

# ALL CHILDREN MATTER

*How Legal and Social Inequalities Hurt LGBT Families*

Full Report

October 2011



**MAP**

movement advancement project ▶

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The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight and analysis that help speed equality for LGBT people. MAP works collaboratively with LGBT organizations, advocates and funders, providing information, analysis and resources that help coordinate and strengthen their efforts for maximum impact. MAP also conducts policy research to inform the public and policymakers about the legal and policy needs of LGBT people and their families. For more information, visit [www.lgbtmap.org](http://www.lgbtmap.org).

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## This report was developed in partnership with:

### **COLAGE**

COLAGE is a national movement of children, youth and adults with lesbian, gay, bisexual, transgender or queer (LGBTQ) parents. COLAGE builds community and works toward social justice through youth empowerment, coalition building, leadership development, education and advocacy. COLAGE views youth and families as powerful agents of social, political and cultural change, and supports youth leadership development through mentorship between people with LGBTQ parents across economic status, religion and culture. The COLAGE network helps children in LGBTQ families to become strong advocates for themselves and their families and to gain the recognition, rights and respect that every family deserves. For more information, visit [www.colage.org](http://www.colage.org).

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National Association of Social Workers (NASW) is the largest membership organization of professional social workers in the world, with 145,000 members. NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies. The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty. For more information, visit [www.socialworkers.org](http://www.socialworkers.org).

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### Note About This Full Report

A condensed version of this full report, entitled “All Children Matter: How Legal and Social Inequalities Hurt LGBT Families (Condensed),” is available online through [www.lgbtmap.org/lgbt-families](http://www.lgbtmap.org/lgbt-families) or through any of the co-author or partner websites.

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## FOREWORD

As the nation's leading membership-based organization for children and families, the Child Welfare League of America (CWLA) has long affirmed that children grow up best in strong families and supportive communities. A diversity of families is needed to help ensure that vulnerable children attain safety, find permanent families, and achieve well-being. As such, lesbian, gay and bisexual parents are essential child welfare partners because they are as well-suited to raise children as their heterosexual counterparts.

CWLA has long held that public policy should serve to further the best interests of children. The lingering bias against gay parents is problematic given that overwhelming social science research confirms that that gay and lesbian people are just as capable of being good parents as heterosexual people, and that their children are just as likely to be healthy and well-adjusted. Not a single reputable study has found that children raised by gay or lesbian parents are harmed because of their parents' sexual orientation.

CWLA is joined by every other major child health and welfare organization in affirming the suitability of gay and lesbian parents, including the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, and the North American Council on Adoptable Children. Our member agencies share a value that we would not take such a strong and unequivocal stand on gay and lesbian parenting were it not supported by sound social science research, established practice, and extensive expertise in identifying and serving the needs of children and families.

Misconceptions and stereotypes about gay people are always harmful—and especially so when they hurt children. In recent years, we have witnessed a disturbing trend as lawmakers in various regions of the country have ignored sound child welfare policy by introducing legislation to ban gay and lesbian people from adopting and foster parenting. One does not have to look too closely to realize that this legislation does not serve the best interests of children.

In 2009, 114,556 foster children awaited adoption by permanent families. Many of these children have been shuffled between temporary placements without the emotional stability that a permanent family can offer. Laws and policies that ban lesbians and gay men from adopting and fostering fly in the face of well-developed child health and welfare standards by depriving children of willing and able parents. We need more permanent families for our foster children, not fewer. We simply cannot afford to systematically exclude any group of caring and loving people from an already-limited pool of prospective parents.

However, restrictions on adoption and fostering are not the only ways in which children are hurt by anti-gay laws and policies. Over two million children are being raised by an LGBT parent. Yet current laws often deny such children legal ties to one parent, undermining family stability and permanency—and parents' ability to act as effective guardians of their children. Even when some legal protections exist, discrimination can still wrongly wrest children from their parents when, for example, custody decisions are driven by anti-gay bias against a parent, rather than by the child's best interests. Furthermore, because so many government programs do not recognize LGBT families,

children in these families are more likely to fall through the safety net. In times of crisis and greatest need, this can devastate families, as in the case of a child denied Social Security Survivor's benefits upon the death of a parent—or a sick child who cannot be covered under a parent's health insurance because that parent is not able to secure a legal relationship to the child.

*All Children Matter* documents how our laws fail to protect children living in LGBT families—and vividly illustrates these policy failures with chilling stories. It also outlines solutions for helping ensure that both public policy and child welfare professionals work to serve all children. These solutions are not always easy, but they are common sense. And the call to prevent and eliminate laws that hurt children is one that we all must answer. *All Children Matter* both shows how far we are from achieving this goal, and offers an indispensable path forward.

LGBT families are part of the American fabric. They live in 96% of US counties and are more ethnically diverse than the general population. Policies which place these families at economic and social disadvantage must be put aside so we can truly begin to act in the best interests of all children.

Linda S. Spears

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## EXECUTIVE SUMMARY

Public discussion about American families often assumes the nation is largely made up of married heterosexual couples raising their biological children. Yet less than a quarter of all U.S. households fall into this category. Today's children may be raised by grandparents, single parents, stepparents, aunts, uncles or foster parents. Their parents may be married or unmarried; they may be heterosexual or lesbian, gay, bisexual or transgender (LGBT).

Unfortunately, public policy has not kept up with the changing reality of the American family. Indeed, our laws and discourse largely ignore the roughly two million children being raised by a parent or parents who are LGBT. They also ignore children in other family configurations, such as those with unmarried heterosexual parents. As a result, most Americans are probably unaware of the many ways in which unequal treatment and social stigma harm the millions of children whose families do not fit into a certain mold.

### In This Report

This report offers one of the most comprehensive portraits to date of the wide range of obstacles facing LGBT families in America. It highlights three major needs that every child deserves: stable, loving homes; economic security; and health and well-being. In each of these areas, the report outlines how current laws and social stigma create obstacles for LGBT families. The introduction's "A Story of Two American Families," sums up the effects of unequal laws and social stigma by providing a case study of different outcomes for two families, one with lesbian parents and the other with heterosexual parents.

Finally, the report offers detailed recommendations for eliminating or reducing inequities and improving the lives of children with LGBT parents. Where possible, the report also highlights how current laws and stigma harm children in other modern family configurations, such as those with unmarried heterosexual parents.

### Key Findings

#### LGBT Families are Numerous and Diverse

- **The number of children with LGBT parents is significant.** Roughly two million children are being raised by LGBT parents.

- **LGBT families are more likely to be poor.** Contrary to stereotypes, children being raised by same-sex couples are twice as likely to live in poverty as children being raised by married heterosexual households. Same-sex couples of color raising children are more likely to be poor than white same-sex couples raising children.
- **Same-sex couples raising children are more racially and ethnically diverse than married different-sex couples raising children.** In all, 59% of same-sex couples with children identify as white compared to 73% of married different-sex couples with children. Same-sex couples of color are more likely to raise children than white same-sex couples.
- **LGBT families are geographically diverse.** LGBT families live in 96% of U.S. counties, and same-sex couples in the South are more likely to be raising children than those in other regions of the country.
- **LGBT families are more likely to be binational than heterosexual-headed households.** Among same-sex couples, 6% are binational compared to 4.6% of married heterosexual couples. Nearly half (46%) of binational, same-sex couples are rearing children compared to 31% of same-sex couples in which both partners are U.S. citizens.

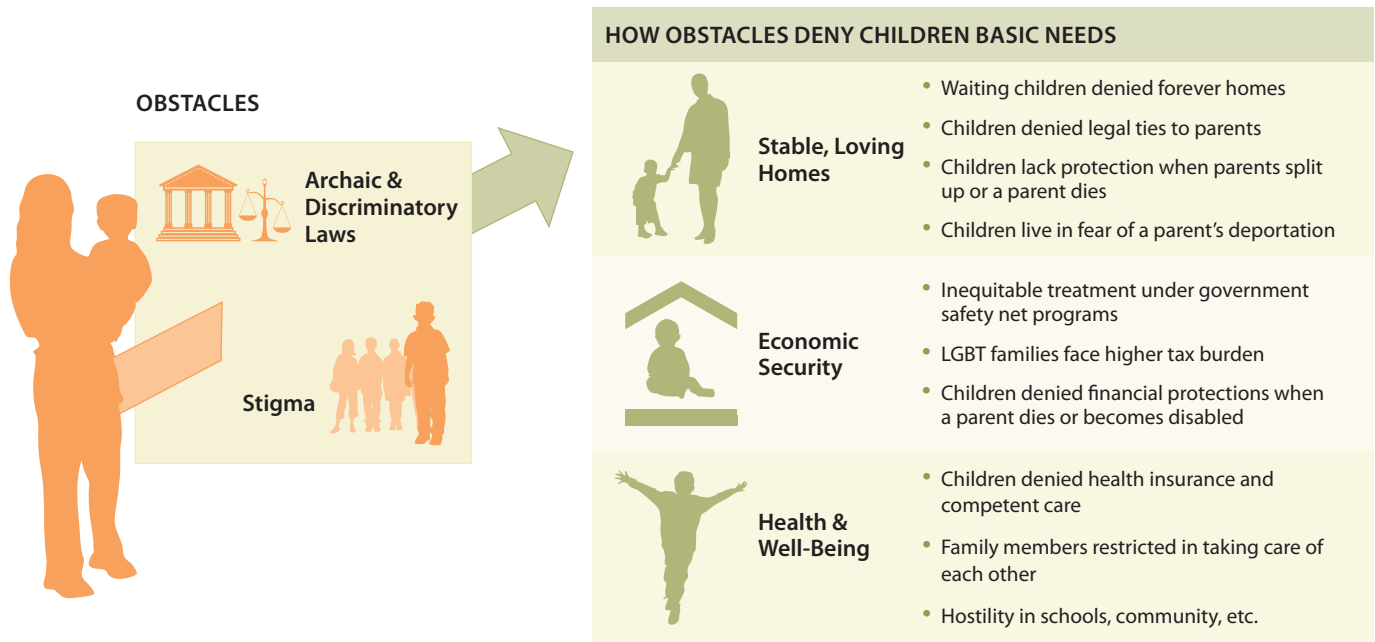
#### Children in LGBT Families Fare as Well as Other Children

- **Research uniformly shows positive outcomes for children in LGBT families.** More than 30 years of rigorous social science research shows that children raised by LGBT parents are just as happy, healthy and well-adjusted as children raised by heterosexual parents. This is why every major authority on child health and welfare has determined that sexual orientation has nothing to do with the ability to be a good, effective parent.

#### Laws and Stigma Hurt Children with LGBT Parents

As shown in *Figure 1* on the next page, archaic and discriminatory laws, combined with social stigma, create obstacles to stable, loving homes; economic security; and health and well-being. This report examines the ways in which inequities interfere with these needs and consequently harm children with LGBT parents.

Figure 1: Bad Laws and Stigma Deny Children Their Basic Needs



### Laws and Stigma Create Obstacles to Stable, Loving Homes for Children

State and federal laws and practices often deny children legal ties to loving, responsible parents. In many states, LGBT adults face restrictions in adoption or fostering—even though roughly 115,000 children are awaiting forever homes. Also, when a child is born to a married heterosexual couple, that child generally enjoys the essential security of being the legal child of both parents. By contrast, a child born to (or raised by) two LGBT parents may have one parent deemed a legal stranger by law, threatening to undercut family permanency. Today's legal and social climate creates barriers to achieving loving, stable homes for children in the following ways:

- **Children denied permanent homes.** Some states and agencies still refuse to place children with same-sex couples despite research consistently showing that children of LGBT parents fare just as well as other children.
- **Children denied legal ties to their parents.** A child living with two parents of the same sex can be assured that her relationship to her parents will be recognized by law in fewer than half of the U.S. states. For example, if a child is born using donor insemination, the partner of the birth mother may be a legal stranger to the child, despite acting as a parent from birth.

- **Children lack protection when their parents' relationship dissolves or a parent dies.** An LGBT parent who is not recognized as a parent by the law can lose custody or visitation rights even in instances when that parent is the most suitable caregiver and has acted as a parent for the child's entire life.
- **Children live in fear that their families could be torn apart by a parent's deportation.** Children being raised in same-sex binational families are denied the protections of family unity under federal immigration law. LGBT Americans cannot sponsor a same-sex spouse or partner for permanent residency or citizenship, a right that heterosexual Americans can exercise.

### Laws and Stigma Create Obstacles to Economic Security for Children

Government-based economic protections, ranging from safety net programs to tax deductions to inheritance laws, help families meet children's basic needs, including obtaining food, shelter and clothing. Yet different treatment under the law creates barriers to economic security for LGBT families in the following ways:

- **Children fall through the safety net.** Because many safety net programs apply antiquated definitions of family, a child with LGBT parents might be denied benefits provided to a peer with heterosexual parents—simply because the child’s parents are LGBT. Most government safety net programs use a narrow definition of family tied to marital status, which often excludes same-sex partners and non-legally recognized parents and children. The result is that financially struggling families with LGBT or unmarried parents cannot accurately reflect their household size or economic resources and may be denied adequate assistance.
- **LGBT families face a higher tax burden.** A series of tax credits and deductions are designed to help all families, regardless of economic circumstance, ease the financial costs of raising children. However, tax law also uses a narrow definition of family which excludes LGBT families. This exclusion usually results in a significantly higher tax burden for LGBT families.
- **LGBT families are denied financial protections when a parent dies or is disabled.** Social Security benefits and inheritance laws aim to protect families when a parent dies or becomes disabled. However, because the federal government fails to recognize LGBT families, such families may be denied critical Social Security death and disability benefits typically provided to heterosexual families. Also, if a married heterosexual parent dies without a will, all the couple’s assets transfer tax-free to the surviving spouse (and/or children); and if a parent dies a wrongful death, minor children and legal spouses may be able to sue. Yet in states where their family ties are not legally recognized, LGBT families have no such protections.

### Laws and Stigma Create Obstacles to Physical and Mental Health and Well-Being

Government policies aim to help ensure that children are physically and mentally healthy, and that they can access the basic resources they need to thrive, including quality and welcoming child care, education and health care. Yet children with LGBT parents face additional obstacles to achieving optimal health and well-being:

- **LGBT families face health coverage disparities and unequal access to health insurance.** The Defense of Marriage Act (DOMA) prevents the federal

government from recognizing the marriages of same-sex couples. This lack of recognition means that employers do not need to extend health insurance benefits to the partners of LGBT employees, or to the children of these partners (assuming the employee is a legal stranger to the children). Even when employers choose to offer extended health insurance benefits, an LGBT family will be taxed on the value of the benefit while a married heterosexual family will not.

- **LGBT families face unwelcoming health care environments.** Many professional caregivers—from physicians to counselors to the receptionists at medical facilities—are not accepting of or trained to work with LGBT families. Some medical providers have even refused to treat LGBT people, citing religious or personal reasons.
- **LGBT family members are restricted in taking care of each other.** When an LGBT parent lacks legal recognition, he or she may be denied visitation rights as well as the ability to make medical decisions for his or her child. In addition, the federal Family and Medical Leave Act (FMLA) does not require employers to grant leave to a worker taking care of a same-sex partner or spouse, even while heterosexual workers have this right.
- **LGBT families face social stigma and discrimination.** Many of the challenges LGBT families face stem from a society that assumes that everyone is heterosexual and comes from a family with two married heterosexual parents. The stresses resulting from these expectations are heightened for LGBT families of color, who also have to contend with additional disparities as racial and ethnic minorities. Transgender parents and their children also face added strains.

### Recommendations

This report presents a detailed and comprehensive set of legal, policy and cultural solutions to address the disparities outlined above. Below we summarize key recommendations which, taken together, could virtually eliminate the legal inequities that harm the two million children with LGBT parents. Many of the recommendations would also help an array of other children, including those with unmarried parents and those awaiting adoption.

## Legally Recognize LGBT Families

1. **Pass comprehensive parental recognition laws at the state level to fully protect children in LGBT families.** State parentage and adoption statutes should allow joint adoption by LGBT parents, recognize LGBT parents using assisted reproduction in the same manner as heterosexual parents, and provide avenues such as second-parent adoption and de facto parenting to allow children to gain full legal ties to their parents.
2. **Legalize and federally recognize marriage for same-sex couples.** Marriage for same-sex couples would help strengthen legal ties of the entire family, including those between a child's parents and between the child and his or her parents. Married LGBT parents would be recognized as legal parents upon a child's birth, and would also have access to joint and stepparent adoption. If recognized by the federal government, marriage would also allow accurate representation of LGBT families for the purposes of safety net programs, tax credits and deductions, inheritance and Social Security protections, immigration sponsorship and other benefits; and make it easier to obtain family health protections, including health insurance, medical decision-making, visitation and family leave.
3. **Provide pathways to immigration and citizenship for binational LGBT families.** This should include legislation such as the Uniting American Families Act, which would add the category "permanent partner" to the list of family members already entitled to sponsor a foreign national for U.S. immigration.

## Provide Equal Access to Government-Based Economic Protections

4. **Recognize LGBT families and children across government safety net programs.** Broadening the definition of "family" would allow LGBT families to accurately reflect their household across numerous government programs and protections. Forms and application procedures should also accommodate the reality of LGBT and other 21st century families.
5. **Revise the Internal Revenue Service (IRS) tax code to provide equitable treatment for LGBT families.** The IRS should create a "permanent partner" designation to identify a person who would be treated as a spouse for tax code purposes. The IRS should allow not just legal parents but also de facto parents to claim a "qualifying child" on their tax filing.

6. **Provide equitable economic protections when a parent dies or is disabled.** First, broaden Social Security's definition of family to allow an LGBT worker's permanent partner and children to access survivor and disability benefits in the same manner as a heterosexual worker's spouse and children. Next, states should change inheritance laws to treat LGBT permanent partners as spouses, and ensure children can inherit from a de facto parent when the parent dies without a will. Last, states should permit the filing of a wrongful death suit by any individual who can show economic dependence on a deceased person.

## Provide Equal Access to Health Care

7. **Advance equal access to health insurance and care.** Pass laws ensuring that LGBT families have access to health insurance on equal terms with heterosexual families, including eliminating unfair taxation of these benefits. Encourage private employers to offer domestic partner benefits. Work to ensure the Affordable Care Act defines "family" broadly.
8. **Enable LGBT family members to care for one another.** Pass or revise state hospital visitation and medical decision-making laws to be inclusive of LGBT families and de facto parents. Work with hospitals and other medical facilities and providers to enact LGBT-friendly policies related to visitation, advanced healthcare directives and related issues. Revise the federal FMLA to allow same-sex partners to care for one another.

## Protect LGBT Families with Anti-Discrimination Laws, Anti-Bullying Laws and Outreach

9. **Pass state anti-bullying laws and laws barring discrimination in employment, adoption, custody and visitation, health services, housing and credit.** Legislation prohibiting bullying and harassment in schools and universities should explicitly protect students based on their sexual orientation, gender identity and expression, and association with LGBT people. Non-discrimination laws should include similar protections.
10. **Expand education and cultural competency training on LGBT families.** Education and cultural competency training for a wide array of professionals should include outreach to adoption agencies and child welfare departments, judges and law students,



government agency workers, health service providers, schools, and faith communities.

## Provide Education and Services Support to Help LGBT Families

**11. Create stronger support services for LGBT families, particularly families of color, low-income families and transgender parents.** Advocates should target LGBT families with focused outreach and services, including opportunities to participate in social and support groups. Advocates should also educate LGBT families about the need to establish parentage ties and other legal protections, and provide assistance in doing so.

## Expand Research on LGBT Families

**12. Expand research on LGBT families and parenting, with an emphasis on filling gaps in data on families of color, low-income families and transgender parents.** This should include lobbying for expanded private and government research and data on LGBT families and parenting in areas such as demographics, income, health and mental health.

## INTRODUCTION

What do children need to thrive? They need close positive relationships with responsible adults who love them. They need homes that foster curiosity, empathy, self-reliance and kindness. They need food, clothing, shelter and medical care. They need a feeling of safety, security and stability. And they need to feel connected to and embraced by those around them.

Unfortunately, how we as a society talk and think about families does not adequately serve our children. Many Americans assume that the U.S. population is largely made up of married heterosexual couples raising their biological children together. This assumption guides government policies and laws at all levels, as well as day-to-day policies, practices and customs in schools and other community institutions.

However, according to the U.S. Census Bureau, only 22% of all households fall into this category. Today's children may be raised by grandparents, single parents, stepparents, aunts or uncles, or foster parents. Parents may be heterosexual. They may be lesbian, gay, bisexual or transgender. They may be citizens or immigrants, well-

off or struggling, white or families of color. Yet despite the growing visibility of diverse American households, public policy has not kept up with the changing reality of the American family in the 21st century.

Most Americans and their elected leaders may be unaware of the many ways in which unequal treatment and ongoing social stigma can harm and impoverish the millions of children whose families do not conform to commonly held assumptions of what it means to be a family. Consider the following:

- More than 115,000 foster children are currently awaiting adoption into a forever home; yet some states and agencies still refuse to consider same-sex couples for foster placements or adoption, despite research consistently showing that children of LGBT parents fare just as well as other children.
- In fewer than 20 states can a child living with two loving parents of the same sex be assured that her relationship to her parents will be recognized by the law; as a result, she is vulnerable to being taken away from a parent who has raised her since birth.
- Currently, laws designed to protect children when they are at their most vulnerable (such as when a parent dies or becomes disabled) do not protect some children just because of who their parents are. As a result, a child's access to health insurance, Social Security survivor benefits, inheritance and a host of other legal protections can be denied because the law values some children's parental relationships over others'.
- Current law tells some families that a parent cannot take family leave when another parent is sick, while telling other families to go right ahead.
- It is still all too common for children to be bullied or harassed in school or elsewhere when their families do not look like other people's families. Consider the elementary school student with two fathers or a transgender parent who regularly hears hurtful comments about his family from adults and children alike.

Unequal laws and social stigma harm not just the two million American children with LGBT parents, but also children in other family configurations, such as those with unmarried heterosexual parents. This report shines a spotlight on how far the U.S. still has to go to achieve fair treatment for all children—not just those

## Key Terms

**Lesbian, Gay, Bisexual and Transgender (LGBT).** The terms lesbian, gay and bisexual describe a person's sexual orientation and collectively include women and men who are predominantly or sometimes attracted to individuals of the same sex. The term transgender is independent of sexual orientation and describes those whose gender identity (their inner sense of being male or female) and/or gender expression (their behavior, clothing, haircut, voice and body characteristics) do not match the stereotypes associated with the gender assigned to them at birth, and who often live as members of the "opposite sex."

**LGBT Families.** This report uses the term "LGBT families" to refer either to families in which an LGBT adult is raising children or to families in which a same-sex couple is raising children. We use this term for simplicity while noting that the term is most likely not reflective of the sexual orientation of the children in such households. Our more restricted use of the term "LGBT families" is not meant in any way to diminish those who live in families without children. We also recognize that many LGBT adults who do not have children form families with life partners, close friends and other loved ones who provide support.

**Child(ren).** Because this report focuses on children currently being raised by LGBT adults, we use the terms "child" and "children" to refer to individuals under the age of 18.

**Legal Parent.** We use the terms "legal parent" or "legally recognized parent" to refer to a person who is recognized as a parent under state (and sometimes federal) law, and who is generally related in some manner by blood, adoption or other legal tie to a child.

**Non-Legally Recognized Parent/Non-Recognized Parent/Legal Stranger.** There are many instances in which someone acts as a parent to a child but is not recognized as a legal parent under state (and sometimes federal law). Throughout the report, we distinguish between the terms "legally recognized parents" and "non-legally recognized parents." Also used in this report is the term "legal stranger" to refer to a parent who is not legally recognized.

**Stepparent.** A "stepparent" is traditionally defined as someone who marries an existing parent, forming a stepfamily. Because same-sex partners are not allowed to marry in most states, we also use the term "stepparents" to refer to LGBT individuals who function as stepparents, whether or not they are formally recognized as such under their state's law. Since same-sex couples in comprehensive domestic partnerships or civil unions enjoy the same rights as legal spouses, they are also referred to as "stepparents," although federal law does not regard them as such.

**De Facto Parent.** A "de facto" parent is someone other than a legal parent who, for reasons other than financial compensation, formed a child-parent relationship in which he or she shared (usually at least equally) in primary child care responsibilities. In certain cases, a court can declare a de facto parent to be a legal parent, conferring on him or her partial or full parenting rights based on the person having functioned as a parent in the child's life for a significant period of time.

**Same-Sex Partner(s).** Since most same-sex couples cannot legally marry, we often use the term "same-sex partner(s)" to refer to same-sex couples in committed relationships, including marriages, domestic partnerships, civil unions or similar relationships that are not recognized under the law. In some cases, we distinguish between those couples who are legally recognized and those who are not.

**Spouse.** Because the federal government does not recognize the marriages of same-sex couples, this report uses the term "spouse" to refer to the husband or wife in a legally married heterosexual couple. When applicable, however, we may use "same-sex spouses" to identify those individuals in same-sex couples who are legally married at the state level.

whose families fit into a certain mold. This means taking a hard look at the current political, economic and social systems that espouse family values but that produce and support laws that only value one type of family.

While the proper role of government in Americans' lives has long been subject to lively debate, basic fairness requires that where government assumes responsibility for helping to support or protect families, it tries to do so in an equitable and non-discriminatory manner. This report examines how current laws, practices and social stigma hurt children with LGBT parents and work against achieving the following three goals:

1. Securing stable, loving homes for all children.
2. Ensuring economic security for all children.
3. Ensuring health and well-being for all children.

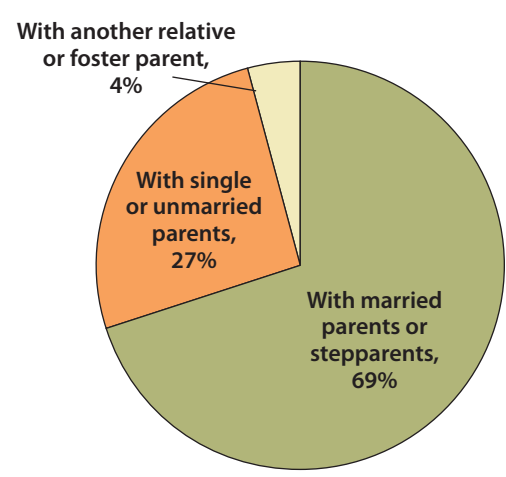
In each of these areas, we assess key challenges that stand in the way of achieving these goals, while offering detailed recommendations for eliminating (or at least reducing) inequities and improving the lives of children with LGBT parents.

The report does not address issues that uniformly impact all American children (such as improving education), nor does it attempt to analyze broader issues affecting children (such as how to best finance Medicaid). However, the report frequently notes how issues affecting children with LGBT parents parallel or overlap with issues affecting children in other types of families. While this analysis is admittedly incomplete, policy recommendations are intentionally broad and aimed at helping the widest possible spectrum of children.

### Who Are LGBT Families?

America's households are changing. Today, just under half (47%) of U.S. households are raising a total of 74.5 million children. These children represent nearly one-quarter of the U.S. population;<sup>1</sup> in 1970, children were 34% of the population.<sup>2</sup> Today, only 59% of all children live with their two married biological parents.<sup>3</sup> What's more, the overall percentage of children living with married heterosexual parents (whether biological, adoptive or stepparents) is dropping: it's just 69% today, down from 83% in 1970.<sup>4</sup> Breaking down the numbers further, 27% of children live with one parent or an unmarried cohabiting couple, and 4% live with someone other than a parent, such as a foster parent, relative or grandparent (see *Figure 2*). In other words, 31% of children do not live in so-called "traditional"

Figure 2: With Whom do American Children Live?



households. Looking at children born in 2009, 41% were born to unmarried women.<sup>5</sup> This number is higher for children born to black and Latina women (72% and 53%, respectively).

**How many children are being raised by LGBT parents?** A recent analysis by The Williams Institute estimates that approximately 9 million American adults are LGBT.<sup>6</sup> Exact estimates of how many children are being raised by LGBT parents are difficult to obtain, but a MAP analysis of three different data sources suggests a range of 2.0 to 2.8 million children. For this report, we use a conservative estimate of 2 million children living with LGBT parents. For a full explanation of how we derived this figure, see *Appendix: Estimating the Number of Children With One or More LGBT Parents*, page 118.<sup>7</sup>

The number of children with LGBT parents is likely to grow in the years to come. Research shows that many LGB people wish to become parents. More than one-third of lesbians without a child want to have children, and three-quarters of bisexual women

<sup>1</sup> U.S. Census Bureau, "Selected Social Characteristics in the United States" and "ACS Demographic and Housing Estimates," 2006-2008 American Community Survey 3-Year Estimates.

<sup>2</sup> Federal Interagency Forum on Child and Family Statistics, "America's Children in Brief: Key National Indicators of Well-Being," 2010, [www.childstats.gov/americaschildren/famsoc.asp](http://www.childstats.gov/americaschildren/famsoc.asp).

