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## Would a Constitutional Amendment Protect and Promote Marriage in North Carolina? An Analysis of Data from 2000 to 2009

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WOULD A CONSTITUTIONAL AMENDMENT  
PROTECT AND PROMOTE MARRIAGE IN NORTH CAROLINA?  
AN ANALYSIS OF DATA FROM 2000 TO 2009

HOLNING LAU\*

INTRODUCTION

The people of North Carolina will soon vote on a constitutional amendment that, if passed, would bar the government from legally recognizing same-sex marriages, civil unions, domestic partnerships, and any other couple relationships other than different-sex marriage.<sup>1</sup> State Representative Paul Stam, one of the amendment's chief architects, has argued that the amendment is necessary to protect marriage from "depreciation."<sup>2</sup> In this view, recognition of same-sex relationships devalues the institution of marriage and, as a result, heterosexuals become less interested in entering and staying in marriages.

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<sup>1</sup> North Carolinians will vote on the amendment during the primary election on May 8, 2012. See S.B. 514, 2011 Gen. Assemb., 2011-2012 Sess. (N.C. 2011). The proposed amendment states: "Marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this state. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts." *Id.* It is worth noting that, in addition to barring legal recognition of same-sex couples, the proposed amendment bars legal recognition of unmarried different-sex couples. This Article, however, focuses specifically on claims regarding the potential benefits of excluding same-sex couples from legal recognition.

<sup>2</sup> Representative Stam stated at a press conference that he is concerned about same-sex marriage "delegitimizing the institution of marriage as a whole." *Marriage Amendment Presser Video*, NEWS & RECORD (Aug. 30, 2011), <http://www.news-record.com/blog/53964/entry/126238>. He claimed that, when same-sex marriage is legitimized "marriage itself is depreciated." *Id.*

<sup>3</sup> See *id.* Specifically, Representative Stam stated that, when marriage is not limited to different-sex couples, "those who are considering whether to get married or not, and who don't have strong opinions one way or another, just don't . . ." *Id.*

Representative Stam is not alone in this belief. For example, Professor George Dent contended years ago that legally recognizing same-sex marriage would render different-sex marriage “less popular” by making it “less special.”<sup>4</sup> Dr. James Dobson, founder of the organization Focus on the Family, has asserted that legalizing same-sex marriage devalues marriage, therefore leading to decreased marriage rates.<sup>5</sup> Similarly, the North Carolina Values Coalition argues that legalizing same-sex marriage “will actually increase divorce.”<sup>6</sup>

Some commentators have gone a step further by suggesting that, when states enact marriage amendments,<sup>7</sup> the states do not only prevent marriage depreciation by foreclosing legal recognition of same-sex couples; the states also promote stable different-sex marriages by reminding people of traditional marriages’ importance.<sup>8</sup> For example, the Catholic Bishops of Minnesota recently argued that an amendment currently slated for a vote in Minnesota would not only “safeguard” marriage, but also “promote” and “enhance” marriage.<sup>9</sup> In a similar vein, State Senator Dan Soucek suggested that

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<sup>4</sup> George W. Dent, Jr., *Traditional Marriage: Still Worth Defending*, 18 *BYU J. PUB. L.* 419, 437 (2004).

<sup>5</sup> James Dobson made this assertion during an interview on CNN. *Larry King Live: Interview with Dr. James Dobson* (CNN television broadcast Nov. 22, 2006) (transcript), available at <http://transcripts.cnn.com/transcripts/0611/22/lk1.01.html>. Dr. Dobson alleged that the Netherlands’ experience with legalizing same-sex marriage supports his claim. See *id.* Data from the Netherlands, however, suggest otherwise. See M.V. LEE BADGETT, *WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME SEX MARRIAGE 69-70* (2009) (concluding, based on empirical evidence, that marriage rates in the Netherlands had been declining well before the introduction of same-sex marriage and that same-sex marriage did not exacerbate that decline).

<sup>6</sup> North Carolina Values Coalition, *Common Myths about the Marriage Amendment*, <http://ncvalues.org/marriage/common-myths-about-the-marriage-amendment> (last visited Mar. 12, 2012).

<sup>7</sup> For brevity, this paper uses the phrase “marriage amendments” as an umbrella term referring to constitutional amendments that exclude same-sex couples from legal recognition. Some of these amendments only bar same-sex couples from legal recognition in the form of marriage. Other amendments, including the one proposed for North Carolina, bar additional forms of legal recognition such as civil unions and domestic partnerships.

<sup>8</sup> See, e.g., Press Release, Catholic Conference of Kentucky, *Constitutional Amendment Promotes, Protects, and Preserves Marriage*, Aug. 24, 2004, available at [http://ccky.org/wp-content/uploads/2011/10/Marriage\\_Amendment\\_Endorsement.pdf](http://ccky.org/wp-content/uploads/2011/10/Marriage_Amendment_Endorsement.pdf) (arguing that a constitutional amendment in Kentucky would not only “protect” and “preserve” traditional marriage, but also “promote” it because an amendment would “define and support marriage as a unique, essential relationship and institution.”); see also *infra* notes 9-10 and accompanying text (discussing additional examples of marriage promotion claims).

