

## FOREWORD

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In late August 2008, I received a phone call from a student requesting to add my seminar a mere day or two before the add/drop deadline. I was initially very reluctant to permit her to do so, as writing a scholarly paper in the confines of one semester is difficult enough; losing a full two weeks off the beginning of the semester was likely to make the task almost impossible.

I agreed to talk with the student, and although my initial concerns were alleviated—the student was very earnest, had a topic selected, and had already begun work—a new set of concerns arose about the ambitious nature of the proposed paper. My interest, however, was piqued, as the topic was creative, timely, and exactly the type of project I like to see tackled. It was an intriguing combination of theory and law, explored in the context of a very real and practical issue. I agreed to allow the student to enroll in the seminar, and the resulting paper not only received a top grade from me, it went on to win first place in the National NALSA Writing Competition, and I am very pleased to write the foreword introducing it.

In *The Coquille Indian Tribe, Same-Sex Marriage, and Spousal Benefits: A Practical Guide*, Julie Bushyhead explores social attitudes toward same-sex marriage, how those attitudes manifest themselves in the law, and how a specific tribal government has chosen to exercise its sovereignty in this hotly contentious arena. The U.S. Constitution, through its Full Faith and Credit Clause,<sup>2</sup> requires each state to recognize the public acts and records of every other state, and the idea that the clause might open the door for one state to force every other state to recognize same-sex unions so horrified much of the U.S. populace that Congress entered the fray with the Defense of Marriage Act.<sup>3</sup> Ever since the passage of DOMA, states have one by one confronted whether they will recognize same-sex marriages and/or civil unions. The issue of same-sex marriage under tribal law hit front-page news when a Cherokee Nation clerk issued a marriage license to a same-sex couple.<sup>4</sup>

At the same time, a separate debate was gathering steam within tribal governments over how to effectively exercise sovereignty and self-determination within the context of the U.S. Supreme Court's increasing curtailment of tribal

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2. U.S. CONST. art. IV, § 1.

3. Public Law No. 104-199, 110 Stat. 2419. (codified as amended at 28 U.S.C. § 1738C (2006)).

4. See, e.g., Matthew L.M. Fletcher, *Same-Sex Marriage, Indian Tribes, and the Constitution*, 61 U. MIAMI L. REV. 53 (2006).

jurisdiction.<sup>5</sup> Tribes are seeking ways to build strong, vibrant governments that incorporate their own customs and traditions. The Coquille Tribe's decision to permit same-sex marriage is one illustration of this type of culturally-appropriate nation building.

In her paper, Ms. Bushyhead brings together these disparate strands, exploring the societal attitudes and presumptions regarding same-sex marriage, examining the legal consequences of the Coquille Tribe's decision, and discussing some of the practical implications of the law, particularly in the context of spousal benefits and end-of-life decisions. The paper accomplishes those ambitious tasks very admirably and in a way that not only advances theory; it is of practical assistance to those "on the ground" working with these issues.



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5. See, *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 128 S. Ct. 2709 (2008).