<sup>3</sup> U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic Supplement.

<sup>4</sup> Rose M. Kreider and Diana B. Elliott, "The Complex Living Arrangements of Children and Their Unmarried Parents," Population Association of America, Poster Presentation, May 2, 2009.

<sup>5</sup> Included in this figure are children born to women who are cohabiting with a partner and children born to same-sex couples who cannot legally marry. Brady E. Hamilton, Joyce A. Martin and Stephanie J. Ventura, "Births: Preliminary Data for 2009," *National Vital Statistics Reports*, 59:3, National Center for Health Statistics, 2010.

<sup>6</sup> Gary J. Gates, "How Many People are Lesbian, Gay, Bisexual and Transgender?" The Williams Institute, 2011.

<sup>7</sup> As described in the Appendix, we rely on data from the U.S. Census Bureau, the National Survey of Family Growth, the California Health Interview Survey, and the National Transgender Discrimination Survey to estimate the number of children with LGBT parents.

without children want to have children. Of gay men who have not had children, 57% want to have children, as do 70% of bisexual men.<sup>8</sup>

Childrearing rates vary greatly among transgender Americans. New data from the largest survey of transgender Americans finds that 38% of respondents identify as parents. Transgender Americans who transitioned later in life were more likely to identify as parents (82% of those who transitioned after age 55 identified as parents compared to 38% of those who transitioned between 25-44).<sup>9</sup>

**Where do LGBT families live?** Same-sex couples live in virtually all counties (99.3%) across the U.S., and 96% of counties in the U.S. have same-sex couples raising children.<sup>10</sup> Not surprisingly, places like New York City, Los Angeles and the San Francisco Bay Area have the highest concentration of same-sex couples raising children, primarily because those areas have the highest concentration of same-sex couples (that is, both with and without children). However, this doesn't mean that same-sex couples in these areas are more likely to be raising children than those in other areas. In fact, California and New York don't even make the list of the top 10 states where same-sex couples are most likely to be raising children. Surprisingly, the state at the top of the list is Mississippi.<sup>11</sup> *Table 1* shows the states where same-sex couples are most likely to be raising children, listed from most to least likely.

**What is the economic status of LGBT families?** In 2010, 22% of American children lived in poverty and approximately 22% of children lived in households that were considered "food insecure," which generally means that such households were worried about whether they would have enough money to purchase adequate food. Nearly 6 million children (8% of all children) lived in extreme poverty, which is defined as living in a family with an income level that is less than one-half of the government's poverty threshold (extreme poverty was equal to \$11,175 for a family of four in 2011).<sup>12</sup>

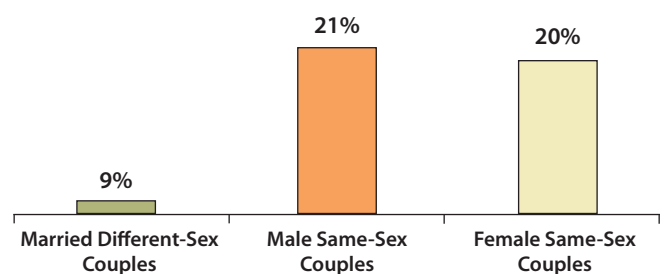
Contrary to common stereotypes, children being raised by same-sex couples are twice as likely to live in poverty when compared to children living in households with heterosexual married parents.<sup>13</sup> One in five children in same-sex-couple families are living in poverty, compared to one in 10 children living with married different-sex parents (see *Figure 3*). This pattern is consistent across race and ethnicity.

**Table 1: States Where More Than One in Four Same-Sex Couples Are Raising Children**

1. Mississippi
2. Wyoming
3. Alaska
4. Arkansas
5. Texas
6. Louisiana
7. Oklahoma
8. Kansas
9. Alabama
10. Montana
11. South Dakota
12. South Carolina

Source: Gary J. Gates and Abigail M. Cooke, Census 2010 Snapshot Series, The Williams Institute, 2011.

**Figure 3: Percent of Families Raising Children Who Live in Poverty**



Source: Randy Albelda, M.V. Lee Badgett, Alyssa Schneebaum and Gary J. Gates, "Poverty in the Lesbian, Gay and Bisexual Community," The Williams Institute, 2009.

Same-sex couples raising children also have significantly lower median and average household incomes compared to married different-sex couples raising children. The average household income for same-sex couples raising children lags that of heterosexual couples raising children by more than \$15,500, or 20% (see *Figure 4* on the next page).<sup>14</sup> Furthermore, same-sex couples with children are almost one-third less likely to own their homes (51% vs. 71% of married heterosexual couples with children).

<sup>8</sup> Gary J. Gates, M.V. Lee Badgett, Jennifer Ehrle Macomber and Kate Chambers, "Adoption and Foster Care by Gay and Lesbian Parents in the United States," The Williams Institute and Urban Institute, 2007, [www.urban.org/UploadedPDF/411437\\_Adoption\\_Foster\\_Care.pdf](http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf).

<sup>9</sup> Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice At Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

<sup>10</sup> R. Bradley Sears, Gary J. Gates and William B. Rubenstein, "Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000," The Williams Institute, 2005.

<sup>11</sup> Gary J. Gates and Abigail M. Cooke, Census 2010 Snapshot Series, The Williams Institute, 2011.

<sup>12</sup> Federal Interagency Forum on Child and Family Statistics, *America's Children in Brief*.

<sup>13</sup> Randy Albelda, M.V. Lee Badgett, Alyssa Schneebaum and Gary J. Gates, "Poverty in the Lesbian, Gay and Bisexual Community," The Williams Institute, 2009.

<sup>14</sup> Adam P. Romero, Amanda K. Baumle, M.V. Lee Badgett and Gary J. Gates, "Census Snapshot: United States," The Williams Institute, 2007.



Reflecting trends in the broader population, same-sex couples of color raising children are more likely to be poor than white same-sex couples raising children (see *Figure 5*).<sup>15</sup> For example, the median household income of Latino/a same-sex couples is 20% less than white same-sex couples.<sup>16</sup>

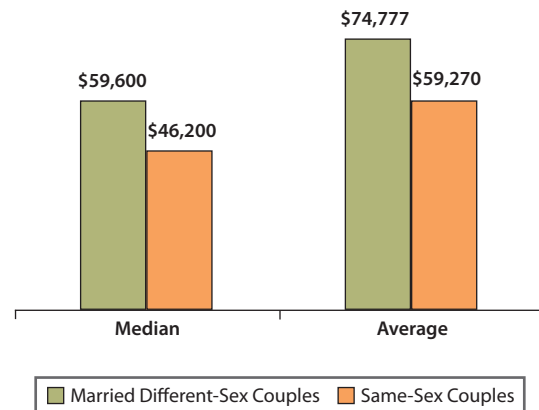
While research about families headed by transgender parents is limited, the economic challenges faced by transgender people in general are becoming better known as a result of several recent studies. For example, in the largest survey of transgender Americans published in 2011, 15% of respondents reported making \$10,000 or less per year—a rate of poverty that is nearly four times that of the general population.<sup>17</sup> In the same survey, transgender respondents with higher household incomes were more likely to be raising a child. For example, more than one-third (37%) of transgender respondents with household incomes over \$100,000 were raising children compared to only 15% of respondents with incomes between \$20,000 and \$50,000.

**What are the racial and ethnic characteristics of LGBT families?** Same-sex couples raising children are more racially and ethnically diverse than married different-sex couples raising children (see *Figure 6*).<sup>18</sup> In all, 59% of same-sex couples with children identify as white compared to 73% of married different-sex couples with children. Black same-sex couples are nearly twice as likely as white same-sex couples to be raising children (52% vs. 32% for lesbian couples and 36% vs. 19% for gay male couples).<sup>19</sup> Latino/a same-sex couples are also more likely to be raising children than white same-sex couples (66% vs. 32% for lesbian couples and 58% vs. 19% for gay male couples).

Similarly, children of same-sex couples are more racially and ethnically diverse than children of married different-sex couples (see *Figure 7* on the next page). Of children raised by same-sex couples, 55% are white. This compares to 70% of children raised by married different-sex couples.<sup>20</sup> Transgender Americans raising children are also racially and ethnically diverse. In the largest survey of transgender Americans to date, nearly half of Native American respondents identified as parents (45%) compared to 40% of Latino/a and White respondents (see *Figure 8* on the next page).

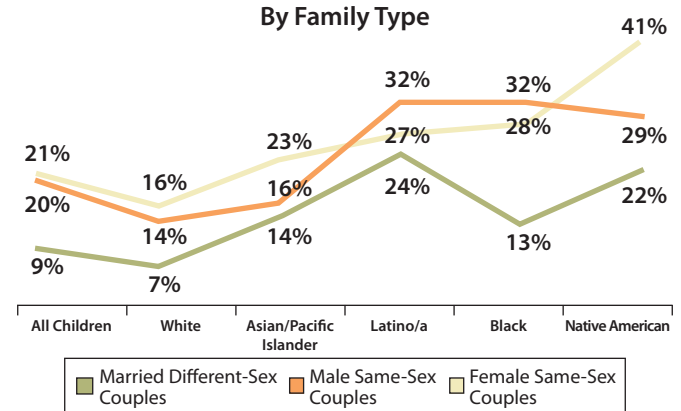
<sup>15</sup> Albelda et al., "Poverty in the Lesbian, Gay and Bisexual Community."  
<sup>16</sup> Sears et al., "Same-Sex Couples Raising Children."  
<sup>17</sup> Grant et al., "Injustice at Every Turn."  
<sup>18</sup> Jason Cianciotto, "Hispanic and Latino Same-Sex Couple Households in the United States: A Report from the 2000 Census," National Gay and Lesbian Task Force Policy Institute and National Latino/a Coalition for Justice, 2005.  
<sup>19</sup> Alain Dang and Somjen Frazer, "Black Same-Sex Households in the United States: A Report from the 2000 Census," 2nd Edition, National Gay and Lesbian Task Force Policy Institute, 2005.  
<sup>20</sup> Sears et al., "Same-Sex Couples Raising Children."

**Figure 4: Household Income of Families Raising Children**



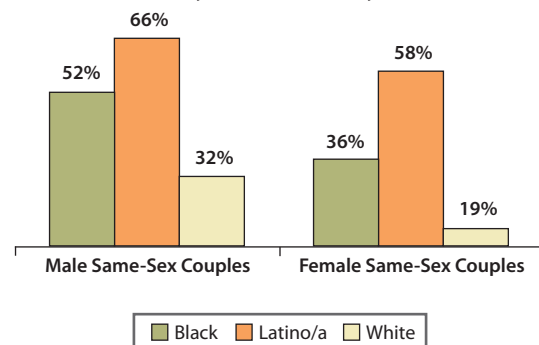
Source: Adam P. Romero, Amanda K. Baumle, M.V. Lee Badgett and Gary J. Gates, "Census Snapshot: United States," The Williams Institute, 2007.

**Figure 5: Percent of Children Living in Poverty, By Family Type**



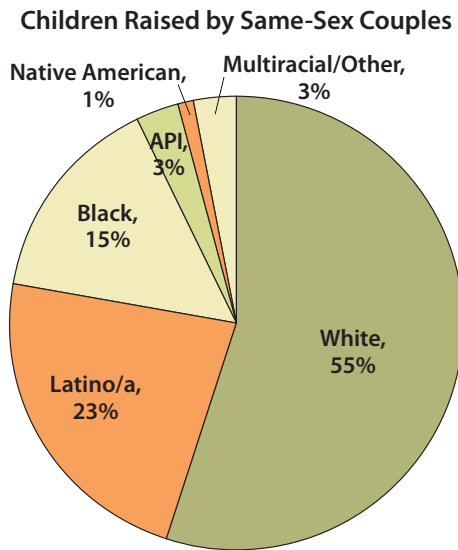
Source: Randy Albelda, M.V. Lee Badgett, Alyssa Schneebaum and Gary J. Gates, "Poverty in the Lesbian, Gay and Bisexual Community," The Williams Institute, 2009.

**Figure 6: Percent of Same-Sex Couples Raising Children, By Race/Ethnicity**

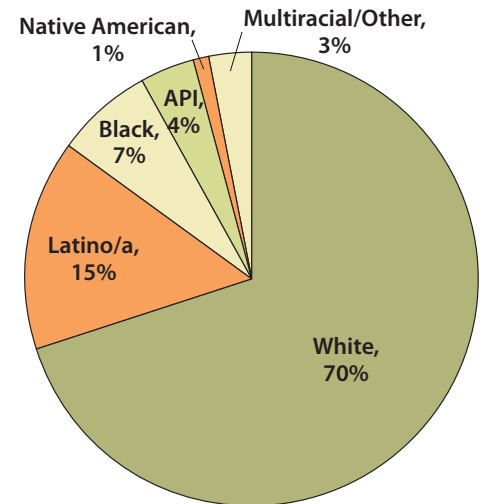


Source: Jason Cianciotto, "Hispanic and Latino Same-Sex Couple Households in the United States: A Report from the 2000 Census," National Gay and Lesbian Task Force Policy Institute and National Latino/a Coalition for Justice, 2005; Alain Dang and Somjen Frazer, "Black Same-Sex Households in the United States: A Report from the 2000 Census," 2nd Edition, National Gay and Lesbian Task Force Policy Institute, 2005.

Figure 7: Race/Ethnicity of Children, By Family Type

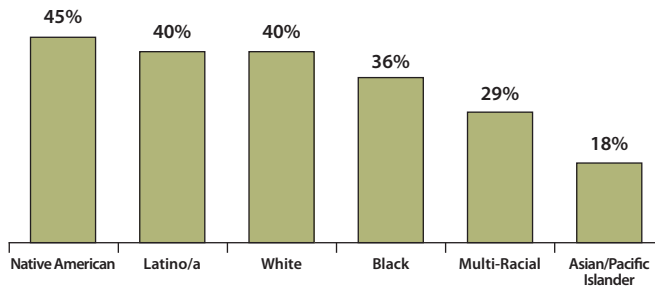


Children Raised by Married Different-Sex Couples



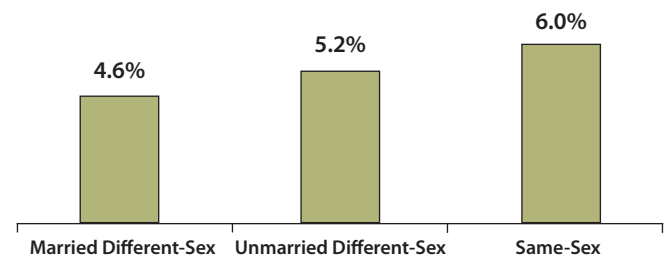
Source: R. Bradley Sears, Gary J. Gates and William B. Rubenstein, "Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000," The Williams Institute, 2005.

Figure 8: Percent of Transgender Americans Raising Children, By Race/Ethnicity



Source: Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice At Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

Figure 9: Percent of Couples Who are Binational



Source: Gary J. Gates, "Binational Same-Sex Unmarried Partners in Census 2000: A Demographic Portrait," The Williams Institute, 2005.

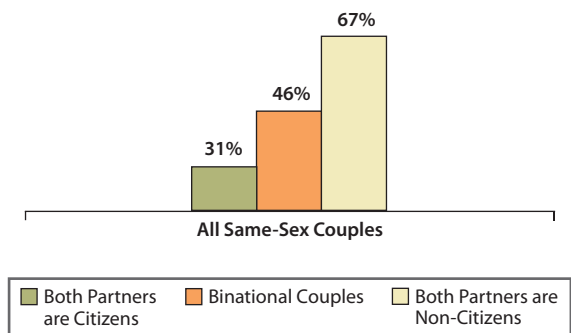
### What is the national origin of same-sex couples?

There are 36,000 same-sex binational couples (couples where one member is not an American citizen) in the U.S.<sup>21</sup> Among all same-sex couples, 6% are binational, compared to 4.6% of married heterosexual couples (see *Figure 9*).<sup>22</sup> Nearly half (46%) of binational, same-sex couples are rearing children, compared to 31% of same-sex couples in which both partners are U.S. citizens (see *Figure 10*).

<sup>21</sup> Gary J. Gates, "Binational Same-Sex Unmarried Partners in Census 2000: A Demographic Portrait," The Williams Institute, 2005. This figure likely undercounts the number of binational same-sex couples as it does not include: those who conceal their partnership or sexual orientation; avoid the census; live apart; or live together outside the U.S.—often due to experience with, or fear of, discriminatory policies and an unwelcoming climate.

<sup>22</sup> *Ibid.*

Figure 10: Percent of Same-Sex Couples Raising Children, By Immigration Status



Source: Gary J. Gates, "Binational Same-Sex Unmarried Partners in Census 2000: A Demographic Portrait," The Williams Institute, 2005.

## Research Shows Positive Outcomes for Children of LGBT Parents

Despite misleading claims from those who oppose LGBT parenting, more than 30 years of rigorous social science research shows that children raised by LGBT parents are just as happy, healthy and well-adjusted as children raised by heterosexual parents. Additionally, nearly every major authority on child health and social services, including the American Academy of Pediatrics and the Child Welfare League of America, has determined that a parent's sexual orientation has nothing to do with the ability to be a good, effective parent.

### Transgender Parents

The wide range of experiences and identities of transgender people can add a layer of complexity to discussions of LGBT parenting, particularly when it comes to couples. The term "transgender" is independent of sexual orientation and refers to someone whose inner sense of being male or female does not match the sex they were assigned at birth. Transgender people may or may not be living their life in accordance with their inner sense of gender.

Transgender parents may be the biological parents of a child (e.g., if the transgender parent has not had sex reassignment surgery or has had a child prior to doing so). They may also be adoptive parents or stepparents or their equivalent. A transgender parent may be in a same-sex or heterosexual relationship, or be a single parent. While there are volumes of research studying LGBT parents, there is a dearth of data on transgender parents. However, some research, along with anecdotal evidence, suggests that transgender parents experience discrimination and hostility from social welfare agencies and judges at much higher levels than LGBT parents.

**Academic studies support the fitness of LGBT parents.**<sup>23</sup> Researchers have found that children raised by LGBT parents are psychologically and socially healthy. Children of LGBT parents have similar levels of psychological adjustment and are no more likely than their peers raised by heterosexual parents to report behavioral issues.<sup>24</sup> In fact, several studies have even suggested that children raised by LGBT families are better adjusted psychologically than their peers.<sup>25</sup> For example, a 2010 study published in *Pediatrics* found that the 17-year-old children of lesbian mothers rated higher than their peers on academic performance tests. They also showed greater social competency, with fewer instances of social problems, rule breaking and other problem behaviors.<sup>26</sup> Researchers have also found that children of LGBT parents experience normal social development and do not differ in their relationships to their peers when compared to children raised in heterosexual families.<sup>27</sup>

**All leading child health and social service organizations support LGBT parenting.** The organizations supporting parenting and adoption by LGBT adults include: American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American Psychiatric Association, American Psychoanalytic Association, American Psychological Association, Child Welfare League of America, Evan B. Donaldson Adoption Institute, National Association of Social Workers, North American Council on Adoptable Children, and Voice for Adoption. Some sample organizational statements on this issue include:

<sup>23</sup> Unfortunately, studies of single and transgender parents are limited. While single LGBT parents have been included in much of the broader research on LGBT parenting, outcomes in these families have been systematically studied less often. Two studies of children raised by transgender parents in the United Kingdom both found that the children were no more likely than other children to experience gender dysphoria or to report concerns about their gender identities. Richard Green, "Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents," *American Journal of Psychiatry*, 135:692-697, 1978, and "Transsexuals' Children," *International Journal of Transgenderism*, 2:4, 1998. See also Grant et al., "Injustice at Every Turn," for survey data on transgender parents.

<sup>24</sup> Fiona L. Tasker and Susan Golombok, *Growing Up in a Lesbian Family*, Guilford Press, 1997; Susan Golombok, Beth Perry, Amanda Burston, Clare Murray, Julia Mooney-Somers, Madeleine Stevens and Jean Golding, "Children with Lesbian Parents: A Community Study," *Developmental Psychology*, 39:20-33, 2003; Fiona MacCallum and Susan Golombok, "Children Raised in Fatherless Families From Infancy: A Follow-Up of Children of Lesbian and Single Heterosexual Mothers at Early Adolescence," *Journal of Child Psychology and Psychiatry*, 8:1407-1419, 2004; Jennifer L. Wainright, Stephen T. Russell and Charlotte J. Patterson, "Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents," *Child Development*, 75:1886-1898, 2004; Stephen Erich, Patrick Leung and Peter Kindler, "A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children," *Journal of GLBT Family Studies*, 1:43-60, 2005; Nanette Gartrell, Amalia Deck, Carla Rodas, Heidi Peyser and Amy Banks, "The National Lesbian Family Study: 4. Interviews with the 10-Year-Old Children," *American Journal of Orthopsychiatry*, 75:518-524, 2005; Jennifer L. Wainright and Charlotte J. Patterson, "Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents," *Journal of Family Psychology*, 3:526-530, 2006; Ian Rivers, V. Paul Potat and Nathalie Noret, "Victimization, Social Support, and Psychological Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom," *Developmental Psychology*, 1:127-134, 2008.

<sup>25</sup> Richard W. Chan, Risa C. Brooks, Barbara Raboy and Charlotte J. Patterson, "Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment," *Journal of Family Psychology*, 12:402-419, 1998; Henny M.W. Bos, Frank van Balen and Dymph van den Boom, "Child Adjustment and Parenting in Planned Lesbian-Parent Families," *American Journal of Orthopsychiatry*, 77:38-48, 2007.

<sup>26</sup> Nanette Gartrell and Henny Bos, "U.S. National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents," *Pediatrics*, 126:1-9, 2010.

<sup>27</sup> Golombok et al., "Children with Lesbian Parents," Gartrell et al., "National Lesbian Family Study," Wainright and Patterson, "Delinquency, Victimization and Substance Use."

*The American Academy of Pediatrics*

"A considerable body of professional literature provides evidence that children with parents who are homosexual can have the same advantages and the same expectations for health, adjustment, and development, as can children whose parents are heterosexual."

*American Academy of Child and Adolescent Psychiatry*

"There is no evidence to suggest or support that parents who are lesbian, gay, bisexual, or transgender are per se superior or inferior from or deficient in parenting skills, child-centered concerns, and parent-child attachments when compared with heterosexual parents. ...The American Academy of Child & Adolescent Psychiatry opposes any discrimination based on sexual orientation or gender identity against individuals in regard to their rights as custodial, foster, or adoptive parents."

*The Child Welfare League of America*

"Gay, lesbian, and bisexual parents are as well suited to raise children as their heterosexual counterparts... Beliefs that gay and lesbian adults are unfit parents have no empirical foundation. A growing body of scientific evidence demonstrates that children who grow up with one or two parents who are gay or lesbian fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual."

**Court decisions support the fitness of LGB parents.**<sup>28</sup>

A growing number of legal decisions also affirm that children raised by LGB parents are as likely as their peers to be happy, healthy and psychologically adjusted. For example, in a 2009 Iowa Supreme Court case allowing same-sex couples the freedom to marry, the Court concluded that the plaintiffs, including same-sex couples and their children, "presented an abundance of evidence and research, confirmed by our independent research, supporting the proposition that the interests of children are served equally by same-sex parents and opposite-sex parents. Opposing opinions, while sincere, were largely unsupported by reliable scientific studies."<sup>29</sup>

In the federal legal challenge to California's Proposition 8, which limited marriage to a man and a woman, the judge concluded, "The evidence does not support a finding that California has an interest in preferring opposite-sex parents over same-sex parents. Indeed, the evidence shows beyond any doubt that parents' genders are irrelevant to children's development outcomes."<sup>30</sup> And in September 2010, Florida's Third District Court of Appeal unanimously struck down the state's law prohibiting gay men and lesbians from

## Top NBA Draft Pick Talks About His Family

Dustin Bradford/icon SMI



One of America's best college basketball players, Kenneth Faried, says that his mom and her wife inspire him.

Kenneth Faried is one of America's best college basketball players. As a power forward from Morehead State in Kentucky, Kenneth was one of the top players drafted to play in the NBA. Life hasn't always been easy for Kenneth, who was raised in a rough neighborhood in Newark, N.J. His

mother has battled lupus, a debilitating disease, since Kenneth was in elementary school. But Kenneth's family is a central part of what makes this young man a leader on the court and off. In particular, Kenneth's mother, Waudda Faried, and her wife, Manasin Copeland—whom Kenneth calls Oomie, the Arabic word for mother—are an inspiration to him. When Kenneth talks about his mom and her wife, he says, "I think people have an aura about them and the first time I met her, I thought, 'I like this lady.' And when they got married, that showed me what commitment is all about, that there are people out there that can commit, even though for them it really has been the worst of times. I look at them, what they've been through and I think, 'Wow. That's amazing.' They're amazing to me." As a child, Kenneth never faced teasing because of his parents: "I think maybe I was just lucky because I lived in New Jersey... I'm sure it would be a lot different if I grew up somewhere else," Kenneth told ESPN.com. As his mother explained, "People are going to have their opinions. Really, their opinions don't matter. Who cares what they think?"

Adapted from: Dana O'Neil, "Kenneth Faried adapts and thrives," ESPN.com, February 9, 2011.

<sup>28</sup> While there are fewer court cases challenging transgender parenting than there are around LGB parents, many transgender parents report challenges in obtaining or keeping custody of their children.

<sup>29</sup> *Varnum v. Brian*, Iowa Supreme Court (April 3, 2009), 54.

<sup>30</sup> *Perry v. Schwarzenegger*, N.D. Cal. (August 10, 2010), 127.



adopting, citing the extensive body of research saying that gay and lesbian parents are equally fit.<sup>31</sup>

**Arguments that children do best with a mother and a father use studies that don't consider LGBT families.** Opponents of LGBT parenting sometimes root their arguments in claims that children need both a mother and a father. Research does indicate that, all else being equal, children fare better with two parents than with only one,<sup>32</sup> yet nowhere does this research indicate that the parents must be of different sexes. Indeed, the research cited by anti-LGBT advocates does not examine LGBT parents at all; it only compares children raised by two heterosexual parents with children raised by single parents. Where studies do compare two heterosexual parents to two parents of the same sex, research uniformly suggests all children are similarly well-adjusted.

### The Effects of Unequal Laws and Stigma

Everyone agrees that children need certain things to thrive. While children have numerous needs, this report loosely groups them into three categories (see *Figure 11*):

- **Stable, loving homes.** Children depend on responsible, loving parents or guardians to protect and nurture them, and to take care of their physical

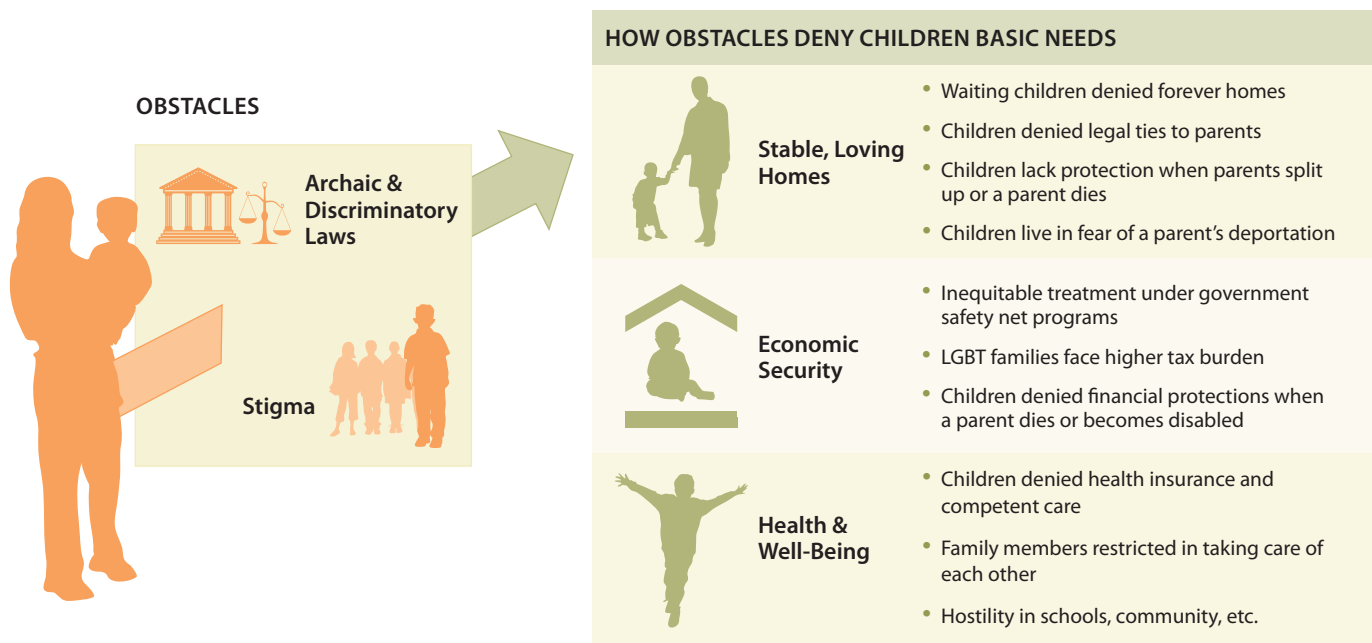
and emotional needs. Stability and love are crucial to the health and well-being of young people. Those who are deprived of these building blocks to success can struggle throughout their lives to thrive.