<sup>9</sup> Minnesota Catholic Conference, *The Marriage Amendment*, <http://mncc.org/issues/marriage/catholic-bishops-of-minnesota-2> (last visited Mar. 12, 2012). Minnesota currently has a marriage amendment slated for the November election.

North Carolina's proposed amendment would ameliorate the state's existing problem with "broken families."<sup>10</sup>

As people debate the merits of constitutional amendments that bar legal recognition of same-sex couples, it is important to ground deliberation in facts rather than unsubstantiated theories. This Article fills a factual gap in the debate by using marriage and divorce data to evaluate the validity of claims about protecting marriage from depreciation and claims about marriage promotion.<sup>11</sup> This Article is based on a report that I originally prepared for members of the North Carolina General Assembly. As such, the Article pays particular attention to North Carolina's proposed amendment. Nonetheless, the Article's findings are also informative for the national debate on marriage amendments as a general matter.

The Article proceeds in four parts. Part I investigates whether marriage rates have changed over time in states that have either enacted marriage amendments or begun governmental recognition of same-sex couples. Part II examines whether divorce rates in these

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Unlike North Carolina's proposed amendment, Minnesota's proposed amendment only bars same-sex couples from legal marriage and does not address other forms of recognition such as civil unions and domestic partnerships. For background on Minnesota's proposed amendment, see Minnesota Legislative Reference Library, *Resources on Minnesota Issues: Same-sex Marriage in Minnesota*, July 2011, <http://www.leg.state.mn.us/lrl/issues/issues.aspx?issue=gay>.

<sup>10</sup> Senator Soucek made this assertion while debating the amendment on the Senate floor. After describing the fiscal costs associated with "broken families" living in North Carolina, he argued that the proposed marriage amendment would have a "possible effect on all areas of state government [that provide resources to broken families] in a very healthy way." See *Senate Debates Marriage Amendment* (Sept. 13, 2011), WRAL, <http://www.wral.com/news/state/nccapitol/video/10121957/#/vid10121957>.

<sup>11</sup> To date, there have been only a few publications of relevant empirical research. Some scholars have examined European data that undermine marriage depreciation claims. E.g., BADGETT, *supra* note 5, at 67-71; WILLIAM N. ESKRIDGE, JR. & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE?: WHAT WE'VE LEARNED FROM THE EVIDENCE 91-129 (2006). To my knowledge, only one study has used data from the United States. In Laura Langbein & Mark A. Yost, Jr., *Same-sex Marriage and Negative Externalities*, 90 SOC. SCI. Q. 292 (2009), the authors analyzed marriage and divorce data, among other data from the United States; they concluded that "[t]he argument that same-sex marriage poses a negative externality on society [such as increased divorce rates and decreased marriage rates] cannot be rationally held." See *id.* at 292. Their article's findings were limited, however, because the article focused on data from 2004 and earlier. See *id.* Insights from that data are limited because Massachusetts did not become the first state to legalize same-sex marriage, prompting many other states to pass marriage amendments, until 2004. For a timeline of legal developments concerning the recognition of same-sex relationships, see National Conference of State Legislatures, *TIMELINE – Same Sex Marriage*, <http://www.ncsl.org/Default.aspx?TabId=4243> (last visited Mar. 12, 2012). For a critique of the logical reasoning behind claims about marriage protection and marriage promotion, see generally Mark Strasser, *State Constitutional Amendments Defining Marriage: On Protections, Restrictions, and Credibility*, 7 FLA. COASTAL L. REV. 365 (2005).

states have changed over time. Part III explores whether states with marriage amendments have lower divorce rates than states without such amendments. Part IV concludes by explaining that this Article's analyses cast serious doubt on the claims that constitutional amendments protect and promote marriage.

### I. CHANGES IN MARRIAGE RATES OVER TIME

Studying changes in marriage rates over time allows us to evaluate the argument that a constitutional amendment would promote and protect marriage in North Carolina. The experiences of states that have already passed marriage amendments ("amendment states") shed light on these claims. I investigated the change in marriage rates in Georgia, South Carolina, and Virginia from 2000 to 2009, the time period for which there are annual marriage rates provided by the National Vital Statistics System.<sup>12</sup> I chose Georgia, South Carolina, and Virginia because they all passed marriage amendments between 2000 and 2009: Georgia passed its amendment in 2004,<sup>13</sup> and South Carolina<sup>14</sup> and Virginia<sup>15</sup> passed their amendments in 2006. I also chose these states because of their geographical and cultural similarity to North Carolina.

