

# Equal Before the Law: How Iowa Led Americans to Marriage Equality

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Perhaps the book's greatest contribution is its eloquent reminder that Indian people are still here, that despite all odds they were not all driven away by the seemingly unstoppable forces of colonization, western expansion, disease, and racism. The region's indigenous people have always been, and remain, important parts of the region's demographics, culture, and history. Their stories should be foundational to the human history of this place.

*Equal Before the Law: How Iowa Led Americans to Marriage Equality*, by Tom Witosky and Marc Hansen. Iowa and the Midwest Experience Series. Iowa City: University of Iowa Press, 2015. xiii, 236 pp. Illustrations, appendix, notes, index. \$19.95 paperback.

Reviewer John W. Johnson is professor of history at the University of Northern Iowa. His books include *Affirmative Action* (2009); *Griswold v. Connecticut: Birth Control and the Constitutional Right of Privacy* (2005); and *The Struggle for Student Rights: Tinker v. Des Moines and the 1960s* (1997).

*Equal Before the Law* was published in June 2015, within days of the U.S. Supreme Court's landmark same-sex marriage decision, *Obergefell v. Hodges*. The timing was fortuitous. *Varnum v. Brien*, the 2009 Iowa Supreme Court decision examined in *Equal Before the Law*, was an important link in the chain of state and federal legal precedents that led to the nationalization of same-sex marriage by the nation's highest court. The story of the road to same-sex marriage in Iowa needed to be told. It is a saga populated with intriguing personalities, complicated by rapidly changing legal issues, shot through with partisan politics, and contested as a high-profile skirmish in the culture wars.

Various individuals could conceivably have written a book on the *Varnum* case. An activist in the LGBT community, for example, could have prepared an impassioned apologia for same-sex marriage. Or a litigant or lawyer in the Iowa case could have crafted a riveting day-by-day account. Or a political scientist or constitutional historian might have produced a book replete with legal ruminations and lengthy footnotes. But none of these categories of writers were first off the line. Instead, *Equal Before the Law* is the work of two accomplished Iowa journalists.

Tom Witosky and Marc Hansen, both formerly of the *Des Moines Register*, begin their treatment of same-sex marriage in Iowa in the late 1990s. Iowa was then one of the vast majority of American states with statutory bans on same-sex marriage. In addition, the country was under the sway of the federal Defense of Marriage Act (DOMA), which forbade states from according full faith and credit to a same-sex mar-

riage granted in any other state. In the 1990s closeted gay Iowa lawmakers were so intimidated that they sided with conservative Republicans to defend “traditional marriage” whenever the matter came before the state legislature.

After a look backward at Iowa’s generally progressive history of protecting individual rights, the authors introduce readers to the six same-sex couples who were carefully selected by Lambda Legal, a gay rights litigation group, to be the plaintiffs in a challenge to the Iowa statute restricting marriage to people of opposite sexes. Each couple has a story of how Iowa’s traditional marriage law adversely affected them. For example, Jen and Dawn BarbouRoske of Iowa City struggled to explain to teachers and school administrators that their precocious daughter has two mothers. Larry Hoch and David Twombly, retired schoolteachers living in Des Moines, alerted the Iowa populace to the particular concerns of older gay men. The authors also profile the lawyers for the plaintiffs and the county officials defending Iowa’s traditional marriage statute.

Among the most interesting sections of *Equal Before the Law* are the portions of the book containing profiles of the judges and justices called upon to adjudicate *Varnum v. Brien*. In applying the sections of the U.S. Constitution and the Iowa Constitution mandating equality before the law, the courts ultimately found in favor of the same-sex litigants. And, perhaps remarkably, the final Iowa Supreme Court decision, written by Justice Mark Cady, was unanimous. Witosky and Hansen were permitted remarkable access to the Iowa jurists, eliciting from them revealing insights into their individual thoughts and court deliberations. The authors were also successful in convincing Iowa legislators to open up about their views on same-sex marriage in the legislative process. Informed Iowans, especially those who have lived in the state for two decades or more, will recognize—and may even be acquainted with—some of the key players in the drama.

As most Iowans recall, the final ruling in *Varnum v. Brien* was far from the last word on same-sex marriage in the state. Public opinion polls at the time of the 2009 decision revealed that Iowans’ attitudes toward same-sex marriage were sharply divided. Taking advantage of the mixed public sentiment, religious conservatives in the state, led by Bob Vander Plaats, president of a group called the The FAMiLY Leader, sought to unseat members of the Supreme Court majority in *Varnum* who were up for a retention vote by the electorate in 2010. The three targeted justices, having ethical concerns that possible campaign donors might later bring cases to the Iowa Supreme Court, refused to campaign or raise money to keep their jobs. As a result, all three failed

to receive enough votes for retention. Two years later, by contrast, another justice from the *Varnum* majority did conduct a campaign in his own behalf and did receive enough votes to stay on the court.

As a book intended for a wide readership, *Equal Before the Law* is understandably light on the parsing of legal doctrine. *Varnum v. Brien* is just one of a long string of privacy and equal protection precedents in the twentieth and early twenty-first centuries, culminating in the federal Supreme Court's 2015 *Obergefell* decision. Witosky and Hansen do not make any serious technical legal errors in their treatment of the case, but readers desiring more probing and detailed legal analyses will need to peruse law journals.

The authors of *Equal Before the Law* write in a simple, breezy style that moves the narrative along smartly. Occasionally, however, the prose is a little too precious. Take this sentence: "Much of the time, it [Iowa] is a purple-clad political cross-dresser."

On balance, Witosky and Hansen have fashioned a worthy contribution to the ever growing list of titles on major American court cases. Iowans who care about recent state history or the civil liberties of its people should definitely not miss *Equal Before the Law*.