- **Economic security.** Children have basic needs that can be fulfilled only to the extent that their families are economically secure. These needs include good nutrition, safe and sanitary housing, and clothing. When a child's family faces economic challenges or otherwise falls into crisis, American public policy provides a range of safeguards to help protect children.
- **Physical and mental health and well-being.** Children need affordable and competent health care, supportive schools and a welcoming and accepting community that promotes and supports their psychological and emotional well-being.

<sup>31</sup> *Florida Dept. of Children and Families v. Matter of Adoption*, FL 3d App. Ct. (September 22, 2010). The Third District Court cited the trial court's summary of the research as definitive, stating: "The quality and breadth of research available, as well as the results of the studies performed about gay parenting and children of gay parents, is robust and has provided the basis for a consensus in the field. . . . Based on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption."

<sup>32</sup> It is important to recognize that while children of single parents may be at higher risk of facing certain obstacles, single parents can and do provide stable, loving homes for their children.

Figure 11: Bad Laws and Stigma Deny Children Their Basic Needs





The bulk of this report focuses on how LGBT families often face legal and cultural barriers to meeting their children's needs in each of these three areas. These barriers arise because LGBT parents are members of a legally and socially disfavored minority. Broadly speaking, children with LGBT parents face two major obstacles compared to their peers with heterosexual parents: archaic and discriminatory laws and social and cultural stigma.



### The Effects of Archaic and Discriminatory Laws

State and federal governments have created a wide assortment of laws and policies designed to ensure that children receive adequate care. These laws define who is, or can be, a parent. They outline parents' responsibilities and obligations to their children. They protect children should a parent die or become disabled—or should their parents' relationship dissolve. And they help ease the burden for struggling families and attempt to ensure that children in these families receive proper nutrition, shelter, education and medical care.

Unfortunately, public policy has not kept up with the changing reality of the American family in the 21<sup>st</sup> century. Government safety net programs and laws intended to support and protect children fail to provide equal protections for those who do not live with a married mother and father—including many children with LGBT parents.

To be sure, family law has evolved considerably over the past three decades. Not long ago, children who were born to unmarried parents were dismissed as "illegitimate" and were penalized by the law in their ability to inherit, access government protections and even secure legal recognition as the children of their parents.<sup>33</sup> In the 1970s, these laws began to change.<sup>34</sup> But while the changes in the law ushered some families briskly into the modern world, they only applied to children with heterosexual parents. Today, archaic and discriminatory laws continue to hurt children whose families do not conform to expected norms.

As detailed later in this report, inequitable laws can result in the following harms:

- They deny permanent homes to children in foster care
- They deny children legal ties to their parents

- They fail to protect children when their parents' relationship dissolves or a parent dies
- They deny children's families equal access to government-based economic protections
- They force LGBT families to pay higher taxes than other families in similar economic circumstances
- They make it harder for some children to access health insurance
- They make it harder for members of some families to take care of each other



### The Effects of Social Stigma

Children are social beings. Their physical and mental health is strongly influenced by the quality and quantity of their social interactions.<sup>35</sup> In addition, their social skills critically shape their ability to succeed as adults.<sup>36</sup> Research has shown that healthy social interaction enhances child development and builds self-esteem.<sup>37</sup>

Sadly, children of LGBT parents are more likely than their peers to face uncomfortable or outright hostile social interactions. Although studies have uniformly shown that these children fare just as well as children with heterosexual parents (perhaps because their families teach them to develop impressive resiliency skills)<sup>38</sup> children in LGBT families have to deal with stigma directed at them *and* at their parents. A 2008 study found that 42% of children with LGBT parents were verbally harassed at school over the past year because their parents were LGBT.<sup>39</sup> Such bullying has been

<sup>33</sup> Originally, U.S. family law said that a child born to an unwed mother had no father at all. Nancy Polikoff, "A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century," *Stanford Journal of Civil Rights & Civil Liberties*, 2009, 5:201.

<sup>34</sup> A 1972 Supreme Court decision made it impermissible to deny a father parenting rights because he was not married to the mother and forced states to revise their parenting statutes to ensure that fathering rights were recognized even outside of marriage. Some scholars have called this moment a "legal revolution" in family law.

<sup>35</sup> Mary I. Armstrong, Shelly Birnie-Lefcovitch and Michael T. Ungar, "Pathways Between Social Support, Family Well-Being, Quality of Parenting and Child Resilience: What We Know," *Journal of Child and Family Studies*, 14:2, 2005.

<sup>36</sup> C. Cybele Raver, "Emotions Matter: Making the Case for the Role of Young Children's Emotional Development for Early School Readiness," *Social Policy Report* 16:3, 2002.

<sup>37</sup> Marga Jennifer Azmitia, "Self, Self-Esteem, Conflicts and Best Friendships in Early Adolescence," cited in T. M. Brinthaup (Ed.), *Understanding Early Adolescent Self and Identity: Applications and Interventions*, State University of New York Press, 2002, 167-192.

<sup>38</sup> For example, see Henny M.W. Bos, Nanette K. Gartrell, Heid Peyser and Frank van Balen, "The USA National Longitudinal Lesbian Family Study (NLLFS): Homophobia, Psychological Adjustment, and Protective Factors," *Journal of Lesbian Studies*, 12:4 455-471, 2008.

<sup>39</sup> Survey of LGBT families conducted by Gay, Lesbian and Straight Education Network (GLSEN), COLAGE and the Family Equality Council. Joseph G. Kosciw and Elizabeth M. Diaz, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K-12 Schools*, GLSEN, 2008.

linked to higher absenteeism, increased risky behavior and an erosion of self-confidence. Other research finds that a surprising number of people assume that children of LGBT parents must themselves be LGBT, and that strangers often ask these children invasive and inappropriate questions about their sexual orientation starting at a very early age.

Depending on the community in which they live, LGBT children and their parents may not be welcome in environments ranging from the local grocery store to the doctor's office to the neighborhood sports team. Other parents may not allow friends to visit the homes of children with LGBT parents. And children with LGBT parents may be anxious when meeting new people, where simple questions such as "Where's your dad?" may quickly devolve into a need to explain one's family to a potentially hostile audience. Due to this tension, some children may avoid talking about their family, but feel guilty about this avoidance. Other children report a hyper-protectiveness towards their parents.

While many children with LGBT parents live in communities that welcome and embrace them, for others the discrimination and social stigma associated with being part of an LGBT family can stand in the way of full participation in schools, community and society.

As detailed later in this report, social stigma can result in the following harms. It can:

- Cause qualified applicants to be rejected as foster or adoptive parents
- Result in child custody decisions that are not in a child's best interest
- Mean that families face greater difficulty accessing government-based economic programs and protections
- Force families to navigate unwelcoming or hostile health care providers

### Summing the Inequities: A Story of Two American Families

To understand the specific challenges facing LGBT families, it helps to consider the real-world impact of unequal laws and social stigma. Here we explore the very different experiences of two families with the same starting point and experiencing the same sequence of events, as shown in *Table 2* on the next page. Both are working to raise two happy, healthy, productive children.

The only difference is that one family is headed by a married heterosexual couple (Darren and Angela) and the other is headed by a lesbian couple (Jennifer and Katie).

In Darren and Angela's household, Darren is the primary breadwinner, earning \$40,000 per year, while Angela works part-time. In Jennifer and Katie's household, Jennifer is the primary breadwinner, earning \$40,000 per year, while Katie works part-time.



Darren and Angela have been trying unsuccessfully to have children and ultimately turn to donor insemination. When their children are born, both Darren and Angela are considered the legal parents of the children and are listed on the birth certificate (though only Angela is a biological parent). Jennifer and Katie also have two children using donor insemination. While Katie is the biological and legal parent of both their children, Jennifer is a non-legally recognized parent to her children and has no parental rights under state law.<sup>40</sup> Only Katie is listed on the birth certificate.

Shortly after their children are born, Darren and Angela complete the Social Security card application for their children, listing themselves in the mother/father spots. The cards are processed and returned quickly. When Katie and Jennifer complete the application for their children, they cross out "Father" and list Jennifer as the second mother. The form is returned with a note that only the legal parent can be listed. Katie resubmits the application listing just herself as the mother and the form is accepted.

Both families feel strongly about protecting their children through health insurance. Darren's entire family receives health insurance through Darren's employer. By contrast, Jennifer's job offers health insurance, but not domestic partner benefits or benefits for non-legally related children. This means Jennifer cannot enroll Katie or their children in health insurance. As a result, the family must purchase private health insurance for Katie and both children, costing \$3,105 more per year compared to what Darren's family is paying through his employer-sponsored plan.<sup>41</sup>

<sup>40</sup> Parenting laws are examined in detail in the next section of this report, "Securing Stable, Loving Homes for Children."

<sup>41</sup> The average cost to purchase health insurance for a family of four on the private market is \$7,102 compared to \$3,997 for an employee's portion of the premiums through an employer-sponsored plan. Katie and Jennifer pay \$3,105 more each year because they cannot enroll in an employer-sponsored plan. The Kaiser Family Foundation (KFF), "Survey of People Who Purchase Their Own Insurance," 2010; KFF and Health Research and Education Trust, "Employer Health Benefits: 2010 Annual Survey," 2010.

Table 2: Two American Families, Two Different Outcomes		
 Darren & Angela + Two Children	 Jennifer & Katie + Two Children	Added Financial Burden for Jennifer & Katie Over 18 Years of Raising Children
<b>Giving birth using donor insemination...</b>		
<ul style="list-style-type: none"> <li>• Darren and Angela are the legal parents of their two children.</li> </ul>	<ul style="list-style-type: none"> <li>• Only Katie (the biological parent) is legally recognized as a parent. Jennifer is a legal stranger.</li> </ul>	
<b>Securing health insurance coverage...</b>		
<ul style="list-style-type: none"> <li>• Entire family receives health insurance through Darren's employer-sponsored plan.</li> </ul>	<ul style="list-style-type: none"> <li>• Jennifer's employer-sponsored health insurance does not extend to domestic partners or non-legally recognized children.</li> <li>• The family purchases private health insurance for Katie and both children, costing \$3,105 more per year.<sup>42</sup></li> </ul>	<b>\$55,890</b> (\$3,105 per year across 18 years)
<b>Applying for their children's Social Security cards...</b>		
<ul style="list-style-type: none"> <li>• Darren and Angela listed as father and mother; cards arrive without problems.</li> </ul>	<ul style="list-style-type: none"> <li>• Application with both parents is rejected. Only Katie can be listed on the form.</li> </ul>	
<b>Entering children into a neighborhood child care program...</b>		
<ul style="list-style-type: none"> <li>• Program is welcoming and friendly.</li> <li>• Family is eligible for \$6,000 child care tax credit, saving (when combined with other credits and deductions for children) \$2,215 in taxes each year.</li> </ul>	<ul style="list-style-type: none"> <li>• Family encounters hostile child care providers; only Katie drops off and picks up children.</li> <li>• Family is ineligible for \$6,000 child care tax credit and other child-related deductions and credits, and pays \$2,215 more in taxes each year.</li> </ul>	<b>\$33,340<sup>43</sup></b>
<b>Visiting the ER after child breaks arm...</b>		
<ul style="list-style-type: none"> <li>• Darren takes daughter to the emergency room, consents to medical care and is permitted to stay with her.</li> </ul>	<ul style="list-style-type: none"> <li>• Jennifer takes daughter to the emergency room, but cannot consent to medical care and must wait for Katie to arrive because she is not the legal parent.</li> </ul>	
<b>Entering children in elementary school...</b>		
<ul style="list-style-type: none"> <li>• Teachers and staff are welcoming and supportive; Jennifer serves on the PTA.</li> <li>• The children easily make friends.</li> </ul>	<ul style="list-style-type: none"> <li>• Administration is hostile; teachers are not adequately addressing bullying.</li> <li>• The children report being teased; some classmates kept by parents from playing at the children's home.</li> </ul>	
<b>Dealing with the death of the primary breadwinner (Darren and Jennifer)...</b>		
<ul style="list-style-type: none"> <li>• Angela inherits house and savings despite Darren's lack of a will.</li> <li>• Family receives \$27,936 in annual financial support from Social Security which pays for living expenses.</li> <li>• Receives support from community.</li> </ul>	<ul style="list-style-type: none"> <li>• Katie loses home and savings, which go to Jennifer's parents.</li> <li>• Katie and the children are legal strangers to Jennifer and therefore receive no Social Security survivor benefits; family struggles to make ends meet on Katie's part-time salary.</li> <li>• Family gets little support from school and community.</li> </ul>	<b>\$130,032</b> in lost Social Security survivor benefits <sup>44</sup>
<b>TOTAL DIFFERENCE IN FINANCIAL BURDEN</b>		<b>\$219,262</b>
<ul style="list-style-type: none"> <li>• Adequate income</li> <li>• Sufficient savings</li> <li>• Keep home</li> <li>• Have support</li> </ul>	<ul style="list-style-type: none"> <li>• No income</li> <li>• No savings</li> <li>• No home</li> <li>• No support</li> </ul>	Extra financial burden in health insurance, lost tax credits and lost Social Security benefits. Excludes loss of house and savings due to inequitable estate tax law.

<sup>42</sup> Above n 41.

<sup>43</sup> The child care tax credit is only available for the care of children ages 12 and under. After that, Darren and Angela still save \$909 in taxes each year when compared to Jennifer and Katie. Below n 45.

<sup>44</sup> Below n 46.

When the babies are three months old, each family looks for three-day-per-week child care to allow the non-working parent to return to work part-time. Darren and Angela find warm and welcoming child care providers, and Darren drops the children off while Angela picks them up. The family also takes advantage of the child care tax credit, reducing their federal taxes by \$2,215 each year.<sup>45</sup> By contrast, local child care providers appear hostile when Katie and Jennifer tour the facilities together, so Katie enrolls the children alone and ensures that she drops off and picks up the children to avoid awkward questions. Jennifer pays for the child care expenses, but because she is not the legal parent, she cannot claim the tax credit.

As the children get older, they begin to run and climb and slide down slides. One weekend while at the park with Darren, his daughter breaks her arm. Darren takes her to the emergency room, consents to medical care and is permitted to stay with her as the cast is set. However, when Jennifer's daughter breaks her arm, Jennifer must call Katie to meet them at the emergency room because Jennifer is not a legal parent and cannot consent to medical treatment. Normally, Jennifer carries legal paperwork that grants such authority with her at all times, but this morning they had left for a spontaneous hour at the park and Jennifer did not want to leave her daughter alone in the hospital while she went back to the house to pick up the documents. It takes an hour for Katie, who had driven across town to visit old friends, to make it to the hospital.

Eventually, the children enter elementary school. Teachers and staff welcome Darren, Angela and their children, and Angela serves on the PTA. However, Katie and Jennifer struggle with a hostile administration and teachers who are reluctant to address issues of classroom bullying related to their children being part of an LGBT family. Their children report being teased about their moms and taunted that they must also "be gay." The parents of some of their classmates will not allow the classmates to come to their house to play.

A few years later, Darren dies in a car crash on his way home from work. Following his death, all of Darren's assets are transferred to Angela even though Darren did not have a will. Jennifer and the children stay in their home and receive annual financial support from Social Security survivor benefits in the amount of \$27,936 each year.<sup>46</sup>

Similarly, Jennifer unexpectedly dies of a brain aneurism. Because her will does not have the proper signatories, it is contested by Jennifer's estranged parents,

who disapproved of Jennifer's relationship with Katie. Because Katie and her children are legal strangers to Jennifer, Jennifer's parents win the legal dispute. As a result, the children not only lose a mother, they also lose their family home and do not receive any of Jennifer's savings, which were meant to help pay their college tuition. Additionally, although Jennifer was the primary breadwinner, Katie and the children are all seen as legal strangers and do not receive Social Security survivor benefits.

The net result? Two similar families with similar life events but because one family is heterosexual, Angela and her two children are left with substantial income support, college savings, the family home and a supportive community. The other family is left homeless, penniless and struggling to make ends meet on a part-time income while living in a community that does not support or recognize them as a family.

This is just one illustration of how life is needlessly more difficult for LGBT families and their children—and why Americans can no longer ignore the added challenges and inequities LGBT families face. In reality, thousands of families face aspects of this differential treatment each and every year. The next three sections of this report provide greater detail outlining how and why various obstacles make it harder for children with LGBT parents to have their basic needs met, along with recommendations for action to ensure that our society treats all children equally.

<sup>45</sup> The overall tax savings for Darren and Angela are a result of the child care tax credit and other tax credits and deductions associated with having children and filing a joint tax return, which Jennifer and Katie cannot access. For a detailed analysis of these families' tax bills, see the second section of this report, "Ensuring Economic Security for Children."

<sup>46</sup> This assumes that Darren had an income of \$40,000 when he died and that the children were 13 years old at the time of his death. Both of Darren's children are eligible to receive the children's survivor benefits until age 18, and Angela receives a mother's benefit to help care for the children until they reach 16. For a detailed discussion of these benefits see the second section of this report, "Ensuring Economic Security for Children."





## GOAL 1: SECURING STABLE, LOVING HOMES FOR CHILDREN

Children need the security and emotional support of loving parents or guardians who care for and nurture them—and the stability that comes from knowing that these caregivers will be part of their lives for a long time to come. This section of the report examines laws and practices that attempt to help secure stable, loving homes for children. The laws address such questions as who can be the legal parent or guardian of a child, who can gain custody or visitation rights, and who is responsible for providing financial and other support. We also cover laws that attempt to protect families from being torn apart by the removal of an immigrant parent.

While all of these laws are intended to serve the best interests of children, they too often miss the mark, especially for children whose families fall outside of commonly held notions of what it means to be a “family.” The following are some of the negative consequences of current laws that penalize LGBT and some other kinds of families:

- **Children are denied permanent homes.** Restrictions on foster parenting and adoption by LGBT and unmarried cohabiting adults mean longer waits or the denial of forever homes for the roughly 115,000 children available for adoption in the child welfare system. The harms associated with denying forever homes to children awaiting adoption are numerous and will be detailed later in this section.
- **Children are denied the security of legal ties to parents.** Substantial problems can arise when children lack legal ties to the adults who are raising them—whether they are grandparents, aunts or uncles, LGBT parents, or others. For the roughly one-quarter million children who already live in households headed by same-sex couples, the majority of states fail to ensure that parents are recognized as legal parents, even when both have functioned as parents since a child’s birth. This leaves children without the security of legal ties to a parent who loves and cares for them. Among the protections that may be denied if a parent is not legally recognized are access to various safety net programs, fair and accurate household tax filings,

health insurance coverage, parental decision-making rights, survivor benefits, inheritance rights, and the ability to claim wrongful death and other kinds of damages.

- **Children may be wrested apart from the only parents they have ever known.** Adults do not always agree about who should care for a child. This problem can arise if the parents’ relationship dissolves and a custody dispute ensues, or if one parent dies. In these instances, family law strives to protect the best interests of children by awarding custody and visitation—as well as ensuring appropriate continued financial support for the child. When children cannot rely on the law to honor their ties to those who are or act as their parents, the consequences can be devastating. For example, if a child is being raised by a same-sex couple and the biological parent dies, a non-legally recognized parent can lose custody, severing that child’s relationship with the only remaining parent. Likewise, lack of legal recognition for an existing parent could result in harmful outcomes related to visitation and child support. Additional problems arise for children living in binational families. These children should not have to live in constant fear that one parent may be deported because the relationship between their parents is not recognized by the federal government.

These problems do not apply only to LGBT couples. Unmarried heterosexual couples suffer some, but not all, of the same disparities as same-sex couples. Since parental rights for fathers have historically been tied to marriage, for example, unmarried men whose female partners conceive using donor insemination can lack the parental rights granted to husbands.<sup>47</sup> Obviously, having the right to marry gives these men options that most same-sex couples do not enjoy. Yet not all heterosexual couples wish to, or do, get married, and their children should not lack the essential protections that legal parentage confers.

Since black children experience the highest rates of living with single or unmarried parents, laws that penalize children with unmarried parents also disproportionately impact black children.<sup>48</sup> Unmarried heterosexual

<sup>47</sup> The 1973 Uniform Parentage Act from the National Conference of Commissioners on Uniform State Laws was written to eliminate these disparities (it was last amended in 2002) but not all states have adopted it.

<sup>48</sup> Pew Research Center, “The Decline of Marriage and Rise of New Families,” November 18, 2010, <http://pewsocialtrends.org/2010/11/18/the-decline-of-marriage-and-rise-of-new-families/2/#ii-overview>.



couples in Utah are ensnared in a law that was designed to punish same-sex couples: it bars any individual who is living with an unmarried partner from adopting.

The remainder of this section discusses state laws governing adoption and parenting rights and obligations, as well as federal law meant to keep binational families together. Additionally, it explains how these laws apply to, and too often harm, LGBT and other families. It also describes other barriers (such as cultural, institutional and judicial discrimination) that can prevent children from securing stable, loving homes. The section concludes with recommendations for addressing the disparities that undercut family permanency and make so many children needlessly vulnerable and insecure.

## Challenge: Children Denied Permanent Homes, Legal Ties to Parents

When a child is born to, or adopted by, a married heterosexual couple, that child is generally recognized in all 50 states as the legal child of both parents. By contrast, a child with LGBT parents faces a climate of uncertainty. First, a child awaiting adoption might be denied a forever home simply because the caring adults who want to provide it are an LGBT or an unmarried heterosexual couple.<sup>49</sup> For a child being raised by a same-sex couple, both parents might be considered legal parents in one state, but not in another. The federal government also might not consider both parents to be legal parents even when the state in which the family lives does so.

### Five Pathways to Parenthood

A legal parent is someone who has the right to physical custody over children, who has the right to make decisions on their behalf, and who has financial responsibility for their support.<sup>50</sup> Unfortunately, current parenting law too often reflects a policy preference for married heterosexual couples even though fully a third of U.S. children live in households that do not reflect this family structure.<sup>51</sup> Same-sex couples wishing to start a family may face added burdens because both intended parents cannot be the genetic parents of the child.<sup>52</sup> While not exhaustive, *Figure 12* on the next page shows five major paths to parenthood, and how these paths—and their legal consequences—look different for same-sex couples.<sup>53</sup> Strikingly, for each path to parenthood except surrogacy, married heterosexual parents can be assured of securing legal ties to their children, while same-sex parents in many states have no such assurances.

In short, state laws are sorely inadequate when it comes to establishing legal ties between children and the adults who wish to parent them, or who are already functioning as their parents.

**Path 1: Traditional Conception.** The most common path to parenthood for heterosexual couples is traditional conception and birth with two biological parents who are automatically granted legal parenting rights. While many LGBT adults have children from a prior heterosexual relationship, same-sex couples cannot conceive a child together through traditional conception.

**Path 2: Adoption and Fostering.** Depending on the state, a same-sex couple (or unmarried heterosexual couple) hoping to offer a waiting child a loving home may not be allowed to adopt or foster that child. This is because some states have discriminatory laws or practices in place that block specific categories of prospective parents from adopting or fostering. In some cases, a child may be adopted by one parent but not allowed to become the legal child of the second member of a couple. The result? A child may be denied a forever home—or denied legal ties to one parent.

**Path 3: Blended Families and Stepfamilies.** A heterosexual adult who becomes a stepparent by marrying an existing parent may adopt his or her spouse's child or children in all 50 states (assuming the child does not already have a second legal parent). Many states, however, do not allow a parent's same-sex partner to secure a stepparent or equivalent adoption. This is because stepparent adoption is generally tied to marriage and most states do not recognize the relationships of same-sex couples. The result? A child may be denied legal ties to a second parent who wishes to adopt him or her.









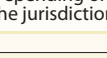


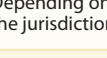


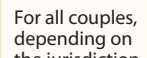
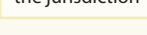
<sup>49</sup> Single parents, especially LGBT ones, face a number of legal and social obstacles. This discussion, however, focuses primarily on children with two parents for the simple reason that the legal disparities we are addressing generally only emerge when two parents are involved and one parent is not a biological or legal parent. These disparities flow from the law's failure to adequately establish legal parent-child ties when parents are of the same sex and/or unmarried.

<sup>50</sup> Nolo, "Gay and Lesbian Adoption and Parenting," [www.nolo.com/legal-encyclopedia/article-29790.html](http://www.nolo.com/legal-encyclopedia/article-29790.html).

<sup>51</sup> The proportion of children living with a parent who has never married has risen steadily in recent years. In some communities of color, the majority of children live in households with only one legally recognized parent. U.S. Census Bureau, "Children and the Households They Live In: 2000," 8, <http://usa.usembassy.de/etexts/soc/censusbriefchildren2000.pdf>; Kreider and Elliott, "The Complex Living Arrangements of Children and Their Unmarried Parents"; Federal Interagency Forum on Child and Family Statistics, *America's Children in Brief*. For 2008 statistics on children living with one parent or unmarried parents broken down by race, see Pew Research Center, "The Decline of Marriage and Rise of New Families."

<sup>52</sup> The exception is a couple with at least one transgender member (see sidebar on transgender parents).

<sup>53</sup> For example, the figure does not outline every possible type of assisted reproductive technology, other types of family formation (such as when an adult becomes a custodian of a child whose parents have died).

Figure 12: Five Paths to Parenthood LGBT Parents Face Landscape of Uncertainty		
Path to Parenthood	Resulting Legal Ties between Parents and Child	
Child born from traditional conception	 Both legally presumed to be the parents  Not applicable	✓
Child joining an adoptive home	 Both become child's legal parents from outset  Both become child's legal parents from outset Depending on the jurisdiction  Only one parent can adopt the child  Neither is allowed to adopt	✓ ✓ ✗ ✗
Child living with blended family	 Stepparent can adopt child  2nd parent /stepparent can adopt child Depending on the jurisdiction  2nd parent must remain legal stranger to child	✓ ✓ ✗
Child born from donor insemination	 Both seen as child's legal parents from birth  Both seen as child's legal parents from birth Depending on the jurisdiction  Only birth mother seen as legal parent at birth but 2nd mother can secure legal ties later  2nd mother must remain legal stranger to child	✓ ✓ ✓ ✗
Child born from surrogacy	 Both intended parents seen as child's legal parents from birth  Only one parent seen as legal parent at birth but 2nd intended parent can secure legal ties later* For all couples, depending on the jurisdiction  2nd intended parent must remain legal stranger to child**	✓ ✓ ✗

Note: This table presumes the heterosexual couple is married. For the same-sex couple, the strongest legal ties to children are usually available when the couple is married or in a legally recognized relationship; the least positive outcomes generally result where couples live in states or jurisdictions with no such recognition.

\* The legal parent would generally be the parent with biological ties to the child, for example, a man contributing sperm who also intends to be the father.

\*\* For example, if the surrogate mother refused to relinquish parenting rights, the intended mother or second father might be unable to gain legal ties to the child.

**Path 4: Assisted Reproduction.** When a child is conceived by a married heterosexual couple using assisted reproduction such as donor insemination, he or she is automatically considered the legal child not only of the mother, but of her consenting husband as well (despite the husband's lack of biological ties to the child).<sup>54</sup> Yet, if a lesbian couple conceives through donor insemination, in many states the birth mother's partner may have no way to establish a legal relationship to the child she has raised since birth. The result? A child may be denied legal ties to one parent.

**Path 5: Surrogacy.** Surrogacy law is complicated regardless of whether the intended parents are a heterosexual or same-sex couple. Contracting with a surrogate parent to carry a fetus to term can also be extraordinarily expensive. However, same-sex couples face extra hurdles in establishing legal ties to children born through surrogacy. The result? A child may be denied legal ties to one or both intended parents.

<sup>54</sup> Analysis of legal recognition for unmarried male partners of women giving birth using donor insemination is beyond the scope of this report.

In sum, state laws may deny children with LGBT or unmarried parents legal ties to adoptive parents, acting stepparents who cannot marry the legal parent, the partner of a birth parent, or to a parent having a child through surrogacy. This can mean that those who act as full parents from a child's birth—supporting their children physically, emotionally and financially and meeting all of the same commitments as married heterosexual parents—may be legal strangers to their own children, with serious consequences for the children's well-being.

### Mechanisms for Securing Legal Ties to Children

Most families do not think twice about how to show the world who the legal parents are in their household. But adoptive families, blended families, dissolving families and families that lack clear legal parent-child ties are likely to encounter this concern throughout their lives.

*Table 3* on the next page provides a comprehensive overview of the various mechanisms through which LGBT parents can attempt to secure legal ties to their children. The table includes a brief explanation of each mechanism, whether it is broadly available, whether it establishes parenting ties from the outset (that is, from the moment the child is born or joins the family, or only after a delay), and whether LGBT parents can feel secure that the mechanism protects their parentage across state lines.