Figure 1 shows marriage rates<sup>16</sup> for the three amendment states. As the graph illustrates, marriage rates in Georgia increased from

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<sup>12</sup> See generally National Vital Statistics System, *Marriages and Divorces*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nchs/mardiv.htm> (last updated Mar. 7, 2011). The Centers for Disease Control and Prevention's National Center for Health Statistics (CDC/NCHS) administers the National Vital Statistics System. The National Vital Statistics on marriage and divorce rates, which I used in this report, are available at the CDC/NCHS's website. During the writing of this report, marriage and divorce rates by state were available for 1990, 1995, and 1999-2009. See National Vital Statistics System, *Divorce Rates by State: 1990, 1995, and 1999-2009*, CTRS. FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/nchs/data/nvss/divorce\\_rates\\_90\\_95\\_99-09.pdf](http://www.cdc.gov/nchs/data/nvss/divorce_rates_90_95_99-09.pdf) (last visited Oct. 7, 2011); National Vital Statistics System, *Marriage Rates by State: 1990, 1995, and 1999-2009*, CTRS. FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/nchs/data/nvss/marriage\\_rates\\_90\\_95\\_99-09.pdf](http://www.cdc.gov/nchs/data/nvss/marriage_rates_90_95_99-09.pdf) (last visited Oct. 7, 2011).

<sup>13</sup> GA. CONST. art. I, § 4, para. 1. See also National Conference of State Legislatures, *supra* note 11 (noting that Georgia passed its amendment in 2004).

<sup>14</sup> S.C. CONST. art. XVII, § 15.2. See also National Conference of State Legislatures, *supra* note 11 (noting that South Carolina passed its amendment in 2006).

<sup>15</sup> VA. CONST. art. I, § 15-A. See also National Conference of State Legislatures, *supra* note 11 (noting that Virginia passed its amendment in 2006).

<sup>16</sup> Marriage and divorce rates in this Article are per 1,000 total population. The National Vital Statistics System uses these definitions. See *Divorce Rates by State: 1990, 1995, and 1999-2009*, *supra* note 12; *Marriage Rates by State: 1990, 1995, and 1999-2009*, *supra* note 12.

2001 to 2004,<sup>17</sup> the year that its amendment passed. In 2004, Georgia's marriage rate began declining.<sup>18</sup> Although there was an uptick in the marriage rate between 2008 and 2009, the marriage rate in 2009 (6.5) was still below the marriage rate for the year that the amendment passed (7.8) and the year preceding the marriage amendment (6.9).<sup>19</sup> Similarly, Figure 1 shows that marriage rates in South Carolina and Virginia declined after those two states passed their marriage amendments in 2006.<sup>20</sup> Unlike marriage rates in Georgia, South Carolina's and Virginia's marriage rates had already been declining since 2000. The rate of decline remained relatively steady in South Carolina and Virginia, neither increasing nor decreasing after their marriage amendments were enacted.<sup>21</sup>

The experiences of Georgia, South Carolina, and Virginia cast substantial doubt on the ability of marriage amendments to promote marriage. Marriage rates from these three states do not show that marriage became more popular after these states passed their marriage amendments. In the case of South Carolina and Virginia, there is no evidence that their marriage amendments changed people's view of marriage enough to change preexisting trends of declining marriage rates.<sup>22</sup> Similarly, there is no evidence from Georgia that its amendment prevented marriage rates from falling.<sup>23</sup> To the contrary, Georgia's marriage rates started falling *after* the passage of its amendment.<sup>24</sup>

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<sup>17</sup> See *infra* Figure 1.

<sup>18</sup> See *infra* Figure 1.

<sup>19</sup> See *infra* Figure 1.

<sup>20</sup> See *infra* Figure 1.

<sup>21</sup> See *infra* Figure 1.

<sup>22</sup> See *infra* Figure 1.

<sup>23</sup> See *infra* Figure 1.

<sup>24</sup> See *infra* Figure 1. To be clear, I do not mean to suggest a causal relationship between the introduction of Georgia's marriage amendment and the decline of its marriage rate.

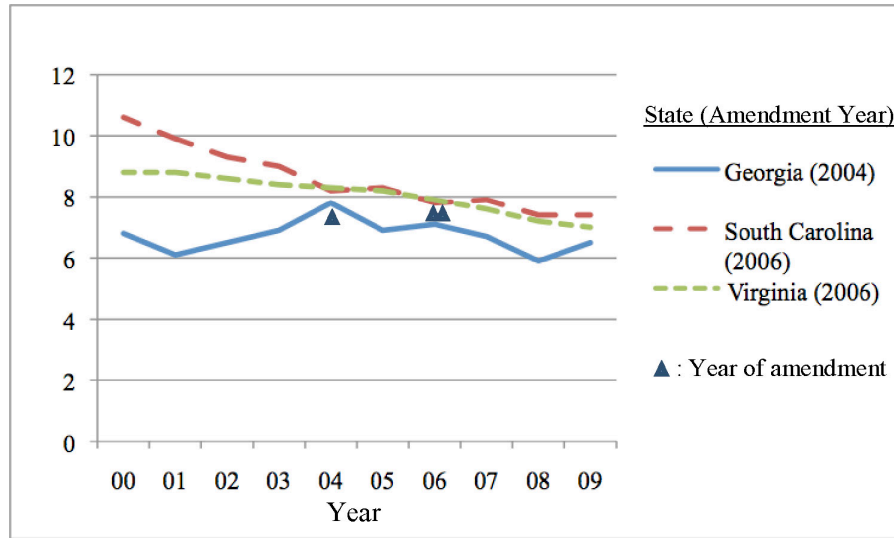


Figure 1. Marriage Rates in Amendment States (per 1,000 population)

