of the past and join the rest of America by protecting its same-sex population when domestic violence occurs. Legislative domestic violence reform is one way for North Carolina to show, not just tell, that same-sex couples are welcome to the same protections that opposite-sex couples already enjoy.