One of the more insidious challenges facing LGBT parents is that they often have no guarantee that their rights as parents will be respected by other states even if they secure these rights in their state of residence. For most Americans, crossing a state border is a minor event. But imagine if moving to or visiting a different state meant wondering whether your child would still be considered your child. For example, a non-biological mother vacationing across state lines might suddenly have to deal with hospital or insurance companies that refuse to recognize her as a legal parent, preventing her from making emergency medical decisions for the child or claiming insurance benefits. Should the family relocate, her children could lose their ability to collect certain benefits, inherit money, or claim financial support from their mother. Such parents can even lose custody rights over their children. For these reasons, legal experts uniformly counsel same-sex couples to obtain a second-parent adoption or parentage judgment (discussed later), even when they are already presumed to be a child's legal parents under their state's law.<sup>55</sup>

The following discussion describes how the law treats LGBT families based on the various paths to parenthood described above. We also cover the ways in which some states are trying to address the lack of parental recognition with improved laws and stopgap remedies such as allowing second-parent adoptions.

### Adoption and Foster Care

While in an ideal world every child would be born into a loving and stable family, the reality is that many parents are unable or unwilling to care for their children.<sup>56</sup> Parents may abandon their children, or children may be removed from home and placed in foster care due to neglect, abuse or other factors. The long-term goal for these children is to establish safety and permanency with an existing parent or relative if possible, but if not, through adoption into a loving forever home.

Only about half of children who go into foster care return to their birth families. In more serious cases of neglect or abuse, or if a child remains in foster care for 15 out of 22 contiguous months because his or her parents cannot provide a safe environment, the state terminates the parents' rights and the child becomes available for adoption.<sup>57</sup> As of 2009, there were more than 423,000 children in foster care; about 115,000 of these were awaiting adoption into forever homes.<sup>58</sup>

**Lack of permanent homes hurts children.** Research clearly shows that children who lack permanent homes are at added risk of major difficulties in transitioning to a healthy adulthood. However, despite the importance of permanency, there is a significant shortage of quality forever homes for children. Of the children currently in the foster care system, 19% are in not in a family home setting. Adding to the problem, children may face years of instability before an adoption becomes final. Of the 115,000 children waiting to be adopted in 2009, the average child had been waiting for over three years (see *Figure 13* on page 23).<sup>59</sup>

<sup>55</sup> Because of the uncertainties surrounding parental recognition for LGBT families, lawyers recommend that non-biological parents in same-sex relationships take the added step of obtaining a court judgment (either of parentage or adoption) deeming them parents of their own children. MAP telephone interview with Julie Shapiro, Professor of Law, Seattle University School of Law, August 10, 2010. Polikoff, "A Mother Should Not Have to Adopt Her Own Child, 258-264; Deborah Wald, "Do I Still Have To Adopt My Own Children?" [www.waldlaw.net/pdf/adoptions\\_essential.pdf](http://www.waldlaw.net/pdf/adoptions_essential.pdf).

<sup>56</sup> Children are removed from their families for any number of reasons, including challenges faced by parents stemming from poverty, imprisonment and mental or physical health struggles. Bias also plays a role. Research shows children of color are disproportionately likely to be removed from their homes, even when their family circumstance is similar to that of a white family.

<sup>57</sup> Adopt Us Kids, [www.adoptuskids.org/resourceCenter/about-children-in-foster-care.aspx](http://www.adoptuskids.org/resourceCenter/about-children-in-foster-care.aspx).

<sup>58</sup> U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2010, [www.acf.hhs.gov/programs/cb/stats\\_research/afcars/tar/report17.htm](http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.htm).

<sup>59</sup> U.S. Dept. of Health and Human Services, "AFCARS Report." Mean is 38 months while the median is 29 months.

Table 3: Securing Legal Ties to Children LGBT Parents May Remain Legal Strangers to Their Children					
Path to parenthood	Options for securing legal ties to children	Explanation of option	Will parents' legal ties hold across state lines?	Do both parents have legal ties from birth/outset?	Is option broadly available to same-sex couples?
Child joining an adoptive home	Individual or single adoption <sup>60</sup>	An individual becomes a legal parent of a child who is not biologically related.  This only makes one adult the legal parent so it is generally not a good option for couples.	✓	N/A  Only establishes legal ties to one parent	✓  Available to single LGBT and heterosexual adults throughout the U.S., but some states prioritize married couples
	Joint adoption by couples	Both members of a couple simultaneously become the legal parents of a child who is not biologically related to either.  This can be expensive; not all couples can afford joint adoption.	✓	✓	✗  Banned in some states and unclear availability in many more
Child living with a blended family	Stepparent adoption	An individual adopts the child of his/her spouse or domestic partner without terminating the rights of the existing parent.  This requires the consent of the existing parent. Unlike other forms of adoption, a home study is generally not required.	✓	N/A	Only available in states with comprehensive relationship recognition <sup>61</sup>
Child born from donor insemination	Parental presumption for recognized couples	Both the biological mother and her spouse or legally recognized partner are presumed to be the legal parents upon the birth of the child.  The presumption is based on the legal relationship of the parents, and is automatic (the couple does not need to fill out forms, pay court fees, etc.)	✗	✓	✗  Only available in states with comprehensive relationship recognition
	Consent-to-inseminate statutes	The spouse or partner of a birth mother obtains legal parentage by demonstrating that she consents to the birth mother's insemination and intends to function as a parent to the child.  This option does not require the couple to be in a legally recognized relationship. The cost and effort required are lower as well—it only requires signing legal papers or in some cases demonstrating consent through behavior.	✗	✓	✗  Not available in most states
Child born from surrogacy	Surrogacy statute or adoption or parentage judgment for intended parents	A woman who is not the intended mother of a child carries and gives birth to the child on behalf of the intended parents. The woman may use her own egg, a donor egg or the intended mother's egg.	?	?	✗  Not available or secure in many states

<sup>60</sup> This report uses "individual" to refer to someone who is living alone or with a partner or spouse but who petitions to adopt individually rather than as a couple, whereas a "single" applicant is someone who petitions individually and is both unmarried and living without a partner. Some states bar unmarried people living with partners from fostering or adopting children, and both Arizona and Utah give preference to married couples over individual or single applicants.

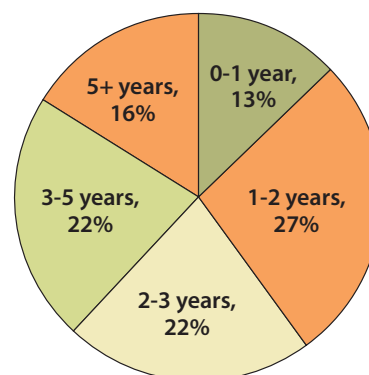
<sup>61</sup> Some judges in states lacking relationship recognition for same-sex couples allow same-sex couples to use the stepparent adoption procedure.

Table 3: Securing Legal Ties to Children LGBT Parents May Remain Legal Strangers to Their Children					
Path to parenthood	Options for securing legal ties to children	Explanation of option	Will parents' legal ties hold across state lines?	Do both parents have legal ties from birth/outset?	Is option broadly available to same-sex couples?
Other paths and options (These stopgap legal remedies can be applied in multiple scenarios)	<b>Second-parent adoption</b>	An individual adopts the child of his/her spouse or partner without terminating the rights of the existing parent.  Unlike a stepparent adoption, a home study is often required. A second-parent adoption can also be expensive and requires the consent of the existing parent.	✔	✘  This process can take several months and cannot take place before the child is born	✘  Not available in many states
	<b>De facto parenting law</b>	An individual who has functioned as a parent of a child gains full or limited parenting rights to that child.  Occasionally, this may occur with the consent of the legal parent (allowing the second parent to gain legal parentage without terminating the rights of the existing parent). Alternatively, in cases of relationship dissolution, a court may award de facto parenting rights against the wishes of the existing parent. Results in a court judgment.	✔  Likely, however this has rarely been tested in practice	✘	✘  Not available in many states
	<b>Parentage judgments</b>	A court issues a judgment that an individual is a legal parent of a child. The judgment must be based on statutory or common law, most commonly a parenting presumption, a consent-to-inseminate law, or a de facto doctrine.	✔  Usually, however judgments based on the relationship status of same-sex parents could face challenge in other states	✘  A few states offer pre-birth parentage judgments, but this is an exception rather than a rule	✘  Generally only available in states with laws that recognize same-sex couples or parents

States in need of adoptive homes for waiting children consistently report that one of the biggest obstacles is finding interested, qualified families who want to adopt.<sup>62</sup> One source of potential adoptive homes is LGBT parents. Research suggests that over one-third of lesbians would like to have children, as would more than half of gay men.<sup>63</sup>

There is widespread agreement among child welfare professionals, supported by decades of parenting research,<sup>64</sup> that children should not be denied a qualified, loving home simply because of the sexual orientation of the parents who want to provide it.<sup>65</sup> Yet unmarried couples and LGBT adoption and foster applicants face a landscape of uncertainty and discrimination that often prevent children from being placed in their homes.

Figure 13: How Long Have Children Awaiting Adoption Been in Foster Care?



Source: U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2010.

<sup>62</sup> Jennifer Ehrle Macomber, C. Scarcella, E. Zielewski and R. Geen. "Foster Care Adoption in the United States: A State-by-State Analysis of Barriers and Promising Approaches," Urban Institute, 2004.

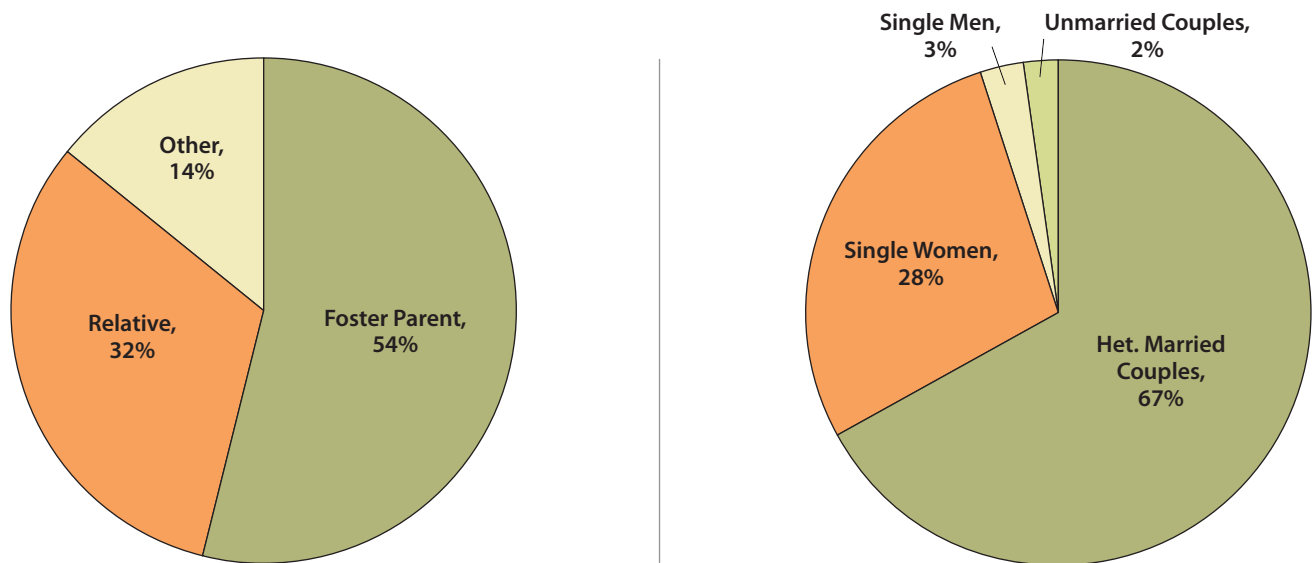
<sup>63</sup> Gates et al., "Adoption and Foster Care."

<sup>64</sup> See discussion of parenting research in this report's introduction.

<sup>65</sup> As described earlier in this report, research shows that gay and lesbian parents provide good homes and that their children are as healthy and as well-adjusted as other children. All mainstream child welfare authorities (including the American Academy of Pediatrics, National Association of Social Workers, Child Welfare League of American, Evan B. Donaldson Adoption Institute, Annie E. Casey Foundation and others) support adoption and fostering by LGBT parents.



Figure 14: Who Adopts Children from the Foster Care System?



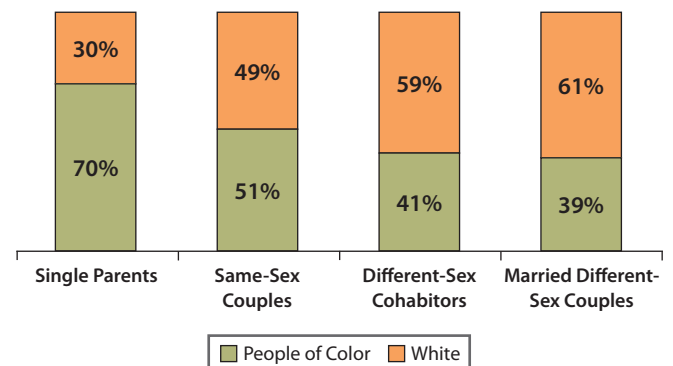
Source: U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2010.

In some cases, prospective parents face state laws that are ambiguous or that formally restrict adopting or fostering by same-sex or unmarried couples. In other cases, hostile, unwelcoming or unknowledgeable agencies and frontline workers may reject LGBT applicants even if state law or policy is silent about, or supportive of, LGBT adoption and fostering. Discrimination against transgender prospective parents can be a particular problem. The result is needless harm to children who may face years of state care, frequent relocation to different foster homes and the absence of stability in their lives.

**Who provides permanent homes to children in foster care?** In addition to providing stable, safe places for children to live on a temporary basis, foster parents also comprise the largest group of individuals who adopt from foster care. In 2009, 54% of children adopted from foster care were adopted by foster parents. Of the 54,407 children successfully adopted from foster care in 2009, one-third were adopted by non-traditional families including single women, single men and unmarried couples (see *Figure 14*).<sup>66</sup> An estimated 14,000 foster children, or 3% of all foster children, currently live with LGB foster parents.<sup>67</sup> Single parents, same-sex couples and unmarried heterosexual couples who become foster parents are more likely to be families of color than married heterosexual couples who foster (see *Figure 15*).<sup>68</sup>

**Who adopts children generally?** Across all adoptions (not just from foster care), almost one-quarter (22%) were by non-traditional families, including 3%

Figure 15: Demographics of Foster Parents, by Family Type



Source: Gary J. Gates, M.V. Lee Badgett, Jennifer Ehrle Macomber and Kate Chambers, "Adoption and Foster Care by Gay and Lesbian Parents in the United States," The Williams Institute and Urban Institute, 2007; calculations revised April 2011.

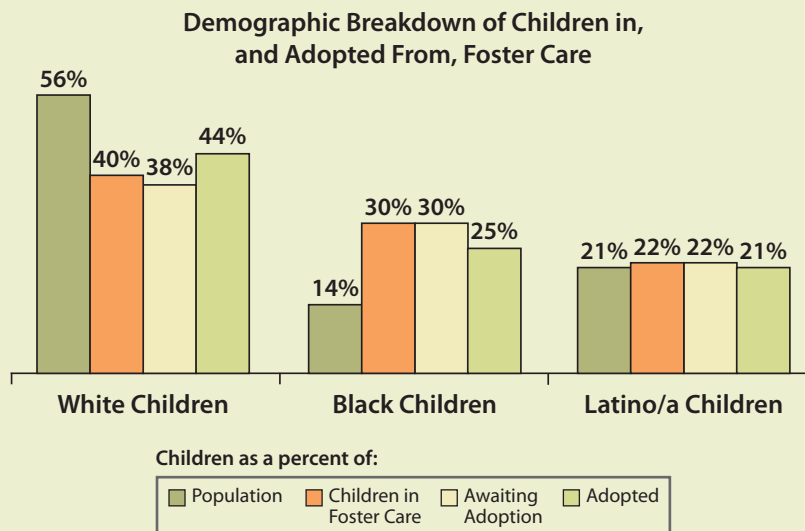
<sup>66</sup> U.S. Dept. of Health and Human Services, "AFCARS Report." Data not available for adoptions by gay and lesbian single adults and couples.

<sup>67</sup> Gates et al., "Adoption and Foster Care"; Evan B. Donaldson Adoption Institute, *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, 2008, 12, [www.adoptioninstitute.org/publications/2008\\_09\\_Expanding\\_Resources\\_Legal.pdf](http://www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf).

<sup>68</sup> Gates et al., "Adoption and Foster Care," Table 10 with calculations revised April 2011.

## Children of Color Are More Likely to Be Placed in Foster Care and Remain There Longer

Research shows that children of color are disproportionately likely to be removed from their homes, as shown at right. Not only are they more likely to be placed in foster care, but, once in foster care, they remain there longer. While the primary goal should be equal and unbiased treatment of all families, denying, for example, a qualified black lesbian couple the opportunity to adopt a niece whose parents cannot care for her, is not in the best interest of the child.



Source: U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2010; U.S. Census Bureau, "ACS Demographic and Housing Estimates," 2005-2009 American Community Survey 5-Year Estimates."

by single lesbians or gay men, and 1 % by gay and lesbian couples (see *Figure 16*).<sup>69</sup> This means that gay and lesbian Americans are already raising an estimated 65,000 adopted children, or 4% of the 1.6 million adopted U.S. children.<sup>70</sup> Research also suggests that LGBT parents may be more willing than heterosexual parents to adopt children with special needs, who are among the most difficult to place.<sup>71</sup>

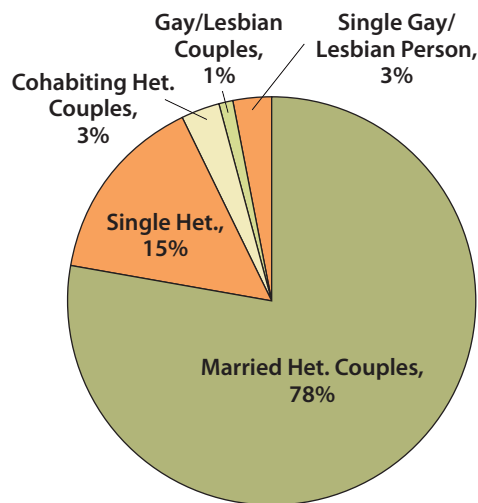
### Adoption by Individuals

Adoption law varies by state.<sup>72</sup> All states currently allow single individuals who are living alone to adopt, and no state has an outright ban on adoption by LGBT individuals.<sup>73</sup> Yet some states bar individuals from adopting if they are unmarried and living with a partner (sometimes called "cohabitating"), and some states give priority to married couples, penalizing single and LGBT applicants. Additionally, LGBT individuals in many states face discrimination from child welfare authorities and judges who can and do block their ability to adopt based on personal views.

<sup>69</sup> *Ibid.*, Table 6-7. Note: figures may not add up to 100% because of rounding.

<sup>70</sup> *Ibid.* Note the caution provided by The Williams Institute about their estimate of the number of adopted children being raised by LGBT parents: "Actual counts (...) do not exist. We derive our estimate using characteristics of same-sex couples identified in the U.S. Census Report and National Survey of Family Growth estimates of the size of the lesbian and gay population in the United States. It is important to remember that these estimates include all adopted children, including those adopted from both public and private adoption agencies, as well as international adoptions and possibly second-parent adoptions of a partner's child. Unfortunately, we are unable to separate out these different kinds of adoptions. Also, these figures do not directly include bisexual adoptive or foster parents."

Figure 16: Who Adopts Children?



Source: Gary J. Gates, M.V. Lee Badgett, Jennifer Ehrle Macomber and Kate Chambers, "Adoption and Foster Care by Gay and Lesbian Parents in the United States," The Williams Institute and Urban Institute, 2007.

<sup>71</sup> Gary P. Mallon, "Assessing Lesbian and Gay Prospective Foster and Adoptive Families: A Focus on the Home Study Process," *Child Welfare* 86, 2007.

<sup>72</sup> The Adoption and Safe Families Act provides federal funding and incentives to encourage family permanency and sets guidelines to ensure safe, speedy and appropriate adoption placements. Each state has its own detailed laws which must comply with federal requirements if the state seeks access to federal funds. Apart from federal funding eligibility, adoption is regulated by state statute, which can vary widely from state to state.

<sup>73</sup> In 2010, a Florida Appeals Court struck down a ban on adoption by anyone who is gay, lesbian or bisexual. The decision is binding on all lower courts, and Florida's Dept. of Children and Families ceased enforcing the ban.

## STRENGTHS

- Adoptions are secure and hold across state lines. An adoption results in a court-issued “adoption judgment.” Adoptions are widely recognized and understood not only by courts but also by people working in schools, hospitals and other institutions where recognizing parent-child relationships can be crucial. As such, adoption is the strongest mechanism for establishing a legal parent-child tie when no blood relationship exists. As a court judgment, adoptions are protected by the U.S. Constitution’s “full faith and credit clause,” meaning that other states must respect the judgment, making the parental tie secure nationwide.<sup>74</sup>

## LIMITATIONS

- Adoption can be expensive and hard to obtain. Adoptions can cost up to \$2,500 when adopting from a child welfare agency, and up to \$40,000 for a private or independent adoption.<sup>75</sup> This may make adoptions inaccessible to lower-income families, who are disproportionately families of color. Adoptions also often require many steps including a home study, extensive application forms and long wait times.

## AVAILABILITY

- States that support adoption by LGBT parents. About a fifth of U.S. states have laws or policies forbidding discrimination against foster and/or adoption applicants on the basis of sexual orientation, and a few of these states also include gender identity in these laws. The specific protections vary by state.<sup>76</sup>
- States that hinder adoption by LGBT parents. While no state bans adoption by LGBT individuals living alone,<sup>77</sup> some states have statutory or regulatory restrictions or practices that hinder the actual availability of adoption for LGBT applicants. For instance, Arizona and Utah both give preference to married adoption applicants, penalizing those who apply as individuals. In Utah, state law also bars an unmarried person from adopting (as an individual or jointly) if he or she is living with a partner.<sup>78</sup>

### Joint Adoption by Couples

A joint adoption allows both members of a couple to simultaneously adopt a child, creating legal ties to two

non-biologically related parents from the outset and in just one step. All 50 states allow married heterosexual couples to jointly adopt children. Yet the ability of same-sex couples (and also unmarried heterosexual couples) to obtain a joint adoption is uncertain in many states and jurisdictions—and most foreign countries also ban such couples from joint adoption. Other states have no explicit laws addressing adoption by same-sex couples, leaving decisions on these matters up to child welfare agencies and judges, who may give preference to married couples and/or reject LGBT applicants based on personal views.

## STRENGTHS

- Joint adoptions are secure and hold across state lines. See “Adoption by Individuals,” above.
- Joint adoptions create ties to both parents from the outset. A joint adoption allows both intended parents to adopt a child simultaneously, meaning a child has legal ties to both parents who intend to raise him or her from the moment she joins the home.

## LIMITATIONS

- Joint adoptions can be expensive and hard to obtain. See “Adoption by Individuals,” above.

## AVAILABILITY

*Figure 17* on the next page provides a snapshot of state law on joint adoption, which is described in more detail below.

States that allow joint adoption by same-sex couples statewide. Seventeen states plus the District of Columbia (D.C.) have laws ensuring availability of

<sup>74</sup> While adoptions should establish an uncontestable legal parent-child tie, this firm legal principle has recently come under increasing attack. A federal court recently upheld the right of Louisiana to name only one parent on the birth certificate of a Louisiana child adopted jointly by a gay couple in New York.

<sup>75</sup> U.S. Dept. of Health and Human Services, Child Welfare Information “Funding Adoption: Adoption Packet 2,” February, 2011, [http://www.childwelfare.gov/pubs/adoption\\_gip\\_two.pdf](http://www.childwelfare.gov/pubs/adoption_gip_two.pdf).

<sup>76</sup> The states are California (includes gender identity), Connecticut, Maryland (adoption only), Massachusetts, Nevada (adoption only), New Jersey, New York, Oregon, Rhode Island (includes gender identity) and Wisconsin. Note that Connecticut law explicitly allows consideration of the sexual orientation of prospective adoptive parents. While this means that, theoretically, LGBT people may face discrimination in placement decisions, the legal provision cuts both ways, in that it also appears to allow agencies to take into consideration the unique needs of an LGBT youth in need of an appropriate, loving home. MAP’s list is compiled from three sources as well as examinations of state laws and regulations: ACLU, “Too High A Price: The Case Against Restricting Gay Parenting,” 2nd Edition, 2006, 6-11, [www.aclu.org/files/images/asset\\_upload\\_file480\\_27496.pdf](http://www.aclu.org/files/images/asset_upload_file480_27496.pdf); Family Equality website, [www.familyequality.org/pdf/foster\\_withcitations.pdf](http://www.familyequality.org/pdf/foster_withcitations.pdf); Courtney G. Joslin and Shannon P. Minter, *Lesbian, Gay, Bisexual and Transgender Family Law*, 2010, 108-110.

<sup>77</sup> Again, a Florida court struck down a ban on adoption by anyone who is gay, lesbian or bisexual.

<sup>78</sup> The law in Utah states that a “child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.” Ut. Code §78-30-1, [http://law.justia.com/utah/codes/title78/78\\_29002.html](http://law.justia.com/utah/codes/title78/78_29002.html).





view on whether this necessarily excludes same-sex couples.<sup>83</sup> There is little or mixed case law in such states.<sup>84</sup> Adding to the sense of uncertainty, some states give agencies the right to consider sexual orientation and moral or religious concerns in placement decisions, while others give preference to married couples, which penalizes LGBT applicants.

While the actual experience of same-sex couples seeking to adopt can vary even in states where law and policy are clear, the situation can be even more unpredictable in uncertain states. Sometimes, couples have been rebuffed in court when trying to secure a joint adoption, while other times they may need to choose a supportive agency or jurisdiction because different judges interpret statutes or prior court rulings differently. The upshot is, that across the country, same-sex couples hoping to expand a family through adoption must do so with a roll of the dice, never sure if both partners will be able to become the legal parents of their child.

### Foster Care

A child enters foster care when his or her existing parents are unable to provide adequate care and the child is placed in the home of a certified caregiver referred to as a “foster parent.” The federal government sets broad foster care guidelines, with each state creating a detailed set of policies and regulations that often grant substantial policymaking authority to state social services departments.<sup>85</sup> These departments govern why, how and when a minor is to be removed from a parent or guardian and placed in a foster home. Social services departments also detail foster care licensing requirements and who may serve as foster parents.

While only a handful of states restrict or ban fostering by LGBT individuals or couples, the silence of most state laws and regulations toward LGBT fostering creates uncertainties about whether they will be able to foster. Furthermore, even where no bans exist, many individuals or couples may be disqualified from fostering in practice.

### AVAILABILITY

States that protect fostering by LGBT people. Eight states have policies barring or restricting discrimination on the basis of sexual orientation for foster care placement: California (includes gender identity), Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island (includes gender identity) and Wisconsin (see *Figure 18* on the next page).<sup>86</sup>

States that restrict fostering by same-sex couples. Laws and policies in two states restrict or ban fostering by LGBT adults.

- Nebraska’s Department of Social Services issued a directive that those “who identify themselves as homosexuals” will not be granted foster licenses,<sup>87</sup> although the level of enforcement of this policy is unclear.<sup>88</sup> This directive appears to apply both to LGB individuals and same-sex couples.
- Utah bans fostering by unmarried cohabiters and gives preference to married couples over single adults.<sup>89</sup>

States with uncertain availability of fostering by same-sex couples. Since most state regulations do not explicitly address fostering by same-sex couples and most states do not have definitive legal rulings, the remaining states and D.C. generally leave it up to each individual agency to approve or deny foster parents based on the agency’s evaluation.<sup>90</sup> In these “uncertain” states, it is unclear whether or not a same-sex couple will be allowed to foster. Experiences of couples vary from state to state and even within a state. A couple approved by one agency might be denied by another in the same state or even the same jurisdiction.

### Who Decides? The Reality of Adoption and Foster Care Practices

Silent, ambiguous or conflicting laws, policies and case law mean that decisions about who may adopt or foster children are often left to individual agencies and judges thereby allowing personal and moral beliefs to block placing children with LGBT parents.

<sup>83</sup> Perhaps because of these statutes, state officials and media reports sometimes assert that joint adoption for unmarried and/or same-sex couples is prohibited, when in fact no court has definitively ruled on how to interpret the statute’s language.

<sup>84</sup> Some intermediate-level courts have ruled against certain kinds of same-sex couple adoptions, which casts doubt on whether those states would allow same-sex couples to obtain joint adoptions. These include Kentucky, Nebraska, Ohio and Wisconsin.