Source: National Vital Statistics System, CDC/NCHS

One might query whether Georgia, South Carolina, and Virginia would have experienced even steeper declines in marriage rates had they not enacted their amendments and, instead, had granted legal recognition to same-sex couples. In other words, the question is whether these states' marriage amendments protect them against the threat of marriage depreciation posed by legal recognition of same-sex couples. To explore this possibility, I examined states that already legally recognize same-sex couples through marriages, civil unions, or domestic partnerships ("recognition states"). If legal recognition of same-sex relationships causes marriage depreciation, that depreciation should be detectable in the marriage rates of Connecticut,<sup>25</sup> Massachusetts,<sup>26</sup> and Washington State<sup>27</sup> after they

<sup>25</sup> Connecticut began recognizing same-sex civil unions in 2005. CONN. GEN. STAT. § 46b-38 (2005) (repealed 2010); see also William Yardley, *Day Arrives for Recognition of Gay Unions In Connecticut*, N.Y. TIMES, Oct. 1, 2005, at B1. In 2008, the Connecticut Supreme Court ordered the legalization of same-sex marriage. See *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407 (Conn. 2008). The state began issuing marriage licenses to same-sex couple that same year. See Daniela Altimari, *Same-sex Couples Can Obtain Marriage Licenses Today*, HARTFORD COURANT, Nov. 12, 2008, available at 2008 WLNR 21612408.

<sup>26</sup> In 2003, the Massachusetts Supreme Court ordered the legalization of same-sex marriage. See *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003). The state began issuing marriage licenses to same-sex couples in 2004. See Yvonne Abraham & Rick Klein, *Free to Marry: Historic Day Arrives for Same-sex Couples in Massachusetts*, BOSTON GLOBE, May 17, 2004, at A1.

began legally recognizing same-sex unions. Yet, the data in Figure 2 provide no evidence that state recognition of same-sex unions decreased marriage rates in these states.

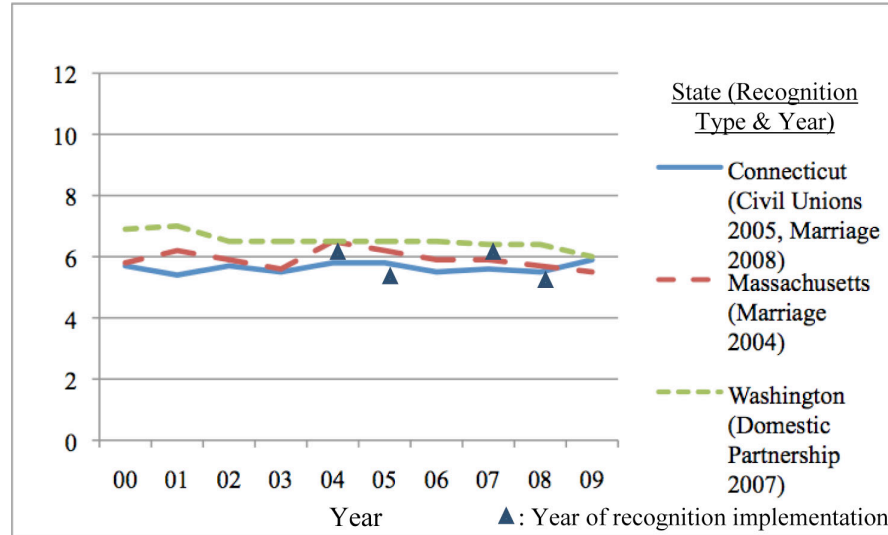


Figure 2. Marriage Rates in Recognition States (per 1,000 population)  
Source: National Vital Statistics System, CDC/NCHS

I chose to study Connecticut, Massachusetts, and Washington State because, out of the states that introduced legal recognition of same-sex couples during the time period studied, they are the three states for which relevant data are available.<sup>28</sup> Connecticut introduced

<sup>27</sup> Washington State began recognizing same-sex domestic partnerships in 2007. See WASH. REV. CODE §26.60 (2007); Chris McGann, *Same-sex Couples Register Vows in Olympia: Law Granting Partner Rights Goes in Effect*, SEATTLE POST-INTELLIGENCER, July 24, 2007, at B1. The following year, it increased the bundle of rights and responsibilities afforded to registered partners. See WASH. REV. CODE §26.60 (2008). In 2009, the state began offering registered partners all the rights and responsibilities that the state offers to married couples. See WASH. REV. CODE §26.60 (2009).