<sup>85</sup> The U.S. Dept. of Health and Human Services monitors each state’s foster care services via field reviews such as Child and Family Services Reviews, Title IV-E Foster Care Eligibility Reviews, AFCARS and Statewide Automated Child Welfare Information System Assessment Reviews.

<sup>86</sup> Above n 76.

<sup>87</sup> Child Welfare League of America and Lambda Legal, “Combating Misguided Efforts to Ban Lesbian and Gay Adults as Foster and Adoptive Parents,” 2009; Donaldson Institute, *Expanding Resources II*, 2008, 17.

<sup>88</sup> CWLA/ Lambda Legal, “Combating Misguided Efforts,” 2009. See also Gates et al., “Adoption and Foster Care,” 2007.

<sup>89</sup> The voter-approved Arkansas law banning cohabiting adults from adopting also banned them from fostering but, as mentioned earlier, was recently struck down by the state’s Supreme Court.

<sup>90</sup> North Dakota explicitly permits agencies not to place children with foster families if it violates the agency’s moral or religious beliefs, though it does not ban such foster families statewide, Senate Bill 2188 Section 50-12-03, [www.legis.nd.gov/assembly/58-2003/bill-text/DRBR0100.pdf](http://www.legis.nd.gov/assembly/58-2003/bill-text/DRBR0100.pdf). The law applies to child placement and licensure, and according to Family Equity Council, also to fostering.





## How the Adoption and Fostering Process Works

In the U.S., adoptions are usually facilitated through a public or private agency that is licensed by the state. Most states also allow “independent adoptions,” where no agency is involved but where the parties rely on lawyers to ensure that all rights and obligations are met, and that the adoption is consistent with state law.<sup>96</sup>

One may adopt from birth (in which case the preparations have been made during a pregnancy to adopt a particular infant) or one may adopt an older child from the child welfare system or foster care. Whether one fosters, adopts or “fost-adopts” (which means fostering when the likely outcome is a permanent adoption by the same parents) depends in part on whether the parental rights of the birth parents have been permanently terminated or only temporarily relinquished.<sup>97</sup>

No one has an absolute right to adopt; rather, each state’s laws outline who may petition to adopt. In addition, the adoption process requires a judge to interpret state law and apply it to each petition. Anyone who wishes to adopt is required by law to undergo a “home study” in which licensed agencies educate prospective parents about the adoption process and assess the home and fitness of the adoptive family. After the home study, applicants are certified and then placed on a list of eligible adopters. As children become available (upon termination of the birth parents’ rights), agencies select eligible adopters for a given placement, which then need to be approved by a court judgment.

Adoption can be expensive. Estimates for private and international adoptions can top \$30,000. The costs associated with adoption include home study expenses (which may range from \$1,000 to \$3,000), legal fees, court documentation and legal representation (which may cost between \$3,000 and \$14,000). Additional fees may be associated with adopting a newborn child (\$5,000 to \$40,000), adopting a child from foster care (up to \$2,500) or adopting a child from another country (\$7,000 to \$30,000). In states where LGBT people and same-sex couples can adopt through child welfare agencies, these adoptions are generally less costly, with most costing less than \$2,500.<sup>98</sup>

## Barriers in Practice: What Agencies and Individuals do to Restrict Placement of Children with LGBT Adoptive or Foster Parents

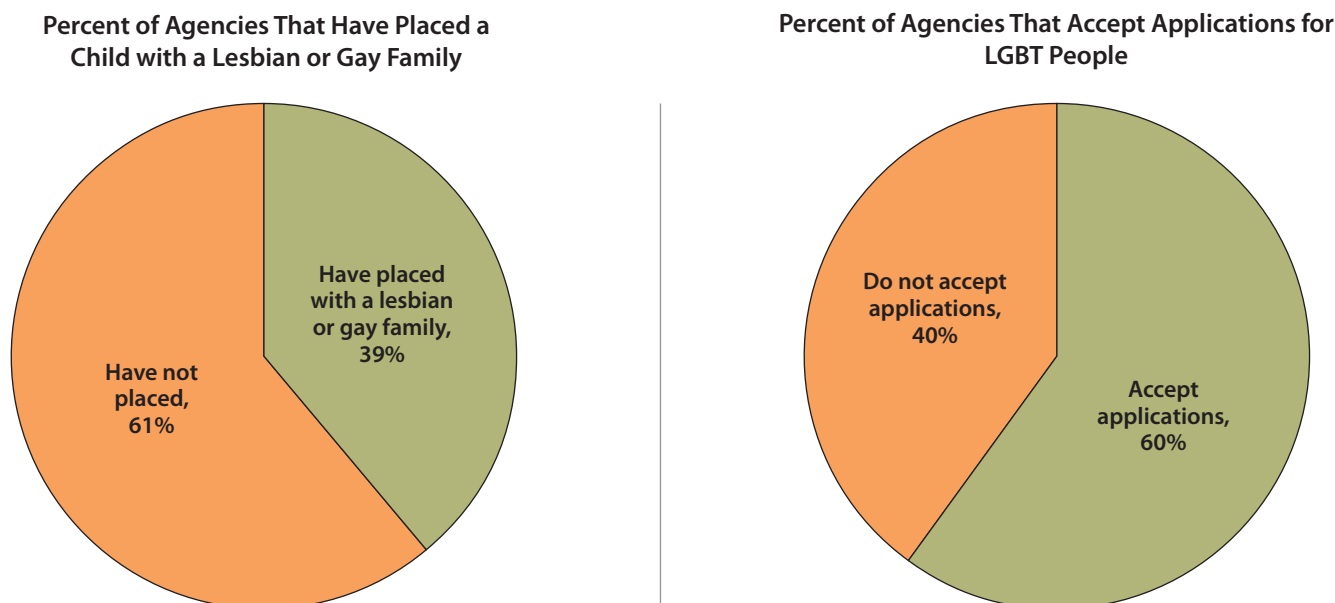
1. Ignore non-discrimination law or policy by citing other reasons for rejecting applicants.
2. Delay the processing of LGBT applicants.
3. Subject LGBT applicants to heightened scrutiny or different screening practices.
4. Produce weak home study reports that fail to communicate an applicant’s strengths.
5. Treat LGBT applicants as families of last resort by only recommending difficult-to-place youth.
6. Rule against placements that serve the best interests of children because of bias.
7. Fail to provide an LGBT-affirmative climate by using questions or forms designed for heterosexual couples or heterosexual singles.
8. Fail to create an agency infrastructure that ensures adequate communication of a non-discrimination policy.
9. Fail to hire or train staff who are LGBT or LGBT-affirmative.
10. Fail to reach out to LGBT communities to seek permanent homes for waiting children.

<sup>96</sup> National Adoption Information Clearinghouse, “Legal Issues of Independent Adoption,” <http://library.adoption.com/articles/legal-issues-of-independent-adoption.html>.

<sup>97</sup> For instance, China requires agencies to represent that adoptive parents are heterosexual. David M. Brodzinsky and Evan B. Donaldson Adoption Institute, “Adoption by Lesbians and Gays: A National Survey of Adoption Agency Policies, Practices, and Attitudes,” 2003, [www.adoptioninstitute.org/whowe/Gay%20and%20Lesbian%20Adoption1.html](http://www.adoptioninstitute.org/whowe/Gay%20and%20Lesbian%20Adoption1.html).

<sup>98</sup> U.S. Dept. of Health and Human Services, “Funding Adoption.”

Figure 19:



Source: David M. Brodzinsky and Evan B. Donaldson Adoption Institute, "Adoption by Lesbians and Gays: A National Survey of Adoption Agency Policies, Practices, and Attitudes," 2003.

### Agency and Frontline Worker Obstacles

Both public and private agencies screen and then certify or license prospective adoptive and foster parents. The certification or licensing process varies by state, but may involve a written application, classes, orientation, a home study, background checks, reference checks and health exams. The entire process generally takes between two months and a year (see sidebar). Final placement requires a court approval.

During this process, agencies, individual frontline workers and family court judges have ample opportunity to discriminate against LGBT applicants if they so desire. These individuals and agencies can go so far as to circumvent equal treatment policies by, for example, failing an LGBT applicant on a home study where a heterosexual applicant with similar circumstances would pass.

A 2003 survey by the Evan B. Donaldson Adoption Institute found that while just over 60% of agencies were willing to accept LGB applicants, only 39% had knowingly made such placements (see *Figure 19*).<sup>99</sup> Only 19% of agencies in the Donaldson study said they actively recruit LGB households for adoption, though a significantly higher percentage of agencies that focused on children with special needs conducted LGB outreach efforts (32%). Highlighting the challenges of outsourcing government social services to religious

organizations, virtually none of the Baptist, Catholic, Mormon, Methodist or Evangelical organizations in the survey would place children with same-sex couples.<sup>100</sup> Buttressing the findings of the Donaldson survey, research shows that LGB prospective foster parents report agency discrimination as a key obstacle to successful placement.<sup>101</sup>

Child advocates also report that some states have issued discriminatory instructions to agencies, essentially creating a "de facto" LGBT fostering ban even when no statutory or regulatory policy exists. For instance, some legal experts report that the Virginia Attorney General's office and the state of Missouri have instructed agencies not to consider applicants who are LGBT.<sup>102</sup>

Even where discrimination against LGBT applicants is banned by state law or agency policy, workers may not know, or may deliberately ignore, what the law or policy says. In one survey of adoption agencies, respondents erroneously cited state bans on LGBT adoption even when they did not exist, or said they were uncertain about their state's law on the matter.<sup>103</sup> Frontline workers may make bad decisions because they do not know

<sup>99</sup> Brodzinsky and Donaldson Adoption Institute, "Adoption by Lesbians and Gays," 24.

<sup>100</sup> *Ibid.*, 33-36.

<sup>101</sup> A.C. Downs and Steven E. James, "Gay, Lesbian, and Bisexual Foster Parents: Strengths and Challenges for the Child Welfare System," *Child Welfare*, March/April 2006.

<sup>102</sup> MAP telephone interview with Flor Bermudez, Lambda Legal, November 29, 2010.

<sup>103</sup> Brodzinsky and Donaldson Adoption Institute, "Adoption by Lesbians and Gays," 25, 37.

## A Child's Best Interests? Judicial Prejudice Uproots a Baby Girl from Loving Parents



Jeff Riedel/Contour by Getty Images

Kathryn Kutil and Cheryl Hess struggled to keep their family together after a court denied them custody because they were lesbians.

When “Baby Girl C” was born to a drug-addicted mother in 2007, the infant tested positive for cocaine and oxycodone and was removed from her mother’s custody. At two weeks old, the West Virginia Department of Health and Human Resources placed her in the home of a lesbian couple, Kathryn Kutil and Cheryl Hess, who were approved by the state for both foster care and adoption. But a month later, a temporary legal guardian appointed by the court filed a motion to remove the girl from the only home she’d known because the guardian believed she should not be raised in a “homosexual home” because it would be “detrimental to the child’s overall welfare and wellbeing.”

Although joint adoption by unmarried couples is not explicitly permitted in West Virginia, one of the women intended to adopt Baby Girl C, and both would have if allowed. The court guardian acknowledged that her current home appeared “to be comfortable and physically safe.” Also, according to court records, “all the evidence indicates that they have done very well and have provided very well for” the girl.

Despite this, in late 2008 a Circuit Court ordered that one-year-old Baby Girl C be uprooted from her home and placed in a new, temporary home of a married heterosexual couple who expressed interest in adopting her. The court found that “it is in the best interest of children to be raised by a traditionally defined family, that is, a family consisting of both a mother and a father.” The court based its decision, in part, on the fact that a same-sex couple could not jointly adopt, and a child should not be “locked into a single-parent adoption.”

Shortly after the child was removed from her home, the married couple decided not to adopt her and returned her to the care of Kathryn and Cheryl, supported by an emergency court suspension of the removal order. Ultimately, the West Virginia Supreme Court of Appeals permanently overturned the removal order from the Kutil-Hess home, but not before the family was put through the harrowing ordeal of a forced separation and over a year of anxious waiting to learn whether they could continue living together as a family.

Adapted from *Kutil-Hess v. Judge Blake WV Ct. Appeals* (June 5, 2009).

that research and experience supports LGBT parenting. Research has found that the personal biases of workers can affect placement when, for instance, a worker rejects or declines to seek out LGBT families for adoption because of skepticism of their parenting abilities.<sup>104</sup> It is difficult to track anti-gay bias because workers and agencies may cite other reasons for rejecting LGBT applicants. Parents can be placed into an unofficial pecking order in which LGBT prospective parents are used as a community of last resort. Some caseworkers also create an unofficial pecking order within the LGBT community itself, with greater openness to placing children with a lesbian couple or single lesbian than a gay man couple, a single gay male, or a transgender person.

Transgender parents can face particular difficulties. In most states, law and policy are silent on the issue of adoption and fostering by transgender individuals, yet those who are visibly gender non-conforming (or who are “discovered” to be transgender during home study and other checks) may face extreme hostility, even when adopting as individuals. Questions surrounding their gender and health can be particularly intrusive. Documents that flag someone as having changed their gender, for instance, can become weapons used to reduce the applicant’s chances of successful placement.<sup>105</sup>

<sup>104</sup>Scott D. Ryan, Sue Pearlmutter and Victor Groza. “Coming Out of the Closet: Opening Agencies to Gay and Lesbian Adoptive Parents,” 2004, *Social Work* 49 (1):85-95.

<sup>105</sup>U.S. Dept. of Health and Human Services, Administration for Children and Families, “The Adoption Home Study Process,” [www.childwelfare.gov/pubs/f\\_homstu.pdf](http://www.childwelfare.gov/pubs/f_homstu.pdf).





## STRENGTHS

- Stepparent adoption is secure and holds across state lines. Stepparent adoptions result in an adoption judgment, creating parenting ties that should be recognized nationwide under the Constitution's "full faith and credit" clause.<sup>111</sup> See "Adoption by Individuals."
- Stepparent adoptions are more accessible than other types of adoptions. The streamlined process and generally lower cost of stepparent adoption make it more accessible to a wide range of families, including low-income families who are disproportionately families of color.

## LIMITATIONS

- Stepparent adoptions require the parents to be in a marriage or equivalent relationship. This requirement not only hurts same-sex couples whose relationships are not recognized in most states, but also hurts unmarried heterosexual couples (also disproportionately couples of color). Although similar data is not yet available for same-sex couples, black Americans in the population at large are only half as likely as white Americans to marry.<sup>112</sup>

## AVAILABILITY

States that recognize same-sex stepparents for the purpose of a stepparent adoption. In the 15 states and D.C. that offer the freedom to marry or comprehensive relationship recognition, a same-sex partner can seek a stepparent (or equivalent)<sup>113</sup> adoption (see *Figure 20* on the previous page). Note that the term "stepparent" traditionally has applied only to married people; however, same-sex couples in comprehensive domestic partnerships or civil unions can also use stepparent adoption law to adopt their children.

States that do not recognize same-sex stepparents for the purpose of a stepparent adoption. In the 35 remaining states, same-sex partners cannot become legal stepparents because they cannot marry or become a domestic partner (though some states and jurisdictions may allow LGBT stepparents to complete a second-parent adoption to similar effect).<sup>114</sup>

<sup>111</sup>Note that even these adoptions are not necessarily fully secure, as courts in states that do not recognize the marriages through which stepparent adoptions are granted could still attempt to challenge the adoption itself. Legal experts, however, say the U.S. Constitution's "full faith and credit" clause ought to protect such adoptions nationwide.

<sup>112</sup>Pew Research Center, "The Decline of Marriage and Rise of New Families."

## Assisted Reproduction

### Donor Insemination

Each year in the U.S., an estimated 30,000 babies are born using donor insemination, where a woman conceives using sperm donated by someone she may or may not know.<sup>115</sup>

Although all states have parentage statutes that specify how to determine the legal parents of a child,<sup>116</sup> many of these laws are outdated and insufficient to cover the range of modern reproductive technologies and the families who use them<sup>117</sup>; this, in turn, creates needless confusion, uncertainty and custody battles.<sup>118</sup> This section of the report examines when and how two lesbian mothers might be legally recognized as parents upon the birth of their child through donor insemination.

### PRESUMPTION OF PARENTAGE

In most states, if a married heterosexual woman bears a child using donor insemination, the law automatically "presumes" that the woman's husband, not the donor, is the legal father. The law's automatic presumption that the husband is a legal parent upon the baby's birth is known as a "presumption of parentage." The question of whether, how and for how long a donor may "rebut," or challenge, that legal presumption varies by state.

Unfortunately, the female partner of a woman giving birth by donor insemination generally enjoys a presumption of parentage only if she lives in one of the minority of states that offer marriage or comprehensive relationship recognition for same-sex couples—and if she and her partner are in a legally recognized

<sup>113</sup>National Center for Lesbian Rights, "Legal Recognition of LGBT Families," 2011. The states that offer comprehensive relationship recognition in the form of domestic partnerships or civil unions generally allow same-sex partners all the same rights as legal spouses. Thus, partners in such relationships have access to the stepparent adoption process, although some may not refer to this as a "stepparent" adoption because that term historically has referred to someone who is married to a parent. In addition, some states that do not offer marriage or comprehensive relationship recognition nevertheless allow a same-sex partner to use the stepparent adoption process to adopt a partner's child, or to allow a second-parent adoption which, while it is often more cumbersome and expensive, has the same effect as a stepparent adoption.

<sup>114</sup>To circumvent this limitation in the law, some same-sex couples may be able to undergo a process called a second-parent adoption, discussed next. However, second-parent adoptions are not an option for many same-sex couples.

<sup>115</sup>Jennifer Egan, "Wanted: A Few Good Sperm," *New York Times Magazine*, March 19, 2006; Liza Mundy, *Everything Conceivable: How Assisted Reproduction is Changing Our World*, Anchor Books, 2007.

<sup>116</sup>Above n 48. The Uniform Parentage Act was amended most recently in 2002, at which point 19 states had adopted it in some form; others have adopted various provisions of the law.

<sup>117</sup>Center for American Progress, "Parentage Determinations," December 17, 2007, [www.americanprogress.org/issues/2007/12/parentage.html](http://www.americanprogress.org/issues/2007/12/parentage.html).

<sup>118</sup>Over the last decade, two of the largest and most prestigious American legal organizations, the American Bar Association and the National Conference of Commissioners on Uniform State Laws, have both approved model laws that provide for recognition of non-biological parents in LGBT families, suggesting the legal mainstream has embraced the need to modernize such law. Polikoff, "A Mother Should Not Have to Adopt Her Own Child," 236.

relationship. Furthermore, even when a lesbian spouse or partner is granted a presumption of parentage, the child lacks the security of a similar presumption granted to a heterosexual family. Why is this so?

The difference between a heterosexual couple's presumption of parentage and that granted to a lesbian couple stems from the fact that a parenting presumption requires no court judgment but is instead a legal assumption derived through a state's parenting statute. This is significant because the Constitution's "full faith and credit" clause only requires states to honor one another's *court judgments*—such as an adoption judgment or parentage judgment. It does not require that they honor other states' statutes, such as a parental presumption law.<sup>119</sup> This means that even if two same-sex parents are recognized as birth parents in Vermont, if the family moves to (or even travels to) another state, one parent might lose legal standing. This is a problem for same-sex versus heterosexual couples because the presumption of parentage is based on the legal relationship of the parents, and the majority of states do not recognize the relationship of the same-sex couple. Thus, a same-sex couple may be considered married in Vermont but legal strangers in another state. While Vermont may honor the parenting presumption that flows from that relationship, another state may not.

### STRENGTHS

- Presumption is automatic based on the relationship of the couple having a child (that is, the couple does not need to do anything for both parents to be presumed legal parents).
- It is free (so there is no barrier to parentage rights based on income which disproportionately affects parents of color).
- It applies from the outset (there is no delay following the baby's birth).

### LIMITATIONS

- Parentage presumptions may not hold across state lines. A parentage presumption does not result in a court judgment but derives from the legal relationship of the couple. Since most states do not recognize lesbian couples, lawyers advise lesbian parents to secure their parentage rights through a parentage judgment or second-parent adoption (discussed in "Stopgap Remedies") even if they live in a state where the parentage presumption applies.

## Mother Adopts Her Child to Secure Parenting Rights



Photo by Leslie Von Pless. Reprinted with permission from Lambda Legal.  
Tevonda Hayes Bradshaw (center, partly obscured) and Erica Bradshaw (left) with their son, Teverico. Erica was forced to undergo fingerprinting so that she could become a legal parent to her son.

Tevonda Hayes Bradshaw and Erica Bradshaw live in New Jersey with their infant son, Teverico Barack Hayes Bradshaw. Tevonda and Erica are in a civil union in New Jersey, but they know that civil unions aren't well understood and aren't always recognized out-of-state. So, even though both Tevonda and Erica are legally presumed to be Teverico's parents, they have spent time, energy and money to ensure that they have multiple legal documents to protect both their relationship and their legal ties to their son. For example, just months after Teverico's birth, Erica had to undergo a court-related examination of her background, including being fingerprinted, so that she could officially adopt Teverico.

Adapted from *Garden State Equality, et al. v. Dow, et al.*, Complaint for Declaratory and Injunctive Relief, New Jersey Superior Court, filed by Lambda Legal (June 29, 2011).

- Parentage presumptions are usually open to challenge. A parentage presumption is just that—a presumption. Therefore, it is often rebuttable, which means it grants parentage only so long as someone else does not successfully challenge (or "rebut") the presumption in court, including, for example, the biological mother who may attempt to deny the parentage of her partner in case of a relationship dissolution.
- It requires that the parents be in a marriage or equivalent relationship.

<sup>119</sup> Article IV, Section 1 of the U.S. Constitution states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

## AVAILABILITY

States with parenting presumption laws that recognize the parentage of same-sex spouses or partners. In the 15 states and D.C. with marriage or comprehensive relationship recognition (except Iowa),<sup>120</sup> the law grants lesbian couples in such relationships the presumption of parentage when they have a child using donor insemination (see *Figure 21* on the next page). This means that both partners are presumed to be full legal parents so long as no one else (such as the donor) successfully challenges that status.

States that do not grant parenting presumption to same-sex couples. In Iowa and the 35 states that do not recognize the relationships of same-sex couples, the lesbian partner of a mother giving birth using donor insemination is not presumed to be a parent.<sup>121</sup> The partner would therefore need to pursue other mechanisms to establish parentage if available, otherwise she will remain a legal stranger to her child.

## CONSENT-TO-INSEMINATE LAWS

Some states have what's known as "consent-to-inseminate" laws that define when and how to grant parentage to the partner (or spouse)<sup>122</sup> of a birth mother using donor insemination. Generally, these provisions grant legal parentage when two criteria are met. First, the partner or spouse of the birth mother must demonstrate intent to parent the child. Second, the birth mother must demonstrate that she consented to her partner or spouse becoming the child's parent.

Consent-to-inseminate laws can protect children by creating full, legal parenting ties to the non-biological parent. This creates safeguards for the entire family. For example, consider a heterosexual couple that has a baby using donor insemination but is now in the throes of divorce. If the state has no law clarifying the husband's parental status, the mother may attempt to deny him custody or visitation by challenging his parentage (since he is not biologically related to the child) or the husband may attempt to deny responsibility for the child (claiming he never intended to parent a child who was "not his".) Consent-to-inseminate laws help prevent such complicated scenarios by documenting the parentage intent of the couple and granting parenting rights and responsibilities accordingly.

Children in LGBT families need these protections too, and for lesbian couples such laws can provide a way for the non-biological mother to become a legal

parent. Unfortunately, even when states have consent-to-inseminate statutes, most do not explicitly include same-sex couples. There is uncertain legal precedent to determine if courts will apply existing statutes—many of which are written in gendered terms to only include "men" or "husbands."

## STRENGTHS

- It is easy to obtain. Generally, the couple simply signs a form, and there are no complicated home visits or court appearances.
- It is free or low-cost, so there is no barrier to parentage rights based on income.
- It creates two legal parents at the time of the baby's birth. There is no delay in which one parent is not a legal parent.
- It may not require the couple to be in a formal relationship. These statutes can provide parentage for lesbian mothers in states with or without relationship recognition. Additionally, such statutes could cover all couples including unmarried partners.

## LIMITATIONS

While a consent-to-inseminate statute provides a more secure legal tie than a parenting presumption,<sup>123</sup> a same-sex couple that is granted parentage rights through such a statute may face the following challenges.

- Parentage rights may not hold across state lines. Using a consent-to-inseminate statute does not usually result in a court judgment of parentage (the couple does not appear before a judge) but

<sup>120</sup>Iowa's attorney general has refused to put the names of both mothers on the birth certificate of a child born to a married lesbian couple, arguing that the parenting presumption only applies if there is the possibility that the birth mother's spouse is a biological parent, which cannot be the case if the spouse is another woman. Lambda Legal is currently challenging Iowa's refusal to place the names of both women on birth certificates, and it remains unclear what a court would rule if the question of parentage came up in other contexts (i.e., if the biological mother died and a custody or inheritance dispute arose regarding the parentage of the surviving, non-biological mother). An appeals court in Oregon likewise stated that the presumption of parentage only exists in that state when there is the possibility that the husband is the biological parent and that it therefore does not apply to a lesbian couple. This interpretation was offered by the court *in dicta*, meaning that the actual status of the law as applied to a same-sex couple is untested. In addition, the state's donor insemination statute allows a non-biological mother to obtain parentage by consenting to the process. See Polikoff, "A Mother Should Not Have to Adopt Her Own Child," 215-216, 251.

<sup>121</sup>Maryland and New Mexico have pledged to honor marriages of same-sex couples performed elsewhere, and while this means that the presumption of parentage should also be recognized, that interpretation remains untested. As a result, MAP does not include those states as "presumption of parentage" states.

<sup>122</sup>In some states, the law applies only to a spouse while in others it can also apply to an unmarried partner. For more information about laws on donor rights and responsibilities, see Human Rights Campaign (HRC), "Donor Insemination Laws," [http://noexcuses.hrc.org/issues/parenting/donor\\_insemination/2490.htm](http://noexcuses.hrc.org/issues/parenting/donor_insemination/2490.htm) and Deborah Wald, "Donor Insemination: A Legal Perspective," <http://lesbianlife.about.com/od/families/a/DonorInseminate.htm>.

<sup>123</sup>Unlike a parenting presumption, recognition of the non-biological mother does not hinge on legal recognition of the couple's relationship, strengthening her parenting rights in other states.

Figure 21: Parental Recognition for Same-Sex Couples Using Donor Insemination\*



\* May require being in legally recognized relationship, such as a marriage, civil union or domestic partnership.

\*\* The 15 states include all states with marriage or comprehensive relationship recognition, except Iowa, plus New Mexico. Two states and DC have both parental presumption and consent to inseminate.

is instead a legal designation of parentage rights derived through the state's donor insemination law. The lack of a court judgment leaves the couple's parentage rights vulnerable to challenge in other states. Therefore, lawyers recommend that same-sex couples who obtain parentage rights using a consent-to-inseminate provision secure such rights with a parentage judgment or second-parent adoption.

## AVAILABILITY

States with consent-to-inseminate laws protecting lesbian couples. In only three states and D.C. is the use of consent-to-inseminate provisions guaranteed by statute or court ruling (see *Figure 21*), but trial courts elsewhere may, on a case-by-case basis, apply a consent-to-inseminate provision to lesbians, as well as issue a parentage judgment based on a finding of consent to parent.

- **D.C.** passed a law in 2009 that allows the partner of a birth mother to become a legal parent by signing a consent form, whether or not the couple is in a marriage or domestic partnership. The law places the names of both parents on the birth certificate.<sup>124</sup>
- **New Mexico** passed a law giving parental status to the female partner of a woman who gives birth using donor insemination if both parties indicate

consent, without the need for a court judgment. However, the law makes no provision for issuing a birth certificate with the name of the non-biological mother as a legal parent.<sup>125</sup>

- **Oregon** has an appellate court ruling that applied its consent-to-inseminate statute to same-sex couples (even though the statute itself only refers to a consenting "husband"). The court ruling ensures that the same-sex partner of a birth mother can be deemed a parent through a consent form rather than a court judgment.<sup>126</sup>
- **Washington** revised its parentage act in 2011 to apply to lesbian couples. The law now says: "The parent-child relationship is established by... the person's having consented to assisted reproduction by his or her spouse or domestic partner" under circumstances prescribed by specific regulations.<sup>127</sup>

States that do not have consent-to-inseminate laws specifically protecting lesbian couples. Many of the remaining 47 states have donor insemination statutes pertaining

<sup>124</sup>Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009, D.C. Official Code, [www.dccouncil.us/images/00001/20090511122621.pdf](http://www.dccouncil.us/images/00001/20090511122621.pdf).