<sup>28</sup> I chose not to study Vermont, which began recognizing same-sex civil unions in 2000, because the dataset for this Article did not include annual statistics for years preceding 2000. That missing data make it difficult to put Vermont's civil unions in proper context. Similarly, I did not select Colorado, Delaware, the District of Columbia, Illinois, Iowa, Nevada, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, or Wisconsin, even though they all now offer at least some statewide partnership rights to same-sex couples, because they all began recognizing same-sex couples too late to provide a basis for meaningful analysis. I did not choose California or Hawaii, even though they recognize same-sex couples, because data for them were missing. I did not choose Maine because its legal recognition of same-sex couples is for very limited purposes. For additional information on when particular states began legally recognizing same-sex couples, see



civil unions in 2005 and same-sex marriage in 2008.<sup>29</sup> Marriage rates in the three-year period before and after 2005 were very similar to each other.<sup>30</sup> In 2009, the marriage rate in Connecticut reached its highest level in the time period studied.<sup>31</sup> In Massachusetts, there was a notable marriage rate increase in 2004.<sup>32</sup> Pent-up demand for same-sex marriage may have caused an unusual number of same-sex marriages that year, raising the overall marriage rate.<sup>33</sup> Otherwise, the rate for marriage in Massachusetts before 2004 was similar to the rate after 2004.<sup>34</sup> Washington State began recognizing domestic partnerships in 2007.<sup>35</sup> Despite that change, marriage rates remained relatively stable between 2002 and 2009.<sup>36</sup> Most notably, none of these states experienced meaningful drops in marriage rates after they began legally recognizing same-sex couples.<sup>37</sup> This finding suggests that state recognition of same-sex couples does not create the sort of depreciation envisioned by commentators such as Representative Stam, Professor Dent, and Dr. Dobson.<sup>38</sup>

One might attempt to argue that, after a state begins to recognize same-sex couples, there is a lag time before the depreciation of marriage manifests—a lag time that cannot be captured in the data presented above. To assess that claim, we can look abroad because some European countries have been legally

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National Conference of State Legislatures, *Same-sex Marriage, Civil Unions, and Domestic Partnerships*, July 14, 2011, <http://www.ncsl.org/default.aspx?tabid=16430>.

<sup>29</sup> See *supra* note 25.

<sup>30</sup> See *supra* Figure 2.

<sup>31</sup> See *supra* Figure 2.

<sup>32</sup> See *supra* Figure 2.

<sup>33</sup> The available data on marriage rates for Massachusetts do not distinguish between same-sex and different-sex marriages. Because the population of gays, lesbians, and bisexuals is so small, same-sex marriages are likely to constitute only a small percentage of the total number of marriages in Massachusetts. See Gary Gates, *How Many People are Gay, Lesbian, Bisexual, and Transgender?*, WILLIAMS INSTITUTE, Apr. 2011, at 1, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf> (“An estimated 3.5% of adults in the United States identify as lesbian, gay, or bisexual.”). Year 2004 may have had an unusually large number of same-sex marriages due to pent-up demand for same-sex marriage. See Tovia Smith, *Lesbian Couples Boosting Gay Marriage Numbers*, NPR, July 11, 2011, <http://www.npr.org/2011/07/11/137763596/lesbian-couples-boosting-gay-marriage-numbers> (“In Boston, experience suggests that pent-up demand for marriage among gays and lesbians will drive a wedding windfall, but it’s usually short-lived.”). Thus, adding same-sex marriages to the total number of marriages in Massachusetts likely had little effect on Massachusetts’ overall marriage rates, except perhaps in 2004.

<sup>34</sup> See *supra* Figure 2.

<sup>35</sup> See *supra* note 27.

<sup>36</sup> See *supra* Figure 2.

<sup>37</sup> See *supra* Figure 2.

<sup>38</sup> See *supra* notes 2-5 and accompanying text (discussing marriage depreciation arguments).

recognizing same-sex couples for about two decades.<sup>39</sup> For example, Denmark began legally recognizing same-sex couples in 1989.<sup>40</sup> Scholars who have analyzed data from Europe have concluded that state recognition of same-sex couples has not caused any corresponding drop-off in marriage rates.<sup>41</sup> In fact, marriage rates in some European countries increased after they began legally recognizing same-sex couples.<sup>42</sup>

In sum, this analysis of marriage rates over time casts serious doubt on the argument that marriage amendments promote marriage and protect it against depreciation. Marriage rates in states with amendments suggest that the amendments did not change people's views of marriage in ways that slowed the decline of marriage rates.<sup>43</sup> Meanwhile, the fact that marriage rates did not drop off in states that recognize same-sex unions suggests that the states' recognition of same-sex couples did not deter people from getting married.<sup>44</sup>

## II. CHANGES IN DIVORCE RATES OVER TIME

In addition to marriage rates, divorce rates shed light on whether constitutional amendments promote stable marriages and protect the institution of marriage against depreciation. As illustrated in Figure 3, divorce rates in South Carolina decreased from 2000 to 2005.<sup>45</sup> However, the year that South Carolina passed its marriage amendment, its divorce rate increased slightly (from 2.9 to 3.0)<sup>46</sup> and then remained relatively unchanged in subsequent years.<sup>47</sup> Meanwhile, in Virginia, the divorce rate had been slowly decreasing

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<sup>39</sup> Consider, for example, Denmark (1989), Norway (1993), Sweden (1994), Iceland (1996), and the Netherlands (registered partnerships in 1998 and marriage in 2001). See BADGETT, *supra* note 5, at 9 (summarizing legal developments in Europe).

<sup>40</sup> See *id.*; Act on Registered Partnership (Act No. 372/1989) (Den.).

<sup>41</sup> *E.g.*, BADGETT, *supra* note 5, at 67-71; ESKRIDGE & SPEDALE, *supra* note 11, at 91-129.

<sup>42</sup> See BADGETT, *supra* note 5, at 68-69 (describing how introducing legal recognition of same-sex couples coincided with the start of increased marriage rates in Norway, Sweden, and Denmark). Professor M.V. Lee Badgett cautions against viewing this connection between recognition of same-sex couples and increased marriage rates as a causal relationship. See BADGETT *supra* note 5, at 69.

<sup>43</sup> See *supra* notes 16-21 and accompanying text.

<sup>44</sup> See *supra* notes 25-38 and accompanying text.

<sup>45</sup> See *infra* Figure 3.

<sup>46</sup> See *infra* Figure 3.

<sup>47</sup> See *infra* Figure 3.

since 2000.<sup>48</sup> The rate of decrease was not affected by Virginia's 2006 amendment.<sup>49</sup> (Unfortunately, complete divorce data were not available for Georgia, the third amendment state that I analyzed in Part I.) Because the data in Figure 3 do not show the amendments altering preexisting trends in divorce rates, the amendments likely did not strongly change people's valuation of marriage.<sup>50</sup>

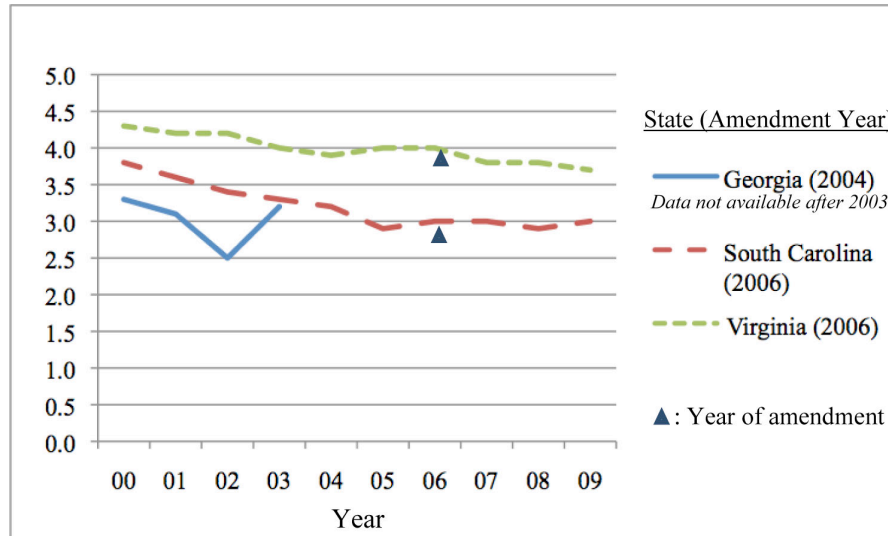


Figure 3. Divorce Rates in Amendment States (per 1,000 population)

Source: National Vital Statistics System, CDC/NCHS

Beyond failing to promote marriage in any way that affects preexisting divorce trends, marriage amendments do not seem necessary to address the fear that legally recognizing same-sex couples would create new increases in divorce rates. If legally recognizing same-sex couples does lead people to devalue the institution of marriage and retreat from marriage as a result, that retreat should be reflected in the divorce rates of recognition states. However, the data do not show such change.<sup>51</sup> For example, as illustrated by Figure 4, the divorce rate in Massachusetts was lower for every year after the legalization of same-sex marriage, compared to the four years preceding legalization of same-sex marriage.<sup>52</sup>

<sup>48</sup> See *infra* Figure 3.

<sup>49</sup> See *infra* Figure 3.

<sup>50</sup> See *infra* Figure 3.

<sup>51</sup> See *infra* Figure 4.

<sup>52</sup> See *infra* Figure 4.