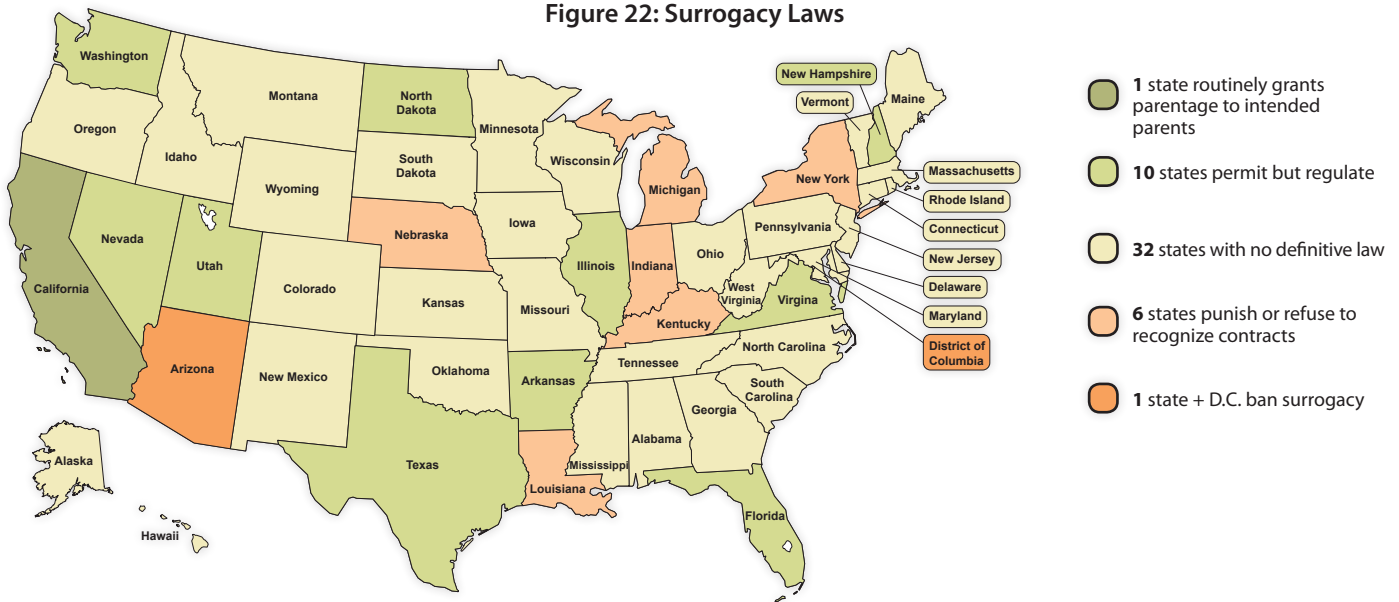
<sup>125</sup>New Mexico Uniform Parentage Act, 2009 N.M. Laws 215, §§ 7-703, 7-704; Polikoff, "A Mother Should Not Have to Adopt Her Own Child," 240.

<sup>126</sup>*Shineovich v. Kemp* OR Ct. App. (July 15, 2009). Although the state has domestic partnerships, the Oregon Court of Appeals has stated that the presumption of parentage for the partner of a birth mother does not apply to same-sex couples.

<sup>127</sup>Clarifying and Expanding the Rights and Obligations of State Registered Domestic Partners and Other Couples Related to Parentage, H.R. 1267, [www.washingtonvotes.org/2011-HB-1267](http://www.washingtonvotes.org/2011-HB-1267).



Figure 22: Surrogacy Laws



to heterosexual couples. However, these statutes do not explicitly provide recognition for same-sex couples and there is no definitive case law to indicate whether such statutes would be extended to include these couples.

### Surrogacy

Surrogacy is an arrangement in which a woman carries and delivers a child for another couple or person. The most common type of surrogacy, gestational surrogacy, occurs when a woman is impregnated with another woman's fertilized egg and gives birth to a biologically unrelated child who will be raised by others.<sup>128</sup>

For children who come into the world with the help of a surrogate, the current patchwork of state laws creates needless confusion and uncertainty.<sup>129</sup> Determining parentage for couples using a surrogate can be complicated for both married heterosexual and same-sex couples. Some states have laws or court rulings designed to make parental determination clear and to avoid protracted custody battles, but where such laws are not in place, problems can ensue. To avoid contested claims to parentage and harrowing lawsuits, parties involved in surrogacy normally execute contracts spelling out parenting rights for all involved (i.e., who relinquishes those rights and who obtains them). However, many states do not honor such contracts. Other states prohibit the use of contracts or have policies or practices of ignoring what private contracts say. This can make it nearly impossible for a same-sex couple considering surrogacy to plan a family

with the certainty that the couple will be able to secure legal parentage of the children.

### STRENGTHS

- Surrogacy allows those who would otherwise not be able to have biological children to have a child who is genetically related to one or both parents.

### LIMITATIONS

- Surrogacy is very expensive. A couple having a baby using a surrogate can easily expect to pay over \$100,000 in legal, medical, surrogate and other fees. The enormous expense involved in using a surrogate not only makes it an inaccessible option for the vast majority of Americans, but also disproportionately affects families of color.
- Intended parents often cannot secure parentage rights until after the child is born. In most states where surrogacy is allowed, intended parents using surrogacy must wait until the child is born to obtain a court judgment (either of parentage or adoption) deeming them the legal parents of their new child. California is one of the few states that routinely allows a couple to obtain a pre-birth parentage judgment

<sup>128</sup>Center for American Progress, "Assisted Reproductive Technologies: A Glossary," [http://www.americanprogress.org/issues/2007/12/art\\_resources.html](http://www.americanprogress.org/issues/2007/12/art_resources.html).

<sup>129</sup>Comprehensive statistics about use of egg donation and surrogacy are unavailable. However, given the extraordinary costs associated with these options, it is unlikely that large percentages of LGBT families undertake these options. One surrogacy agency targeting LGBT couples estimates that its services cost between \$115,000 and \$150,000. Abbie E. Goldberg, *Lesbian and Gay Parents and Their Children: Research on the Family Life Cycle*, American Psychological Association, 2010.



from a court declaring the intended parents to be the baby's legal parents and terminating the surrogate's rights, but not all judges will grant such an order.

- Some surrogacy laws include restrictions that can make them inapplicable to same-sex couples. These can include prohibiting a surrogate from using her own egg, requiring that intended parents be a married heterosexual couple, proving "infertility," and requiring a "judicial preauthorization" where a court approves a contract in advance.<sup>130</sup>
- There is debate about whether surrogacy exploits women. While many surrogates are middle-income American women who report satisfaction and joy from bringing a child to a childless couple, it is also true that ethical dilemmas result if a woman decides to become a surrogate because her other options for a livelihood are constrained. This report does not attempt to detail the thorny ethical implications of surrogacy or provide recommendations for how they might be resolved. Rather, the goal here is simply to outline the inadequacies of existing surrogacy law when it comes to determining parentage and ensuring that children end up in stable homes.

## AVAILABILITY

The options for an LGBT couple's use of surrogacy are highly constrained because of two factors: the high costs of surrogacy and the fact that only a handful of states with surrogacy-friendly laws also have laws that are LGBT-friendly. For an overview of state surrogacy laws, see *Figure 22* on the previous page.<sup>131</sup>

## Stopgap to Remedies to Inadequate Parenting Law

Parenting law is wholly inadequate when it comes to providing protections for LGBT families. These families, however, can sometimes avail themselves of three stopgap measures to remedy the inadequacy of existing parenting law. These are:

- **Second-parent adoption law** in which an intended parent adopts his or her partner's legal child without terminating the partner's parental rights.
- **De facto parenting law**, which grants full parenting rights to a person who acts as a parent to a child without terminating the rights of the existing parent.
- **Parentage judgments** in which a judge issues a court order making someone a legal parent based on existing parentage law.

## Parent Left Off Birth Certificate for Twins Born via Gestational Surrogate



Shawn (left) and Anthony Raftopol with their three children, Sebastiaan, Zoe and Lukas, who were born using a gestational surrogate. The state refused to issue birth certificates for the twins with both parents' names.

Anthony and Shawn Raftopol have been together for more than 16 years and were married in Massachusetts in 2008. The couple's daughter, Zoe, was born in Connecticut in 2006 using a gestational surrogate and Anthony's sperm. When Zoe was born, both Anthony and Shawn were listed on her birth certificate. The couple then had twin boys, Sebastiaan and Lukas, also born in Connecticut using the same egg donor and gestational surrogate. Anthony again was the twins' biological father. But the couple was surprised when the state refused, citing a policy change, to put Shawn's name on the twins' birth certificates and said he would need to adopt the twins. The case was brought to the Connecticut Supreme Court, which held that when a couple, regardless of gender, enters into a valid gestational agreement with a surrogate, both individuals are the legal parents. As a result, both Anthony and Shawn were able to be listed as parents on the twins' birth certificates, and Connecticut has updated its laws regarding children born to gestational surrogates so couples can obtain pre-birth parentage orders.

Adapted from Susan Donaldson James, "Surrogacy Law: Conn. Gives Non-Genetic Parents Legal Rights," ABCNews.com, January 20, 2011, <http://abcnews.go.com/Health/connecticut-surrogacy-law-genetic-parents-legal-rights/story?id=12662224>.

<sup>130</sup>Jessica Arons, *Future Choices: Reproductive Technologies and the Law*, 2007, [http://www.americanprogress.org/issues/2007/12/future\\_choices.html](http://www.americanprogress.org/issues/2007/12/future_choices.html).

<sup>131</sup>MAP analysis and Center for American Progress, "Guide to State Surrogacy Laws, 2007," [www.americanprogress.org/issues/2007/12/surrogacy\\_laws.html](http://www.americanprogress.org/issues/2007/12/surrogacy_laws.html) and HRC, "California Surrogacy Law," <http://www.hrc.org/laws-and-legislation/entry/california-surrogacy-law>.

These three remedies are discussed in turn below. Often, these remedies are only available in the states that are already likely to protect LGBT families, leaving non-biological LGBT parents in most of the country with no options for securing permanent legal ties to their children. What's more, it's important to remember that if existing parenting law adequately addressed LGBT families, these remedies would not be necessary. Therefore, the long-term public policy goal should be to adequately acknowledge LGBT parents—both within each state and across state lines—from the time of the child's birth or adoption into the family.

### Second-Parent Adoption

Modeled on the stepparent adoption process, a second-parent adoption allows the partner of a legal parent to adopt that parent's child without terminating the parental rights of the first parent. The result is that both of the child's parents are recognized as legal parents with identical rights and obligations. A second-parent adoption is perhaps the most common way for same-sex couples to secure legal ties to their children. Unlike joint adoption of a new child, where both parents adopt simultaneously, a second-parent adoption formalizes a relationship with a second parent who is already in a child's life.

#### STRENGTHS

- Second-parent adoptions are secure and hold across state lines. A second-parent adoption results in an adoption judgment, the strongest legal mechanism for establishing a legal parent-child tie when no blood relationship exists. See "Adoption by Individuals."
- It may not require the couple to be in a formal relationship. This requirement varies by state, though in most instances, same-sex couples who live in states without legal relationship recognition, or who do not marry or formalize their union, may lack access to second-parent adoptions.

#### LIMITATIONS

Where available, second-parent adoption adds much-needed security to a child's relationship with his or her parents. However, the process remains an imperfect stopgap measure that is inadequate for securing the parental needs of all children for several reasons.

- It can be a long process. Second-parent adoptions take time, ranging from several months to over a year. During this time, a child is left without legal ties to one parent.

- It can be expensive and complicated. Second-parent adoptions can be costly (\$1,200 to \$4,000)<sup>132</sup> and can often require a home study, copious paper work, attorney's fees and travel expenses. This can make adoptions inaccessible to lower-income families, who are disproportionately families of color.
- Many couples are not aware of the need for second-parent adoption. Families may not understand the legal ramifications of not formally adopting their child. Some may not even know that second-parent adoption is an option for them. One study in Colorado found that, of LGBT respondents who had or intended to have children in their households, 38% were unaware of the state's second-parent adoption law.<sup>133</sup> In addition, a 2011 report by the Center for American Progress found that second-parent adoption was unknown by most people.<sup>134</sup> The report also found that race may affect how likely it is that different population groups know about, or use, second-parent adoptions. Among the findings: African Americans were less inclined than others to view it as a high priority, preferring informal community recognition to legal adoption.<sup>135</sup>
- It requires a parent to adopt a child who may already be viewed as his or her own. The very need for second-parent adoptions underscores the inequality in existing law. Imagine if a woman's husband had to undergo a costly, months-long adoption process including a home study just to be considered the legal father of their child born by donor insemination. In order to secure legal parental status, LGBT parents have to endure a process that some people view as an adoption of their own child.

#### AVAILABILITY

Second-parent adoptions are not available in every state, and in some states they are granted only in certain jurisdictions or even by just a few judges. Some states

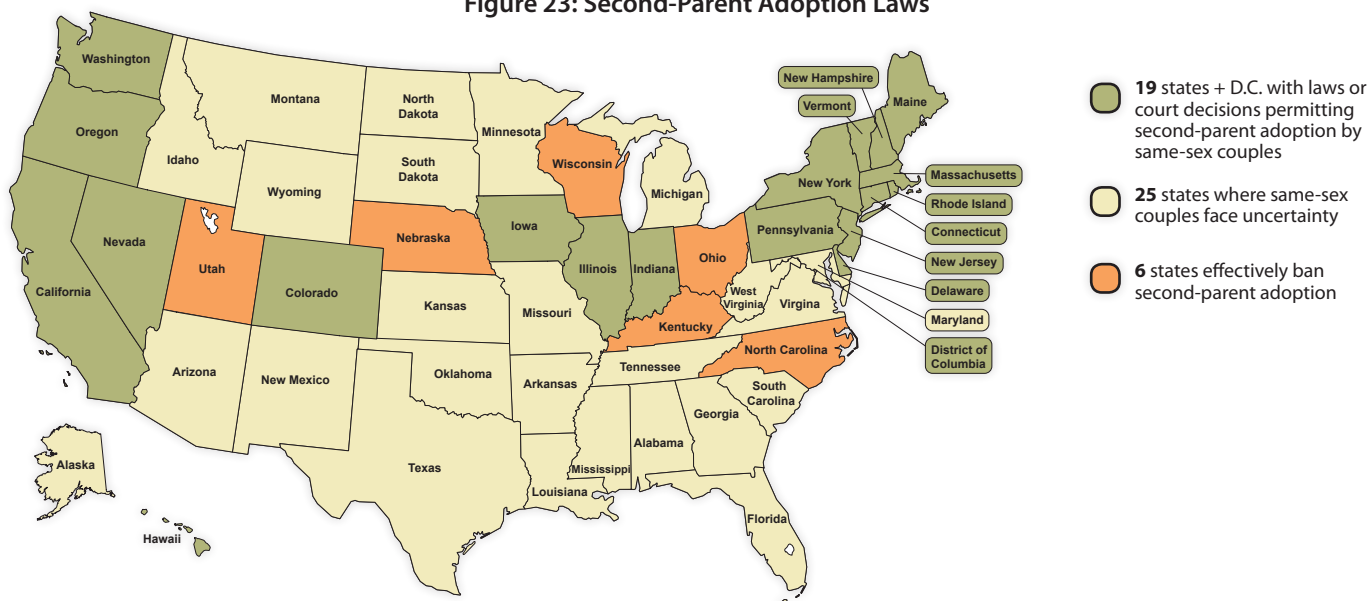
<sup>132</sup>Stephanie Haynes, "Philadelphia attorney Tiffany Palmer answers questions about same-sex, second-parent adoptions," Philadelphia Gay Parenting Examiner, April 9, 2009, <http://www.examiner.com/gay-parenting-in-philadelphia/philadelphia-attorney-tiffany-palmer-answers-questions-about-same-sex-second-parent-adoption>; Beth Allen, "Second Parent Adoption: An Outline," <http://www.avvo.com/legal-guides/ugc/second-parent-adoption--an-outline--an-outline>.

<sup>133</sup>One Colorado Education Fund, "A Conversation with Coloradans," 2010.

<sup>134</sup>Sally Steenland and Susan Thistlethwaite, "Working for Equality in the Great Lakes State," Center for American Progress, January 2011, [www.americanprogress.org/issues/2011/01/pdf/michigan\\_lgbt.pdf](http://www.americanprogress.org/issues/2011/01/pdf/michigan_lgbt.pdf).

<sup>135</sup>"We don't necessarily go to the system. We might not want to go through an adoption course for six weeks, and we don't want them to know about our income or how we raise our kids. We informally adopt kids all the time. Almost everyone I know, gay and straight, has parented some kid that wasn't theirs. We have figured out how to make our family system work." Steenland and Thistlethwaite, "Working for Equality."

Figure 23: Second-Parent Adoption Laws



have passed laws that explicitly allow such adoptions; others grant same-sex couples such adoptions either because an appellate court ruling has allowed them statewide, or because judges in some jurisdictions have granted them even in the absence of a definitive law. Given the patchwork of state laws and court decisions, most LGBT parents and hopeful parents must plan their families in conditions of enormous uncertainty.

States where same-sex couples can petition for second-parent adoptions statewide. In 19 states and D.C., children can be adopted by the same-sex partner of their existing legal parent statewide (see *Figure 23*). These include the 15 states and D.C. with comprehensive relationship recognition, plus Colorado, Indiana, Maine and Pennsylvania.<sup>136</sup> In these states, a clear statute or binding court judgment has established that these adoptions are available in all jurisdictions for same-sex couples. In some cases, the adoptions are granted based on explicit second-parent adoption law, while in others, they involve the application of stepparent adoption law to same-sex couples.

States where same-sex couples face restrictions on second-parent adoption. In six states, law, policy or a court decision makes second-parent adoption unavailable: Kentucky, Nebraska, North Carolina, Ohio, Utah and Wisconsin.<sup>137</sup>

States where same-sex couples face uncertainty around second-parent adoption. In the remaining states, same-sex couples face uncertainty when seeking second-

parent adoptions. Many of these states have granted second-parent adoptions in some jurisdictions but do not ensure statewide availability. In other states, there is no clear statute or court precedent for second-parent adoptions, making the prospect of getting one unknown. Michigan appears to have a judge-ordered ban on second-parent adoptions but its authority is being challenged, making the current prospects unclear.<sup>138</sup>

### *“De Facto” Parenting*

In some cases, a child who has received care and support from someone other than a legal parent can become a legally recognized dependent based on what is known as the “de facto” parenting law.<sup>139</sup> This type of law may grant full or partial parenting rights (such as custody or visitation). While exact definitions vary by state, a “de facto” parent is generally defined as someone other than a legal parent who, for reasons other than financial compensation, formed a child-parent relationship in which he or she shared (usually at least equally) in primary child care responsibilities. For a court to declare a de facto parent a legal parent, a judge may require the individual to show that he or she has lived with the child

<sup>136</sup>In some of these states, couples may be required to be married or have a domestic partnership or civil union in order to be assured of a second-parent adoption.

<sup>137</sup>Based on National Center for Lesbian Rights, “Adoption by LGBT Parents,” 2011, [www.nclrights.org/site/DocServer/2PA\\_state\\_list.pdf?docID=3201](http://www.nclrights.org/site/DocServer/2PA_state_list.pdf?docID=3201) plus a 2010 court ruling in North Carolina that appears to ban second-parent adoptions. While Mississippi has a statute prohibiting adoption by same-sex couples, it is unclear whether this would preclude second-parent adoption by an individual with a same-sex partner.

<sup>138</sup>HRC, “Michigan Adoption Law,” 2009, <http://www.hrc.org/laws-and-legislation/entry/michigan-adoption-law>.

<sup>139</sup>Sometimes known as “psychological parenthood,” “*in loco parentis*,” “equitable parenthood” or “parenthood by estoppel.”

and played a parenting role for a significant period of time (such as two years), either with the agreement of the legal parent or because of the parent's inability to care for the child.

A de facto parent can be any person who acts as a parent in a child's life and meets the criteria above, including same-sex parents, but also grandparents, stepparents, aunts, uncles or other loved ones. Most often, de facto parenting law is based on common law resulting from a judge's interpretation of a state's general parentage statute, which is applied in cases of relationship dissolution or a custody dispute. However, in 2009, Delaware revised its parentage statute to protect de facto parents embroiled in custody disputes and to allow same-sex and other couples to proactively extend parentage to a second parent without terminating the rights of the existing parent, in a manner similar to a second-parent adoption.<sup>140</sup> In this latter case, the statute allows a judge to deem someone a full legal parent if that person has "acted in a parental role" for long enough to establish a parent-like bond, so long as the child's other parent gives consent.<sup>141</sup> In 2011, Washington adopted a similar law, updating its parentage statute to allow for de facto parents—including LGBT and unmarried adults—to be recognized as full legal parents.

### STRENGTHS

- De facto parenting judgments are secure and should hold across state lines. When de facto parenting laws result in a court judgment, the resulting parentage rights should be protected across state lines.<sup>142</sup>
- De facto parenting judgments do not require a parent to adopt his or her own child. Unlike a second-parent adoption, a de facto parentage judgment does not require a parent to go through an adoption, which sometimes requires a home study and added expenses. The de facto judgment simply deems an acting parent to be a legal parent.
- De facto parenting judgments do not require the parents to be in a formal relationship. De facto parenting laws cover a variety of family compositions, including unmarried partners and other family configurations in which a child is raised by a non-legally recognized parent.

### LIMITATIONS

- It is not available from birth. As with a second-parent adoption, a de facto parent probably

cannot be declared a legal parent upon a baby's birth. This creates some period of time (months to years) during which a child is a legal stranger to one parent.

- It can be costly and time-consuming. Obtaining a parentage determination based on being a de facto parent requires the family to appear in court and pay any legal fees.
- Many families do not know it is an option. As with second-parent adoptions, families may not understand that the de facto parenting option is available to them. In addition, families may not understand the ramifications of failing to establish legal ties to their children.

### AVAILABILITY

While other states have de facto parentage law that can grant some parenting rights and responsibilities to functioning parents, only Delaware and Washington have statutes that explicitly allow same-sex couples to extend full parentage rights to a second parent based on the parent's "de facto" status.

### Parentage Judgments

A parentage judgment is a court order in which a judge makes a determination of full legal parentage based on existing law (such as a parentage statute or case law). Parentage judgments are most often used when someone already has statutory recognition as a parent but wishes to solidify such recognition with a court judgment in order to protect his or her parental status from legal challenge, especially across state lines.

Same-sex couples in the following circumstances are most likely to be able to secure a parentage judgment:

- A lesbian mother of a child born using donor insemination (and who enjoys a presumption of parentage or has signed a "consent to inseminate" form).
- Same-sex couples bringing parentage proceedings to declare a legal parent-child relationship in cases of surrogacy.

<sup>140</sup>The Delaware and Washington de facto parentage statutes create legal parentage in essentially the same way as do second-parent adoptions because they extend parentage rights to a second parent without terminating the rights of the first parent, and they both require the first parent's consent. Unlike second-parent adoption, these laws result in a parentage judgment, not an adoption judgment.

<sup>141</sup>Polikoff, "A Mother Should Not Have to Adopt Her Own Child," 224.

<sup>142</sup>Depending on the law and the situation, a presumption or an actual adjudication of parentage may ensue. The Washington law, for instance, creates a presumption of parentage based on holding a child out as one's own, and that presumption can be adjudicated in a court and thereby become a full parentage judgment.



- An LGBT de facto parent.
- A transgender parent who is presumed to be a parent under state law but fears that transitioning may put current parenting claims at risk.<sup>143</sup>

In all cases, a parentage judgment helps strengthen a legal parent-child relationship by giving it the added weight of a court judgment. This, in turn, helps secure the parent's rights across state lines, as well as the rights of children to receive child support. Depending on the law and the situation, judges may offer parentage judgments before the child is born (a "pre-birth judgment") or after he or she has been living in an LGBT family. Parentage judgments may be issued either at the request of a couple who is raising, or planning to raise, a child together, or by a court in a dissolution case to assign the parental rights and obligations of custody and child support (see "Custody and Visitation Disputes"). Parentage judgments are not likely to be issued in cases of joint or stepparent adoption, as adoption judgments are separate legal devices.

#### STRENGTHS

- It strengthens a parent's legal ties to children, including across state lines. Parentage judgments create a court judgment of parentage, which helps protect a parent's parentage rights both within his or her state of residence and across state lines.

#### LIMITATIONS

- It may be less secure than an adoption judgment. Although parentage judgments are court orders that should be universally honored, some legal experts caution that emerging case laws may make parentage judgments less secure than adoption judgments. In particular, they warn that parentage judgments that are in some way tied to legal recognition of the relationship of a same-sex couple (such as a parentage judgment based on a parental presumption for a married lesbian couple using donor insemination) are at potential risk in states that do not recognize the relationships of same-sex couples. Moreover, parentage judgments are not as well-recognized or as well-understood as adoptions.
- Its requirements may pose barriers for some families. While more accessible than a second-parent adoption, parentage judgments require a court appearance and some knowledge of existing parenting law, making obtaining such a judgment intimidating or out of reach for many families.

- It is based on existing state parentage law. Since a parentage judgment requires that a court find that someone is a legal parent under existing state law, it is not likely to be a remedy for couples living in states with parentage law that is hostile to LGBT parents.
- It is often not available from birth. While some states offer pre-birth parentage judgments, in most states a couple must wait to obtain a judgment until after the baby is born, leaving the child with legal ties to only one parent for some period of time.

#### AVAILABILITY

It can be difficult to know in what jurisdictions and situations a parentage judgment will be granted. At a minimum, all states that offer parentage presumption or consent-to-inseminate statutes covering same-sex couples should, in theory, also be willing to grant a parentage judgment to such couples. Additionally, California courts have frequently granted pre-birth parentage judgments to members of same-sex couples raising, or intending to raise, children, making it a popular state for couples using surrogacy.

#### Challenge: Children Wrongly Separated from Parents

The previous section describes the ways in which outdated family law makes it difficult for many parents to establish legal ties to their children, focusing on those who are establishing intentional families. This section discusses how laws meant to protect children when adult relationships end, or when a parent dies, often fail those children with LGBT or other non-legally recognized parents. The section also discusses how some children must live in daily fear of a parent's removal from the country if the child's parents are a binational same-sex couple.

#### Custody and Visitation Disputes

While good laws can help make family relationships more permanent and enduring, nothing can ensure that they last forever. Inevitably, some relationships dissolve. When families break up, custody battles can ensue. One of the primary functions of family law is to ensure that parents continue to meet their obligations to children in these situations.

<sup>143</sup>In 2005, the Illinois Court of Appeals invalidated the marriage between a woman and a transgender man and ruled that the man was not a parent to the couple's son, who had been born through donor insemination. In re Marriage of Simmons, 355 Ill. App. 3d 942, 292 Ill. Dec. 47, 825 N.E.2d 303 (1st Dist. 2005).



In custody disputes, courts must make decisions about several key aspects of a child's care, including:

- **Physical custody**—how and whether physical custody of a minor will be shared among parents or other caregivers.
- **Legal custody**—how and whether to divide the right to make major decisions about a child's health, finances, education and religious upbringing.
- **Financial obligations**—the expected economic support from each parent, including child support, education and other economic assistance.
- **Visitation rights**—whether or not to grant visitation rights to a parent or other caregiver who is not awarded full or partial custody of a child.

LGBT parents are vulnerable to two major disadvantages when it comes to these decisions. The first is discrimination against an LGBT parent who is in a dispute with a former different-sex partner. The second is a possible refusal of the law to acknowledge an existing parent who lacks legal ties to his or her child. We discuss each of these in turn.

### *Custody Decisions that Discriminate Against LGBT Parents*

In some cases when different-sex parents break up, one parent may be LGBT (and this parent's sexual orientation or gender identity may be identified as a factor in the split). In these situations, LGBT parents can be subject to rulings where bias about sexual orientation and gender identity adversely impacts decisions about custody or visitation. For example, a judge may rule against custody rights for an LGBT parent even when giving custody to that parent would be in the child's best interests.

For years, gay and lesbian parents routinely lost custody or visitation rights when judges simply assumed that being an LGBT parent was, in and of itself, detrimental to child welfare. This assumption of detriment was known as the "per se" rule because it was based on the idea that being LGBT, per se, makes someone unfit to be a good parent, irrespective of whether they have been shown to be capable parents. Today, the vast majority of states no longer use the "per se" rule in making custody and visitation decisions, basing them instead on the "best interest of the child" standard. Statutes and legal standards require that claims to deny custody or visitation show that a parent is causing the child "adverse harm," rather than simply assuming that being an LGBT parent is, in its own right, detrimental to children.<sup>144</sup>

Despite the fading use of the "per se" test, many state courts still routinely penalize parents based on their sexual orientation or gender identity and expression. These rulings often cite factors other than sexual orientation, such as the parent's "lifestyle" or marital status; concerns that children of LGBT parents could be subjected to teasing and ostracism; fears that children may be victimized by sexual abuse or could contract HIV; the anxieties of children about the sexual orientation of their parents; and a parent's openness about his or her sexual orientation.<sup>145</sup> A transgender parent can be at serious disadvantage in divorce, particularly if the parent's transition was a factor in the divorce. The court may fault the transgender spouse and question his or her fitness as a parent. In any of these cases, bias might be used to deny custody or visitation.