Meanwhile, in Washington State, the divorce rate decreased fairly consistently over the time period studied.<sup>53</sup> The introduction of domestic partnerships had no effect on that decrease.<sup>54</sup> In Connecticut, there were more fluctuations in the divorce rate than in Massachusetts and Washington.<sup>55</sup> However, by 2009—four years after the introduction of civil unions and one year after the introduction of same-sex marriage—Connecticut’s divorce rate was lower than it had been in years prior to the legalization of civil unions.<sup>56</sup>

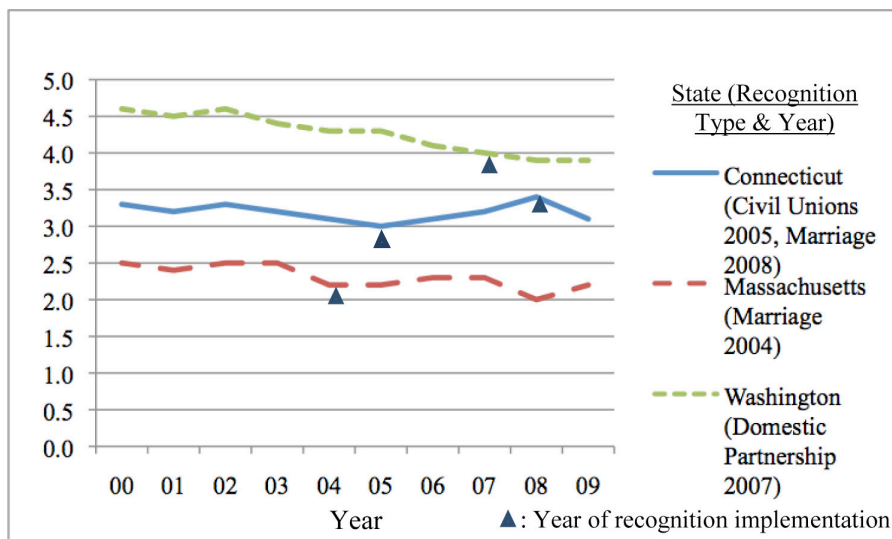


Figure 4. Divorce Rates in Recognition States (per 1,000 population)

Source: National Vital Statistics System, CDC/NCHS

As was the case for Part I’s findings on marriage rates, my conclusions based on divorce data are supported by research on Europe. In European countries that have a longer history of recognizing same-sex unions, the introduction of such recognition had no effect on divorce rates.<sup>57</sup>

<sup>53</sup> See *infra* Figure 4.

<sup>54</sup> See *infra* Figure 4.

<sup>55</sup> See *infra* Figure 4.

<sup>56</sup> See *infra* Figure 4.

<sup>57</sup> See generally BADGETT, *supra* note 5, at 67-71; ESKRIDGE & SPEDALE, *supra* note 11, at 91-129.

This analysis of divorce rates over time severely undermines the argument that marriage amendments promote marriage and protect it against depreciation. Divorce data from the amendment states suggest that marriage amendments are unlikely to alter people's appreciation of marriage or lack thereof.<sup>58</sup> Moreover, data from recognition states suggest that recognition of same-sex unions does not encourage divorce, contrary to the reasoning of commentators who have propounded marriage depreciation claims.<sup>59</sup>

### III. COMPARISON OF DIVORCE RATES IN 2009

In this Part, I provide a comparison of divorce rates in 2009, the most recent year for which the National Vital Statistics System has divorce data.<sup>60</sup> Specifically, the National Vital Statistics System has 2009 divorce data for 44 states and the District of Columbia.<sup>61</sup> Using those data, I created Table 1, which lists the five jurisdictions that had the highest divorce rates and the five jurisdictions that had the lowest divorce rates.

Of the five jurisdictions with the lowest divorce rates, none has ever had an amendment limiting relationship recognition to different-sex couples. In fact, by 2009, Iowa and Massachusetts legalized same-sex marriage, the District of Columbia legalized same-sex domestic partnerships, and New York recognized foreign same-sex marriages.<sup>62</sup>

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<sup>58</sup> See *supra* notes 45-50 and accompanying text.

<sup>59</sup> See *supra* notes 51-56 and accompanying text.

<sup>60</sup> I do not compare marriage rates in 2009 because examining marriage rates at one point in time can be misleading. Because the National Vital Statistics System's marriage rates also include second marriages and marriages of even higher orders, which are predicated on divorces, the marriage rate in any state at a given point in time fails to convey the stability of marriages or the culture of marriage in that state.

<sup>61</sup> See *Marriage Rates by State: 1990, 1995, and 1999-2009*, *supra* note 12.

<sup>62</sup> Iowa began issuing same-sex marriage licenses in 2009 in response to an Iowa Supreme Court decision. See *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009); Monica Davey, *A Quiet Day in Iowa as the State Begins Allowing Same-sex Couples to Marry*, N.Y. TIMES, Apr. 28, 2009, at A12. Massachusetts began issuing marriage licenses in 2004, in response to *Goodridge*, 798 N.E.2d 941. See *Abraham & Klein*, *supra* note 26. In 1992, the District of Columbia passed a law allowing couples to register as domestic partners, but that law did not take effect until 2002. See D.C. MUN. REGS. tit. XXIX, § 80 (1992); Alia Ibrahim, *District Registers Domestic Partners: Congress Blocked Law for 10 Years*, WASH. POST, July 9, 2002, at B1. The District of Columbia began issuing same-sex marriage licenses in 2010. See D.C. CODE § 46-401 (2010); Ann E. Marimow & Keith L. Alexander, *First Gay Couples Wed in Capital*, WASH. POST, Mar. 9, 2010, at B1. In 2008, Governor David Paterson directed New York State agencies to begin recognizing out-of-state same-sex marriages. Memorandum from David Nocenti, Legal Counsel to the Governor of New

Lowest Divorce Rates		Highest Divorce Rates	
Massachusetts (same-sex marriage)	2.2	Nevada (marriage amendment, domestic partnerships)	6.7
Iowa (same-sex marriage)	2.4	Arkansas (marriage amendment)	5.7
Illinois (no marriage amendment)	2.5	West Virginia (statutory ban of same- sex marriage)	5.2 <i>tied</i>
District of Columbia (domestic partnerships)	2.6 <i>tied</i>	Wyoming	5.2 <i>tied</i>
New York (recognition of out-of- state same-sex marriages)	2.6 <i>tied</i>	Idaho (marriage amendment)	5.0

*Table 1. Highest and Lowest Divorce Rates in 2009 (per 1,000 population), and Treatment of Same-sex Unions in 2009*  
*Source: National Vital Statistics System, CDC/NCHS*

In contrast, of the five states with the highest divorce rates, none had ever recognized same-sex couples in the years leading up to 2009.<sup>63</sup> Three of these five states passed marriage amendments by 2009—Arkansas (2004), Idaho (2006), and Nevada (2002).<sup>64</sup> Arkansas and Nevada had the highest divorce rates in the country.<sup>65</sup> It is worth noting, however, that Nevada created a domestic partnership registry that went into effect in October 2009.<sup>66</sup> The two

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York, to All Agency Counsel of N.Y. (May 14, 2008), *available at* [http://www.nyclu.org/files/Nocenti\\_Order\\_05.14.08.pdf](http://www.nyclu.org/files/Nocenti_Order_05.14.08.pdf). New York legalized same-sex marriage in 2011. *See* N.Y. DOM. REL. § 10-a (2011); Sam Dolnick, *After Long Wait, Same-Sex Couples Marry in New York*, N.Y. TIMES, July 24, 2010, at A4. Illinois implemented its civil union law in 2011. *See* 750 ILL. COMP. STAT. 75/10 (2011); Rex W. Huppke & Serena Maria Daniels, *Same-sex Couples Line up for Licenses on First Allowed by State Law*, CHI. TRIB., June 2, 2011, at 6.

<sup>63</sup> *See supra* Table 1.

<sup>64</sup> *See* ARK. CONST. amend. LXXXIII; IDAHO CONST. art III, § 28; NEV. CONST. art. I, § 21. *See also* Human Rights Campaign, *Statewide Marriage Prohibitions*, Jan. 13, 2010, *available at* [http://www.hrc.org/files/assets/resources/marriage\\_prohibitions\\_2009\(1\).pdf](http://www.hrc.org/files/assets/resources/marriage_prohibitions_2009(1).pdf) (noting the years in which Arkansas, Idaho, and Nevada passed their amendments).

<sup>65</sup> *See supra* Table 1.

<sup>66</sup> *See* NEV. REV. STAT. § 122A (2009); Ed Vogel, *Couples Delight as Law Takes Effect*, LAS VEGAS REV. J., Oct. 1, 2009, at 6B. Nevada's domestic partnership registry can

remaining states in the bottom five included West Virginia, which enacted a statute in 2000 that excludes same-sex couples from recognition.<sup>67</sup>

This pattern shows that states with marriage amendments purported to strengthen marriage also have the highest divorce rates in the country.<sup>68</sup> This fact challenges the claim that a marriage amendment in North Carolina would promote stable marriages.

#### CONCLUSION

This Article fills a gap in the debate over marriage amendments by presenting marriage and divorce data from states that have already implemented marriage amendments, as well as from states that have recognized same-sex couples. The findings of the analysis are unambiguous. There is no support for claims that marriage amendments increase marriage rates or decrease divorce rates. Further, there is no evidence that legal recognition of same-sex couples devalues marriage, thereby deterring people from marrying or encouraging divorce.

These results cast substantial doubt on arguments that amending North Carolina's constitution would promote stable marriages and protect the institution of marriage from depreciation. Likewise, these results cast doubts on the use and efficacy of such amendments in other states. As the debate over marriage amendments continues, individuals engaged in deliberation should be skeptical of claims regarding marriage depreciation and marriage promotion.

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coexist with Nevada's marriage amendment, discussed in note 64 and accompanying text, because Nevada's amendment can be interpreted to prohibit only same-sex marriage and not other forms of legal recognition. *See* NEV. CONST. art. I, § 21 ("Only a marriage between a male and female person shall be recognized and given effect in this state").

<sup>67</sup> *See* W. VA. CODE § 48-2-603 (2000).

<sup>68</sup> *See supra* notes 8-10 and accompanying text (discussing claims that marriage amendments promote and enhance marriage).