### *Custody Decisions that Ignore a Functioning Parent*

There are many scenarios in which adults may enter into a custody dispute over a child. The most common is when a child's parents split up, but in some circumstances, grandparents may desire custody of a grandchild, aunts and uncles may desire custody of a niece or nephew, or a de facto parent may desire custody of a child that he or she has raised for years.

In such custody disputes, those who are not legal parents (including non-legally recognized LGBT parents) may not have standing to claim custody or visitation rights. For example, some states have laws explicitly restricting custody filings to legal parents and stepparents. This means that a child may not be able to live with the most suitable parent or caregiver, and may even be entirely cut off from someone who has functioned as a parent and has loved and supported the child for his or her entire life. The flip side of this problem is that non-legally recognized parents may not be required to provide child support or other financial support, putting the child at economic risk. Children

<sup>144</sup>Most states specifically describe what factors a court should (and occasionally should not) weigh in determining what is in the best interest of the child. Wisconsin state law makes clear that neither a parent's sexual orientation nor factors presumed to be associated with sexual orientation, such as societal discrimination or bullying based on a parent's orientation, is to be considered a relevant factor in determining custody or visitation; only parental action that causes direct harm to the child can be considered a relevant factor. The same holds true in Florida, where appellate courts have held that "moral fitness" of a parent is only relevant if it has a direct bearing on the child's welfare and sexual orientation, per se, is not. D.C. bars consideration of sexual orientation in making custody decisions. See Joslin and Minter, *Lesbian, Gay, Bisexual and Transgender Family Law*, 12-13; National Center for Lesbian Rights, *Child Custody and Visitation Issues for LGBT Parents in Wisconsin (2009) and Florida (2009)*; DivorceLawInfo.com, "District of Columbia Divorce," [www.divorcelawinfo.com/dc/flc.htm](http://www.divorcelawinfo.com/dc/flc.htm).

<sup>145</sup>Joslin and Minter, *Lesbian, Gay, Bisexual and Transgender Family Law*, 3-78. The Supreme Court has ruled it impermissible to restrict parental custody based on concerns about teasing and ostracism—whether or not they are well-founded—in a 1984 case invalidating custody restrictions based on fears that a mother's interracial relationship could subject her child to harassment.

who may have relied for their entire lives on the financial and emotional support of a parent can suddenly be wrenched away from this essential love and assistance.<sup>146</sup>

One way to protect children with LGBT parents is to ensure that state laws recognize both of their parents, where applicable. However, many families may not be aware of the need to—or cannot afford to—take advantage of legal mechanisms such as second-parent adoptions. Furthermore, all children, not just those with LGBT parents, require protection in the event that an adult who acts as a parent cannot or does not legally establish parenting ties. This is where de facto parenting law again comes into play.

**“De facto” parenting doctrine in cases of custody dispute.** As explained earlier, a minority of states provide for the recognition of de facto parents as legal parents. Because continuity of a relationship with a loving caregiver is generally considered to be in the best interest of a child, states are increasingly recognizing that de facto parents should be able to seek custody, visitation, or even full parenting rights in the event of a custody dispute.

De facto parenting law generally covers adult caregivers who meet certain criteria, including non-legally recognized LGBT parents. Judges may confer varying levels of custody and visitation on those with a viable claim to continuing legal ties to a child. Some custody awards may have virtually the same effect as granting full parentage, while others will confer partial aspects of parental ties when a judge determines that doing so is in the child’s best interest. When a court deems someone a legal de facto parent, a court judgment is issued, and the legal ties that result between parent and child cannot be challenged across state lines.

**Availability.** The growing recognition of de facto parenting is a promising start to updating parenting law that was designed for an earlier era. But parenting law overall remains a complicated patchwork, leaving children vulnerable to falling through the cracks because adults who have functioned for years as their parents are not legally recognized as their parents.

As shown in *Figure 24* on the next page, legislatures in 14 states plus D.C. have passed de facto parenting statutes explicitly giving adults who have acted as a de facto parent the right to seek custody or visitation.<sup>147</sup> These laws not only protect children with LGBT parents, they also protect children living in other types of family structures (such as children reared by grandparents, other

## Judicial Bias Places Children with Abusive Father Over Lesbian Mother



Dave Dieter/The Huntsville Times

Former Alabama Supreme Court Chief Justice Roy Moore, who denied custody to a lesbian parent.

In 2002, the Supreme Court of Alabama deprived a lesbian mother of custody of her children even though she presented evidence that her ex-husband was physically abusing their children. The court dismissed the alleged abuse as “occasional excessive disciplinary measures” even though an appeals

court had found that “the father’s verbal, emotional, and physical abuse can be considered family violence.” One of the judges wrote that “homosexual conduct is, and has been, considered abhorrent, immoral, detestable, a crime against nature, and a violation of the laws of nature and of nature’s God upon which this Nation and our laws are predicated.” In other custody cases, factors presumed to be associated with sexual orientation were used to deny or restrict custody or visitation to LGB parents.<sup>148</sup>

Adapted from *H.H.*, *Ex parte*, 2002 WL 227956 (Ala. February 15, 2002).

relatives, or close family friends). This type of protection can be especially important among black communities, where children are more likely to be raised by someone other than a biological parent.<sup>149</sup>

<sup>146</sup>Lambda Legal, “Gay v. Gay Custody Battles,” 2009, [www.lambdalegal.org/news/of-counsel/oc\\_200909\\_camilla-feature.html](http://www.lambdalegal.org/news/of-counsel/oc_200909_camilla-feature.html).

<sup>147</sup>Most of these laws were not specifically passed to apply to LGBT parents, but have generally been applied to them. Most of the laws grant the limited rights and obligations that come from custody or visitation rather than full parentage; however, the statutes of Delaware and Washington apply more broadly, allowing conferral of full parental rights.

<sup>148</sup>See GLAD, “Bibliography of Cases Involving Divorce from a Different-Sex Spouse,” [www.glad.org/uploads/docs/publications/custody-bibliography.pdf](http://www.glad.org/uploads/docs/publications/custody-bibliography.pdf). For example, in 1994 a Georgia court ordered a mother to move with her children away from her partner in order to retain custody of children she bore with a man in a prior relationship. The judge accepted the father’s argument that his ex-wife should not expose their children to a “meretricious relationship” by sharing a home with her same-sex partner. The court found the relationship to be “unwholesome,” and the Georgia Supreme Court declined to hear an appeal, letting the ruling stand; ACLU, “Too High a Price,” 5. In 2007, two Virginia courts upheld restrictions on lesbian and gay parents that allowed visitation only if the parents agreed not to have overnight guests, including a long-term partner, while the children were in the house; Joslin and Minter, *Lesbian, Gay, Bisexual and Transgender Family Law*, 12-13, 54-55.

<sup>149</sup>U.S. Census Bureau, “America’s Families and Living Arrangements,” 2010, [www.census.gov/population/www/socdemo/hh-fam/cps2010.html](http://www.census.gov/population/www/socdemo/hh-fam/cps2010.html).

## My Journey as a Transgender Parent

Photo reprinted with permission from Denise E. Brogan-Kator



Denise E. Brogan-Kator and her daughters, Melody and Amanda.

I came out as transgender when my daughters were 7, 9, and 11. Two years later, my wife and I began what would be a five-year process of separation and divorce.

My ex-wife initially asked the court to terminate my parental rights. My children and I were instructed to not see or speak with each other until that motion was ruled upon. My lawyer warned me that my being transgender made losing this motion a very real possibility. Thankfully, my ex-wife eventually withdrew her motion, and my daughters and I were reunited.

Two years later, on the day my eldest turned 17, her mother granted her longstanding wish to come live with me. My middle daughter later came to live with me for her final year of

high school. Then, unexpectedly, when my eldest turned 21, she told me that she no longer wanted me in her life. That was 7 years ago, and I've seen her only twice in that time—most recently at my mother's funeral.

At the same time, my relationship with my two younger daughters has grown even stronger. By the time I had surgery, my middle daughter was 21. She flew out to Colorado to help take care of me. My youngest—now 25—is just finishing her Ph.D. and writing her dissertation on the relationships between children and their trans parents.

I think of my eldest daughter every single day. I hope for the day when we will be reunited, but her sisters are not optimistic. I take comfort from my close relationships with my two youngest daughters, and the fact that my daughters are close to each other.

- Denise Brogan-Kator

Figure 24: De Facto Parenting Statutes<sup>150</sup>



<sup>150</sup> National Center for Lesbian Rights, "Legal Recognition of LGBT Families."



## Ohio Mother Unfairly Denied Custody of Her Daughter



Reprinted with permission from Michele Hobbs.

Michele Hobbs (right) with her daughter, Lucy, and her partner, Amanda Broughton. The Ohio Supreme Court ruled that Michele had no parental connection to Lucy despite the existence of a co-parenting agreement and other legal documents naming Michele as a parent.

In 2005, after more than five years together, Michele Hobbs and Kelly Mullen planned a family. They took out a second mortgage on their house to pay for a \$12,000 in vitro fertilization procedure. Kelly gave birth to their daughter, Lucy, but both Michele and Kelly were equal parents. Michele and Kelly were both listed on Lucy's birth certificate, and Michele was listed as a parent in Kelly's will, power of attorney, and durable power of attorney for medical care. Michele provided much of the daily care, driving Lucy to and from school, cooking and caring for Lucy when she was sick. "We were known as a family to our church, to our friends and to our neighbors," Michele said. After the couple split, Kelly denied Michele any contact with their daughter. Michele

filed paperwork requesting permanent shared custody. As she told a local news station, "I have no legal rights to see my daughter because I'm not the biological parent. Nonetheless, I am Lucy's mom and she knows me as mama. The fact is I'm Lucy's mom and someone has taken that away from her." The first court granted shared custody, but an appeals court ruled that because the couple had never entered into a written, shared custody order, Michele had no legal ties to the child. In July 2011, the Ohio Supreme Court also ruled that Michele did not have permanent parental rights. As Lambda Legal attorney, Christopher Clark, explained, "The court disregarded the overwhelming evidence that Ms. Mullen agreed to parent Lucy with Ms. Hobbs 'in every way.'" Regrettably, the decision severs a parent-child relationship between Lucy and the person she knows to be her mother. All Ohio families should be alarmed by this, as a child with a non-biological parent could be taken from their mom or dad in the event of separation."

Adapted from Lambda Legal, *In the Matter of L.K.M.*, <http://www.lambdalegal.org/in-court/cases/in-the-matter-of-lkm.html>; KYPost.com, "Same-Sex Custody Dispute Could Rewrite Ohio Laws," February 18, 2010. [http://www2.kypost.com/dpp/news/local\\_news/Same-Sex-Custody-Dispute-Could-Rewrite-Ohio-Laws](http://www2.kypost.com/dpp/news/local_news/Same-Sex-Custody-Dispute-Could-Rewrite-Ohio-Laws); Jacob Baynam, "Losing Lucy," CityBeat.com, March 3, 2010. <http://www.citybeat.com/cincinnati/article-20089-losing-lucy.html>.

Explicit de facto parenting statutes are most helpful in protecting children. However, even when no explicit statute authorizes de facto parenting status, a court may still confer limited or even full parenting status in a custody dispute by drawing on broader parenting law in certain states. Indeed, courts in many states have used de facto parenting doctrine to issue parentage, custody and visitation judgments to LGBT parents who were not recognized as legal parents.<sup>151</sup> Maine, New Jersey, Pennsylvania and Washington have court rulings in which someone with no biological or adoptive relationship to a child can still be a full legal parent if a judge finds that the adult has functioned as a parent and has contributed substantially to the child's life.<sup>152</sup> While the language in the court rulings suggest the granting of full parenting rights and obligations, it is not clear if the rulings give such individuals full parity with the biological parent.<sup>153</sup>

### Custody When a Parent Dies

The death of a parent is devastating for a child. However, children with a non-legally recognized parent may face even greater trauma. These children may be deprived of badly needed inheritance funds, Social Security benefits and a host of other protections that should have flowed from their dependency on the deceased parent (see "Economic Stability When a Parent Dies"). Worse yet, if the legal parent dies, the surviving parent (a legal stranger) may be denied custody even if he or she has acted as a parent for the child's entire life.<sup>154</sup>

<sup>151</sup>National Center for Lesbian Rights, "Legal Recognition of LGBT Families."

<sup>152</sup>Maine: Once an individual is found to be a de facto parent, a court may award "parental rights and responsibilities to that individual as a parent." 9 C.E.W. v. D.E.W., 845 A.2d 1146, 1151 (Me. 2004); New Jersey: "Once a third party has been determined to be a psychological parent to a child, under the previously described standards, he or she stands in parity with the legal parent." V.C. v. J.M.B., 748 A.2d 539 (N.J. 2000); Pennsylvania: The "rights and liabilities arising out of [in loco parentis status] are the same as between parent and child." L.S.K. v. H.A.N., 813 A.2d 872, 876 (Pa. Super. Ct. 2002); Washington: A "de facto parent stands in legal parity with an otherwise legal parent." In re Parentage of L.B., 122 P.3d 161, 708 (Wash. 2005).

<sup>153</sup>In most of these cases, the question of whether a child would receive intestate benefits after the death of a non-biological parent who was granted legal parentage in court has not been tested.

<sup>154</sup>Frederick Hertz, *Legal Affairs: Essential Advice for Same-Sex Couples*, 1998, 136-7.

## After Fatal Accident Kills Mother of Five-Year-Old Boy, Court Tries to Deny Him Ties to Surviving Mother



Tina Burch was initially denied custody of the child she parented with her partner, Christina, after Christina was killed in a car accident.

When Christina Smarr and her life partner, Tina Burch, decided to have a child together, they agreed that Christine would carry the child. On Christmas Day 1999, Christine gave birth to a son, and she and Tina raised him along with Tina's biological daughter. But in 2005, tragedy struck the family when Christine was killed in an automobile accident. Following Christine's death, her parents sought custody of Tina and Christine's boy. The family court, however, stated that Tina was the child's "psychological parent" and awarded custody to her, with the grandparents getting visitation rights.

On appeal, a circuit court reversed the lower court's ruling, denying Tina custody and removing the child from the home of his surviving parent. The West Virginia Supreme Court affirmed the original award of custody to Tina. "Simply stated," the court said, "the child's best interests would best be served by awarding permanent custody of [the child] to" the surviving mother.

Adapted from ACLU, "ACLU Applauds Child Custody Award For Surviving Lesbian Mom in West Virginia," June 17, 2005.

State laws on custody in case of death vary, and how a court ultimately rules in a custody decision will depend on state parentage law and the judge's interpretation of both constitutional parenting rights and what is in the best interest of the child. In states with de facto parenting laws, courts may recognize the same-sex partner of a deceased legal parent if that person shows that he or she has functioned as a parent. Not all states have de facto parenting laws, however, and some laws limit rights to visitation only. Further, some states prioritize child placement with a legal parent, stepparent, grandparent or other relative,<sup>155</sup> which allows little leeway for a judge to grant custody to an unrelated primary caregiver.

The result is to put at risk not only children in LGBT families but all children who are being raised by adults who are not legally or biologically related to them. Other children at the disproportionate risk of being wrested away from lifelong caregivers include low-income children and children of color (where the state is also more likely to remove children from the home and families are less likely to have the resources to fight such decisions).

For same-sex couples and other families, one partial safeguard is to put documents in place that express the legal parent's preferred guardian in case of death. These documents, called "nominations of guardianship" or "appointments of guardianship", are far from perfect. The documents can be expensive and complicated to produce. In addition, many couples do not realize the importance of taking these steps, or are disinclined to think about and plan for their own death. Also, while judges may consider the custody wishes of a deceased parent as expressed in such documents, they are usually not required to honor them, which is a particular problem if another party claims custody (such as an aunt or grandparent).

### Uncertainty for Binational Families

Immigration policy has a special role in keeping families together and protecting children's interests. U.S. policy has long reflected this goal of family unity, which is why the federal government prioritizes the foreign spouses or fiancé(e)s of U.S. citizens and permanent residents for entry into this country.<sup>156</sup> This policy focus also helps ensure that children whose parents are in a binational relationship will enjoy the permanency every child needs and deserves.

Unfortunately, children being raised in same-sex binational families are denied the protections of family unity under federal immigration law. To understand why this is the case, it's important to remember that anyone who is not a U.S. citizen but wants to remain for an extended period of time generally has three options:<sup>157</sup>

- **Temporary visa.** They can obtain a temporary visa to work in, study in, or visit the U.S.

<sup>155</sup> *Ibid.*; See also Mike Broemmell, "Child Custody & Death," [www.livestrong.com/article/218359-child-custody-death](http://www.livestrong.com/article/218359-child-custody-death).

<sup>156</sup> "Reunification of families serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well-being of the nation." U.S. Select Committee on Immigration and Refugee Policy, "U.S. Immigration Policy and the National Interest," 1981, 112.

<sup>157</sup> Some immigrants enter or remain in the U.S. without a visa or residency status and become "undocumented immigrants." The large number of people who have entered the country without documentation or have overstayed their visas are also impacted by these issues.



- **Permanent residency.** They can become a “permanent resident” (holder of a “green card”), which allows a person to live and work in the U.S. indefinitely, subject to certain requirements.
- **Citizenship.** They can become a U.S. citizen through the “naturalization” process.

The immigration options described above are achievable through various paths,<sup>158</sup> but the majority of foreign nationals who seek permanent residency in the U.S. do so by having a family member—spouse, fiancé(e), son or daughter, or parent—who is a U.S. citizen or permanent resident sponsor their application. U.S. citizens and permanent residents are allowed to sponsor a foreign-born spouse or fiancé(e) for entry into the U.S., but only if their partner is of a different sex. DOMA prevents the federal government from recognizing the marriages of same-sex couples. As a result, LGBT Americans cannot sponsor a same-sex partner, even if the couple is legally married in their state. What’s more, even if the law were to recognize same-sex couples, such couples could continue to face discrimination in obtaining visas, green cards or citizenship, or in obtaining permission to enter or remain in the U.S.<sup>159</sup>

### *How Immigration Law Denies Permanency to Children*

There are five primary ways in which immigration law negatively impacts the stability and security of children in same-sex, binational families.

**Deportation (or fear of deportation) of a parent.** Because LGBT Americans cannot sponsor their spouses and partners for the purposes of immigration, children of same-sex, binational couples face the constant threat of losing a parent through deportation or denial of a visa. Some families are actually ripped apart; others must live in fear of such an eventuality. This flies in the face of children’s need for permanency and of the policy preference of family unity.

**Deportation (or fear of deportation) of a child.** If the child of a same-sex, binational couple is foreign-born and if his or her American parent cannot become a legal parent, that parent also cannot sponsor the child for immigration purposes. Therefore, the child may be deported (and forced to leave the only country he or she has ever known) regardless of how long the child has lived in the U.S. This may happen if the child’s foreign-born parent is deported (and the child is also deported), if the child is discovered to be undocumented and is deported, or, in a worst-case scenario, if the foreign-born parent

dies but the American parent has no legal standing to care for the child. In some cases, rather than split apart a family, binational families who can do so (and most cannot) may choose to move to one of the 25 nations<sup>160</sup> that allow such families to live together, finding safe haven but tearing their children away from their schools, friends, communities and extended families.

**Prevention of a child’s parents from securing the protections of marriage or relationship recognition.** In an added complication of U.S. law, binational parents seeking to keep their families together may be unable to get the legal protections of marriage or formal partnerships because doing so would undermine their effort to renew a temporary visa. Since LGBT immigrants cannot secure permanent, family-based visas through a same-sex partner, many remain in the U.S. by repeatedly renewing temporary visas. Securing a temporary visa normally requires proof that an applicant does not intend to stay in the U.S. indefinitely. However, obtaining the legal protections on which LGBT families—like all families—depend demonstrates the opposite: an intention to build a permanent life together. Thus, an LGBT family seeking permanency is caught between two sets of contradictory laws: in order to stay together, it must forgo the family protections that stem from marriage or partnership recognition.

**Prevention of a child’s parent from securing legal parenting ties.** Likewise, if the American partner of a foreign-born parent wants to secure ties to their children through a second-parent adoption, going through that process could put the foreign-born parent’s status at risk if he or she is on a temporary visa or is undocumented. Once again, the law pulls these families in two different directions: they cannot secure legal parenting ties without risking their immigration status.

**Denial of government safety net and other protections.** Families where one parent cannot become a permanent immigrant or citizen face added restrictions in their access to government safety net protections, such as Temporary Assistance for Needy Families, the Supplemental Nutrition Assistance Program and Social Security benefits (see “Children Falling Through The Safety Net”).

<sup>158</sup>Other options for immigration include getting asylum, winning the diversity visa lottery and obtaining a visa through employer sponsorship.

<sup>159</sup>According to Immigration Equality, a group that advocates for LGBT immigrants, “foreign consulates have a great deal of discretion in deciding applications for visas, and there is no appeal for a denial.”

<sup>160</sup>Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law,” Human Rights Watch and Immigration Equality, 2006, 7, 150-172. Updated in email from Julie Kruse, Immigration Equality, May 24, 2011.

## Inequitable Immigration Law Threatens to Tear Family Apart



Reprinted with permission from Mark Himes

Mark, Fred and their four children at the 2010 White House Easter Egg Roll. The family has struggled because Fred is not a citizen and Mark cannot sponsor him.

When Mark met Fred at a birthday party in 1990, he was not even sure that Fred, a Frenchman teaching temporarily in the U.S., was gay. Seven years later the two were a long-time couple. Fred secured a teaching job in Pennsylvania, and Fred and Mark began thinking about starting a family.

Mindful of the importance of family permanency, Mark and Fred researched their options for staying together if they adopted children, and learned—that France would recognize their adopted children as their own. Between 2000 and 2009, the couple adopted four children. When Fred's 6-year visa was due to expire, the family planned to move back to France. Unfortunately, while France offers immigration protections to same-sex couples, the French Consulate informed the couple that if they moved to France, the government would only recognize their children's legal ties to one of the parents.

If the couple were heterosexual, Mark could sponsor Fred to become a permanent U.S. resident. However, even though the couple legally married (in California, during the brief window when the state allowed marriage by same-sex couples), the federal government refuses to recognize their marriage. The result is that Mark cannot sponsor Fred as his spouse. Now, after nearly 20 years together, permanency eludes Mark, Fred and their children. To extend his visa, Fred has returned to school. However, the costs of forgoing work and paying tuition are a grave financial hardship. As of the time of publication, the family's fate remains unclear.

Based on MAP telephone interview with family members, May 21, 2011.

## Recommendations Overview: Providing Stable, Loving Homes

The recommendations table at the end of this report provides a detailed and comprehensive overview of how to address the inequitable laws and stigma that make it harder for children with LGBT parents to have the security of stable, loving homes. However, broadly speaking, recommendations fall into the following major categories:

### BROAD LEGAL RECOGNITION OF LGBT FAMILIES

- Pass comprehensive state legislation to ensure recognition of LGBT parents as legal parents. Comprehensive parentage laws would cover the following (each is discussed separately in the recommendations table):
  - a. Adoption and fostering laws
  - b. Parental presumption laws
  - c. Donor insemination laws
  - d. Surrogacy laws
  - e. Second-parent adoption laws
  - f. De facto parenting laws
  - g. Clarification of judges' authority to issue parentage judgments
- Legalize and federally recognize marriage for same-sex couples
- Provide paths to immigration and citizenship for binational LGBT families

### NON-DISCRIMINATION/CULTURAL COMPETENCY

- Pass and strengthen adoption and foster care non-discrimination laws
- Pass custody and visitation non-discrimination laws
- Provide cultural competency training for agencies, social workers and judges

### RESEARCH, EDUCATION AND FAMILY SUPPORT

- Expand research on LGBT families and parenting
- Help LGBT families establish parentage ties and other legal protections where possible
- Create stronger support services and outreach for LGBT families
- Create inclusive environments for all LGBT families (particularly transgender parents and families of color)



## GOAL 2: ENSURING ECONOMIC SECURITY FOR CHILDREN

All children have the same basic physical needs: clothing, adequate food, a safe and sanitary place to live and the ability to receive medical care when they get sick. Federal, state and local governments provide programs, benefits and protections to help families with the costs of meeting these needs and raising healthy, well-adjusted children. But advocates for children often point out that federal spending in this area is inadequate at a time when one out of five American children lives in poverty.<sup>161</sup>

In 2010, the federal government spent \$445.2 billion (or 11% of total federal spending) on more than 100 programs benefiting children.<sup>162</sup> By comparison, in just two years the government spent approximately \$440 billion on tax expenditures benefiting corporations.<sup>163</sup> Federal spending on children, as a percent of the federal budget, has been reduced by 20% over the past 40 years.<sup>164</sup> This report divides the government-based economic protections intended to help ensure financial security for children into three major categories: safety net programs, tax credits and deductions, and programs designed to provide economic stability when a parent dies or becomes disabled (see

Figure 25).<sup>165</sup> These programs and laws often fall short of providing true security for all American children for a number of reasons.

First, qualification for assistance from safety net programs generally is tied to federal poverty guidelines that underestimate the actual income required for a family to survive and meet basic needs. Second, a large percentage of families who qualify for assistance do not receive it (for example, only 57% of families who qualify for food assistance receive it).<sup>166</sup> Next, even when families do receive benefits, the benefits are generally not enough to lift them out of poverty. And last, rather than tying qualification for benefits to such factors as a family's size or demonstrated need for assistance, the government treats families differently based on whether or not parents are married and/or parents have legal ties to their children.

<sup>161</sup>Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, "Income, Poverty, and Health Insurance Coverage in the United States: 2010," U.S. Census Bureau, 2011, 60-239.

<sup>162</sup>Julia Isaacs, Heather Hahn, Stephanie Rennane, C. Eugene Steuerle and Tracy Vericker, "Kids' Share 2011: Report on Federal Expenditures on Children Through 2010," Brookings Institute and Urban Institute, 2011.

<sup>163</sup>Scott Hodge, "Putting Corporate Tax 'Loopholes' In Perspective," *Special Report #184*, Tax Foundation, 2010.

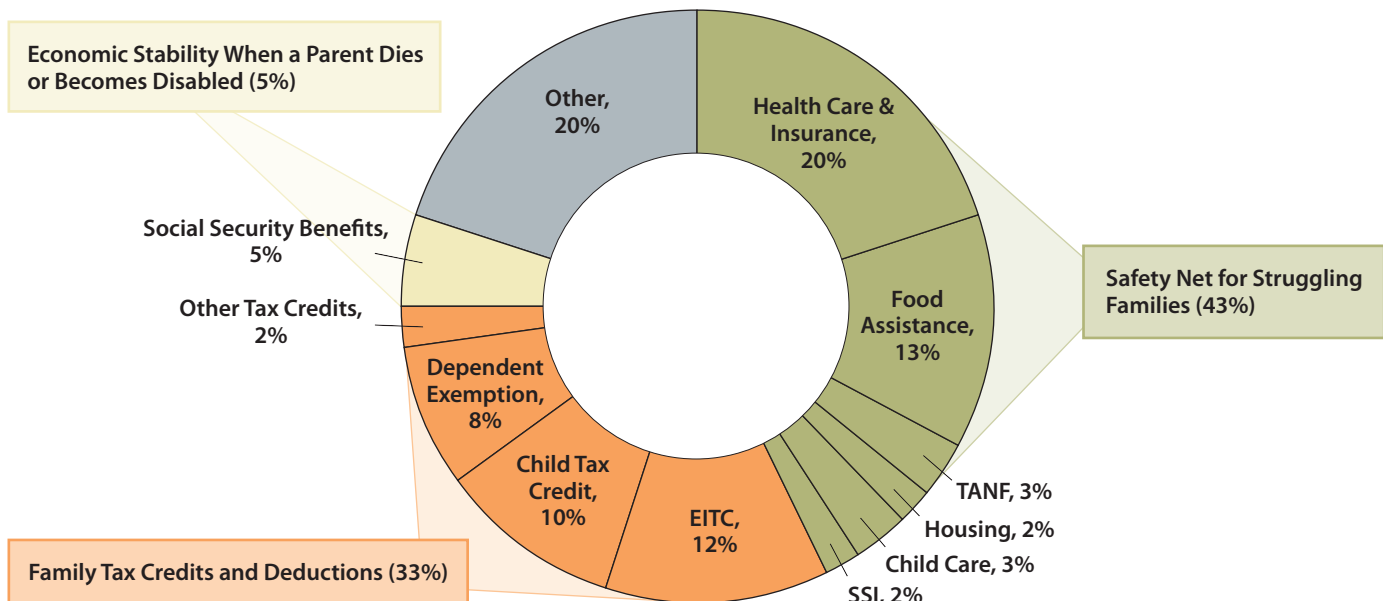
<sup>164</sup>In 1960, the share of domestic federal spending on children was 20% compared to just 16% in 2009; this marked a 20% decrease over that time. Isaacs et al., "Kids' Share 2011."

<sup>165</sup>This report does not address benefits for military families because of the complicated and changing nature of the laws and policies governing these important protections.

<sup>166</sup>James Mabli, Rhoda Cohen, Frank Potter and Zhanyun Zhao, "Hunger in America 2010," Feeding America, 2010.

Figure 25: Federal Expenditures on Children in 2010

100% = \$445.2 billion



Note: Not all families in need receive these benefits due to eligibility restrictions, state funding constraints, time limits on benefits, and other obstacles.

Source: Julia Isaacs, Heather Hahn, Stephanie Rennane, C. Eugene Steuerle and Tracy Vericker, "Kids' Share 2011: Report on Federal Expenditures on Children Through 2010," Brookings Institute and Urban Institute, 2011.

This report does not address the first three problems. Rather, the focus here is on how the government treats similar families differently when it comes to awarding and distributing needed assistance. This uneven application of government benefits, tax policy and other protections based on family structure affects not only LGBT families, but also many other types of families.

Some government-based economic protections are based on a broad definition of what constitutes a family or household. The focus in these cases is on the actual interconnectedness of people (such as the extent to which individuals share economic resources like food or housing). These programs and laws accurately count and reflect LGBT and other families because their definition of family is not constrained by whether a parent is legally married or has established a legal parent-child relationship.

But these programs and laws are in the minority. Most family-related government programs and laws use narrow definitions of family that do not accurately reflect LGBT and many other families. For example, a program may refuse to recognize the same-sex partner of an LGBT parent when counting household size or determining death benefits, even if the couple is married.<sup>167</sup> Additionally, many safety net programs require parents to have a legal parent-child relationship in order to receive benefits intended to help their children, even if state law makes this impossible for LGBT parents.

This unequal treatment can affect LGBT and other families in a number of important ways:

- **Children fall through the safety net when government programs refuse to recognize their families.** Government safety net programs provide cash assistance, food and nutrition support, housing subsidies, health insurance, child care assistance, educational loans and other forms of assistance. They are designed to help families get back on their feet and meet children's basic needs during times of economic struggle. A narrow definition of family within these programs means that LGBT and other families are unfairly denied benefits. In other cases, families face economic penalties if the parents formalize their relationship with each other or with their children. (For more on how means-tested programs treat diverse families, see the sidebar on page 56.)
- **LGBT and other unrecognized families cannot access many tax credits and deductions intended**

**to reduce the cost of raising a family.** Government tax credits and deductions for all families, regardless of economic circumstance, are substantial. A 2007 study by the Tax Foundation found that an average-income American family receives approximately \$16,781 in benefits each year from the federal government.<sup>168</sup> Much of this support comes in the form of tax credits and deductions designed to reduce the financial costs of raising a family. LGBT families usually cannot avail themselves of these tax credits and other programs, meaning they face a higher tax burden than other families.

- **Laws designed to support families when a parent dies or becomes disabled harm children by excluding LGBT and other families.** The death or disablement of a parent is traumatic for families and children. Government programs provide cash assistance to help families who are facing such crises so they can continue to provide adequately for their children. A variety of laws and programs also seek to ensure that children are protected and cared for both emotionally and financially when a parent dies or become disabled. LGBT families often are excluded from these programs. When a parent dies or becomes disabled, for example, LGBT families can be denied their inheritance, as well as Social Security survivor and disability benefits. They also can be barred from suing for wrongful death.

*Table 4* on the next page provides a summary of major government-based economic protections for families. The table includes information about whether or not these programs and laws define family broadly or narrowly, and how this definition impacts LGBT families. While the analysis is LGBT-specific, the principles are similar or the same for many other households (such as households headed by unmarried heterosexual couples and households in which a child is raised by an extended family member).






Except where noted, the majority of this section examines how children raised by two LGBT parents are treated differently than those raised by two heterosexual parents for the simple reason that disparities most often emerge as the result of the law's failure to recognize LGBT families. (Children raised by

<sup>167</sup>Since the federal government does not recognize same-sex relationships because of DOMA, same-sex partners are generally treated as legal strangers under the law.

<sup>168</sup>Andrew Chamberlain and Gerald Prante, "Who Pays and Who Receives Government Spending? An Analysis of Federal, State and Local Tax and Spending Distributions, 1991-2004," Tax Foundation, 2007.



Table 4: How Government-Based Economic Protections Treat LGBT Families Differently

Program or law	How the program or law helps families <sup>169</sup>	Average amount of assistance	Definition of family	How program or law's definition of family impacts LGBT families
<b>Safety Net Programs for Struggling Families</b>				
Temporary Assistance for Needy Families (TANF)	Provides cash assistance to low-income families	\$\$\$ \$509-\$763 per month in cash assistance for a single parent with two children	 Narrow <sup>170</sup>	 May make it easier or more difficult to qualify
Food & Nutrition Assistance (SNAP, School Lunch & WIC)	Provides financial assistance to help families and pregnant women obtain food	\$\$\$ \$524 per month in food assistance for a family of three	 Broad	 LGBT families are treated the same as heterosexual families
Public Housing & Housing Assistance (Public Housing & Section 8 Vouchers)	Provides vouchers to help with the cost of renting a home or placement in public housing units	\$\$\$ \$641 per month in housing vouchers per family	 Broad	 LGBT families are treated the same as heterosexual families
Medicaid & Children's Health Insurance Program (CHIP)	Provides free or low-cost health insurance	\$ \$133 per month in health benefits for each child	 Narrow	 May make it easier or more difficult to qualify
Supplemental Security Income (SSI)	Provides a minimum level of cash assistance to individuals who are aged, blind or disabled	\$\$ \$499 per month in cash assistance for each disabled or blind person	 Narrow	 May make it easier or more difficult to qualify
Child Care & Early Child Education Assistance (Child Care & Head Start)	Provides free or low-cost child care or early child education programs	\$\$\$ \$583 per month in child care assistance per child	 Narrow	 May make it easier or more difficult to qualify
Educational Loans & Grants	Provides financial assistance to students pursuing higher education through grants, loans and work-study programs	\$\$\$\$ Private loans and scholarships vary, but Pell Grant is \$5,550 per year for each student	 Narrow	 May make it easier or more difficult to qualify
<b>Easing the Financial Costs of Raising a Family: Tax Credits and Deductions</b>				
Tax Credits & Deductions	Reduces tax liability or reduces taxable income for child-related expenses	\$\$\$\$ \$2,215 per year in tax savings for an average family with two children	 Narrow	 LGBT families are generally denied these credits and deductions <sup>171</sup>
<b>Economic Stability When a Parent Dies or Becomes Disabled</b>				
Social Security Benefits (OASDI)	Provides cash benefits to the children and spouses of deceased workers	\$\$\$ \$751 per month in cash assistance for a child whose parent died	 Narrow	 LGBT families are generally denied these benefits
Inheritance & Intestacy Law	Facilitates passing of assets to family members upon death	\$-\$\$\$\$ Benefits vary, but can include staying in the family home and inheriting assets	 Narrow	 LGBT families are generally not recognized under these laws
Wrongful Death Suits	Allows surviving family members to sue for monetary damages in the event of the wrongful death of a loved one	\$\$\$\$ The average successful wrongful death suit awards \$2.8 million to surviving family members <sup>172</sup>	 Narrow	 LGBT family members often cannot sue in event of a wrongful death

<sup>169</sup>Not all families in need receive these benefits due to eligibility restrictions, state funding constraints, time limits on benefits, and other obstacles.

<sup>170</sup>Note that most government safety net programs treat same-sex couples as unmarried even if they are legally married in their state.

<sup>171</sup>The two exceptions are the Earned Income Tax Credit and the Adoption Credit, for which LGBT families may be more likely to qualify or receive additional benefits.

<sup>172</sup>Teresa Anderson, "Laying Down the Law: A Review of Trends in Liability Lawsuits," <http://diogenesllc.com/liabilitytrends.pdf>.

single LGBT parents are often, but not always, treated like children raised by single heterosexual parents.) The section also outlines recommendations for ensuring that LGBT families are treated equally.

Even in cases when a narrow family definition does not directly hurt an LGBT family, social stigma combined with inequitable laws and policies create a culture that tells LGBT families that they are not “real families.” In many cases, LGBT families are not even aware of the important programs and protections that they can access. Additionally, when families do seek assistance, high numbers experience discrimination or are denied services even when they qualify. A survey of low-income LGBT people in New York City found that 36% had “problems getting services” from public agencies, including welfare agencies.<sup>173</sup> And a recent survey of transgender Americans found that 22% reported being harassed or disrespected by a government agency or official.<sup>174</sup>

Of course, the unique economic challenges facing LGBT families aren’t limited to the ways in which they are treated by government policies intended to ensure economic security for families. The most important pillar of economic security is the availability of family-supporting jobs, and large numbers of low-wage jobs make it difficult for LGBT and other families to make ends meet. A family of three supported by one minimum-wage earner, for example, would still live below the federal poverty level.<sup>175</sup> Adding to the challenges for LGBT families is the fact that they often face employment discrimination, which may result in lower wages or more instances of unemployment. These challenges may be particularly acute for transgender Americans and LGBT people of color.

While the remainder of this section focuses on the safety net programs, taxes, and other laws designed to help families, access to good jobs that provide adequate compensation should be an important focus for all advocates who wish to assist LGBT and other families as they face the economic challenges of raising children.

## Challenge: Children Falling Through the Safety Net

Millions of American children are living in poverty today<sup>176</sup> and despite stereotypes to the contrary, children being raised by same-sex couples are twice as likely to live in poverty as children living in married heterosexual households.<sup>177</sup>

Because safety net programs are designed to help struggling families, they are “means-tested,” meaning eligibility is based on a family’s financial resources and household size. Generally speaking, means-tested programs set income caps for eligible recipients. Some programs offer assistance to families whose incomes fall under established federal poverty guidelines based on household size, while other programs may provide assistance to families whose incomes are at or below 150% of the guidelines. Income caps (and the federal poverty guidelines) rise with the number of people in a household because larger families have a higher cost of living. In addition to increased income caps for larger families, the value of safety net program assistance generally increases as family size increases (larger families receive a higher level of benefits).

Ideally, government safety net programs would provide assistance to families based on need rather than factors such as the marital status of the heads of the household. Unfortunately, this is not usually the case. The majority of safety net programs use a narrow definition of family that is tied to marital status and to the legal relationship between parents and their children. This often excludes same-sex partners (even those who are legally married) and non-legally recognized parents and children. The result is that the assistance available for LGBT and other families often does not accurately reflect their household size or economic resources.

The lack of recognition for LGBT families in government means-tested programs affects families in a couple of different ways, depending on their circumstances:

**Government programs may deny LGBT and unmarried households needed assistance that would be provided to a married household in otherwise identical circumstances.**<sup>178</sup> Consider a family consisting of a same-sex couple and the couple’s child. An accurate count would see this family as a three-person

<sup>173</sup>Welfare Warriors Research Collaborative, “A Fabulous Attitude: Low-Income LGBTGNC People Surviving & Thriving on Love, Shelter & Knowledge,” *Queers for Economic Justice*, 2010.

<sup>174</sup>Grant et al., “Injustice at Every Turn.”

<sup>175</sup>The current minimum wage is \$7.25. Assuming a worker works 2,000 hours per year, this worker would earn \$14,500, which is still \$3,810 below the federal poverty guideline for a family of three.

<sup>176</sup>DeNavas-Walt et al., “Income, Poverty, and Health Insurance Coverage.”

<sup>177</sup>Albelda et al., “Poverty in the LGB Community.”

<sup>178</sup>Here we mean either through the legal recognition of the relationship of two adults through a federally-recognized marriage or other union, or as a result of the ability to establish a legal parent-child relationship through adoption, parental presumption or another mechanism as described in the previous section, “Securing Stable, Loving Homes for Children.”

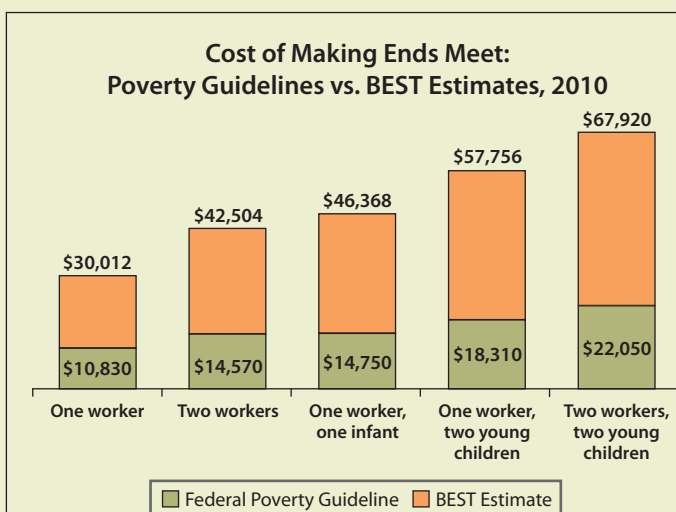
## What Does It Mean to Live in Poverty?

Individuals and families living in poverty are unable to achieve a minimum standard of living and may struggle to afford food, clothing and a safe place to live. When the government measures poverty rates or sets eligibility requirements for means-tested programs, it uses the **federal poverty guidelines**. Families with household incomes at or below the guidelines are considered to be “poor” or “living in poverty.” This is often what we mean when we use the term “low-income.”<sup>179</sup>

The federal poverty guidelines are set by the U.S. Department of Health and Human Services and are issued each year. With the exception of Alaska and Hawaii, the guidelines do not vary based on regional cost-of-living differences. Examinations of the cost of living in various parts of the country find that the poverty guidelines underestimate the income required for a family to survive and meet basic needs.

For example, the 2010 Basic Economic Security Tables (BEST) Index estimated the true annual costs to an average family for housing, utilities, food, transportation, child care, health care, taxes and minimal savings.<sup>180</sup> As shown, the federal poverty guideline is \$22,050 for a family of two adults and two children, but the BEST estimate for the true cost of living for that family is \$67,920. Therefore, if this family had an income at the federal poverty guideline, it would only allow this family to meet a third to a quarter of its actual needs. Similarly, a 2006 study showed that more than half of the families who received support from the federal government’s TANF program still struggled to purchase food and two-fifths were unable to pay for utilities.<sup>181</sup>

The government is working on a new measure of poverty that will take into consideration the costs of food, shelter, clothing and other necessities, as well as geographic adjustments based on what it takes to meet basic needs in various parts of the country. This supplemental poverty measure, which will be released by the U.S. Census Bureau alongside the traditional measure of poverty, will shed new light on the ability of families to meet their basic needs in areas from housing and child care to medical expenses.



Source: Wider Opportunities for Women, “The Basic Economic Security Tables for the United States,” 2010.

household consisting of two parents and one child and would consider the combined income of both parents when calculating the level of available assistance. But currently, the federal government will not recognize the marriage or committed relationship of LGBT parents (even if the couple is married in their state), and a non-biological parent may not be able to establish a legal parent-child relationship. As a result, most safety net programs would only see the family as a two-person household consisting of one parent and one child. This, in turn, means the government would ignore the non-legally recognized spouse or parent when calculating the family’s financial needs. Families in this situation may

not receive assistance needed, particularly if the spouse or parent excluded from the household calculation has a very low income. And because benefits increase with family size, such families will receive a reduced benefit.

**Government programs may penalize couples wanting to marry (or wanting to have their relationships recognized by the government) or parents wanting to establish legal ties to their children.** Advocates across the political spectrum argue that government

<sup>179</sup>Federal Register, Volume 76, Number 13, January 20, 2011.

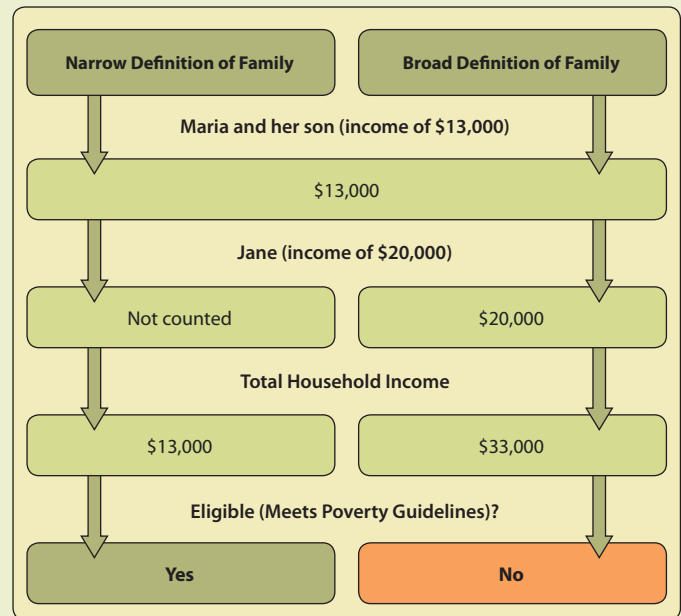
<sup>180</sup>Wider Opportunities for Women, “The Basic Economic Security Tables for the United States,” 2010.

<sup>181</sup>Pamela J. Loprest and Sheila R. Zedlewski, “The Changing Role of Welfare in the Lives of Low-Income Families with Children,” Urban Institute, 2006.

## How Definitions of Family Affect Eligibility for Safety Net Programs: Two Family Stories

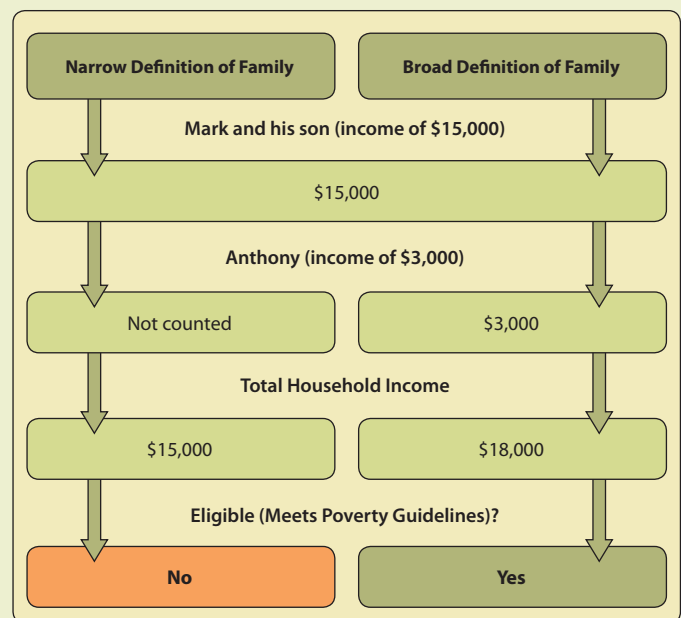
### Jane, Maria and Stuart Only Qualify Under A Narrow Family Definition

Maria (who earns \$13,000) and Jane (who earns \$20,000) are raising their son, Stuart. Maria is Stuart's only legal parent. A government program using a narrow definition of family would exclude Jane and her income in calculating eligibility. Thus, the family would be considered a two-person household (Maria and Stuart) with an income of \$13,000 (Maria's income). This allows the family to qualify for assistance. However, a government program using a broad definition of family would include Jane and accurately consider this a three-person household. The total household income of \$33,000 (Jane and Maria's combined income) would be too high for the family to qualify for assistance. This particular household would therefore lose benefits should the government recognize the whole family.



### Anthony, Mark and Lukas Only Qualify Under A Broad Family Definition

Mark (who earns \$15,000) and Anthony (who earns \$3,000) live with their son, Lukas. Mark is Lukas's only legally recognized parent. A government program using a narrow definition of family would exclude Anthony and his income in the family's application for assistance. As a two-person household earning \$15,000, Mark and Lukas have an income that is too high to qualify for the program. However, if the program uses a broad definition of family and recognizes Anthony's presence in the family, then this family's household size (three-person household) and total household income of \$18,000 would qualify them for assistance since larger households have higher allowable incomes. In other words, this particular household is denied assistance they would otherwise receive because of the narrow definition of family.



programs and policies should aim to support, stabilize and strengthen families. However, eligibility guidelines for many means-tested programs can create economic disincentives that discourage couples from entering into legally recognized relationships.

Consider, for example, an unmarried or LGBT couple raising a child, where both parents have very low incomes. Each parent qualifies for assistance when counted as an individual, or as a single parent raising a child. However, if the government recognizes this couple's relationship, their combined income is just enough that they no longer qualify for assistance. This



can happen because the eligibility level for two people in most means-tested programs is less than twice the level for a single person. In this case, government policy creates an economic disincentive for a couple to formalize their relationship—a disincentive sometimes referred to as a “marriage penalty.”

Like other families, LGBT families may face a choice between accessing the important protections that come with legal relationship recognition and formal parental recognition and losing vital benefits that help families meet basic needs. In fact, research by the Congressional Budget Office and The Williams Institute finds that extending legal recognition to same-sex couples would mean that the number of families receiving assistance would decrease.<sup>182</sup>

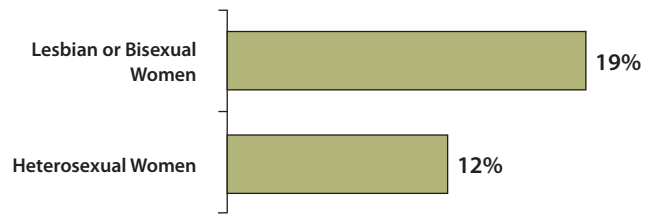
### Temporary Assistance for Needy Families

Temporary Assistance for Needy Families (TANF) provides cash assistance, child care, job training programs and other services to low-income families with children.<sup>183</sup> TANF funds are directed to states, which operate their own programs while meeting broad federal goals.<sup>184</sup>

In an average month, 1.9 million families and their 3.4 million children receive assistance and services through TANF.<sup>185</sup> To qualify for the program, families must have incomes and economic resources below a threshold, which varies based on the number of adults and children applying for assistance. Nationally, only 20% of families living in poverty were enrolled in TANF in 2010.<sup>186</sup> While TANF is vital to low-income families, it is not sufficient to lift families out of poverty. For example, TANF provided benefits equal to less than half of the federal poverty guidelines in all states in 2010; in 29 states, TANF’s benefits amounted to less than 30% of the guidelines.<sup>187</sup>

The majority of recipients of TANF are single mothers with children. Of families receiving TANF in 2009, 68% self-identified as people of color.<sup>188</sup> A 2009 survey of Californians found that nearly one in five low-income lesbian and bisexual women with children were enrolled in TANF, compared to one in ten heterosexual low-income women with children (see *Figure 26*).<sup>189</sup> Rates of TANF enrollment for men—gay, bisexual or heterosexual—are low and do not reveal disparities.<sup>190</sup> Very little data is available about transgender families and TANF.<sup>191</sup>

**Figure 26: Percent of Low-Income California Women with Children Receiving Temporary Aid for Needy Families (TANF) (2009 California Health Interview Survey)**



Note: Sample sizes for gay and bisexual men is too small to accurately estimate TANF receipt. Previous studies find similar rates of TANF receipt for gay, bisexual and heterosexual men. Low-income is defined as 300% of the federal poverty guideline. Source: MAP analysis of the 2009 California Health Interview Survey.

### LGBT Families and TANF

TANF uses a narrow definition of family. In general, only the legal parents of a child are considered part of the “assistance unit,” the group of individuals whose needs and resources are counted when determining eligibility. If both adults are legally recognized parents of a child, they both are considered part of the assistance unit, regardless of marital status. However, if only one parent is legally recognized, the non-legally recognized parent is not included in the assistance unit. As with all means-tested programs, the exclusion of a non-legally recognized parent can result in unfair denial of TANF benefits. Alternatively, exclusion of one parent can result in the family receiving benefits it would be denied were the entire family recognized, creating an economic disincentive for a parent to establish legal ties to his or her child.

To ensure that children are financially supported by both parents, TANF requires that applicants (most often women) identify the other legal or biological parent of a

<sup>182</sup>Congressional Budget Office, “The Potential Budgetary Impact of Recognizing Same-Sex Marriages,” 2004; Jody Herman, Craig Konnoth and M.V. Lee Badgett, “The Fiscal Impact of Creating Civil Unions on Colorado’s Budget,” The Williams Institute, 2011.

<sup>183</sup>In 1996, TANF replaced the welfare program previously known as Aid to Families with Dependent Children (AFDC).

<sup>184</sup>TANF’s goals are “assisting needy families so that children can be cared for in their own homes; reducing the dependency of needy parents by promoting job preparation; preventing out-of-wedlock pregnancies; and encouraging the formation and maintenance of two-parent families.”

<sup>185</sup>U.S. Dept. of Health and Human Services, “Caseload Data 2010,” [http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2010/2010\\_family\\_tan.htm](http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2010/2010_family_tan.htm).

<sup>186</sup>In 2010, the average monthly TANF caseload was 1.9 million families, while 9.2 million families lived in poverty in 2010. Ibid. DeNavas-Walt et al., “Income, Poverty, and Health Insurance Coverage.”

<sup>187</sup>Liz Schott and Iffe Finch, “TANF Benefits Are Low and Have Not Kept Pace With Inflation,” Center on Budget and Policy Priorities, 2010.

<sup>188</sup>U.S. Dept. of Health and Human Services, “Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2009,” <http://www.acf.hhs.gov/programs/ofa/character/fy2009/tab08.htm>.

<sup>189</sup>MAP analysis of 2009 California Health Interview Survey, where “low-income” is defined as 300% of the federal poverty guideline.

<sup>190</sup>Albelda et al., “Poverty in the LGB Community.”

<sup>191</sup>Grant et al., “Injustice at Every Turn.”

child (most often the noncustodial father). The state then locates the second parent, conducts a DNA test to confirm paternity, legally establishes paternity (if necessary) and seeks child support payments from this parent. Applicants who do not cooperate with child support investigations, including the establishment of paternity, may receive reduced assistance or lose their assistance entirely.<sup>192</sup>

TANF's focus on paternity and collection and the implicit assumption that there is an identifiable, usually biological second parent creates challenges for several categories of parents, including: mothers who do not know the father of their children; single mothers who have had children using reproductive assistance or through adoption; and LGBT parents who have created families using reproductive assistance. A caseworker may institute penalties for noncooperation against a parent who is not able to produce evidence of a different-sex second parent. While caseworkers are given leeway in identifying the parent obligated to pay child support, some caseworkers may not be sensitive to LGBT parents who identify a same-sex partner as the second parent.<sup>193</sup> Similar concerns arise for transgender parents who may need to disclose their birth sex in order to identify a noncustodial or absent parent.

TANF also includes often stringent and inflexible work requirements that can pose additional challenges for prospective recipients, particularly LGBT parents. For example, as part of their job training, TANF recipients may be sent to an "interview skills" course and instructed on how to dress. Caseworkers may not be sensitive to the issues this raises for transgender parents, whose gender presentation may not match what is listed on legal paperwork such as a driver's license or Social Security card.<sup>194</sup> Given the lack of employment protections in most states, LGBT parents can have a harder time finding and keeping employment. And, if they can find work, they may be forced to take or keep jobs in workplaces where they are verbally harassed or physically unsafe.

Finally, TANF's marriage promotion programs ignore the experiences and realities of many LGBT families. Originally, TANF focused on ensuring that noncustodial parents, generally fathers, paid child support. However, in 2005, Congress allocated \$750 million over five years for programs that provide marriage and relationship skills, as well as programs to teach parenting skills to fathers. Funding for marriage promotion programs continues despite a 2010 evaluation that found they had no effect on the likelihood of couples staying together or

### California Adjusts to the Evolving Reality of Today's Families

In 2005, the State of California pursued the non-biological lesbian mother of a child whose biological mother had applied for assistance through CalWorks (California's TANF program) after the couple split up. In this case, the applying biological mother could not name a legal father nor could she name a sperm donor, as the donor had signed a contract with the clinic relinquishing all parental rights and obligations. The mother therefore named her ex-partner who had been the primary economic provider while the couple had been together. Appropriately, the county then pursued the non-biological mother to obtain child support payments.

Adapted from Anna Marie Smith, "Reproductive Technology, Family Law and the Post-Welfare State: The California Same-Sex Parents' Rights 'Victories' of 2005," *Signs* 34:4, 2009.

getting married or on the quality of their relationships.<sup>195</sup> Given these programs' questionable effectiveness, many advocates for low-income families argue that funds would be better spent on direct assistance to low-income families. While TANF regulations do not explicitly prohibit LGBT parents from marriage promotion programs, the applicability of these programs to LGBT families is doubtful.

### Food and Nutrition Assistance

Nearly one-quarter of children in the U.S. live in households that are "food insecure."<sup>196</sup> Despite the size and breadth of government food assistance programs, it is estimated that 43% of food-insecure households do not receive such assistance.<sup>197</sup> Three federal programs provide food and nutrition assistance to low-income American families:

<sup>192</sup>U.S. Dept. of Health and Human Services, "Major Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," [www.acf.hhs.gov/programs/ofa/law-reg/finalrule/aspesum.htm](http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/aspesum.htm).

<sup>193</sup>For example, caseworkers are given discretion in situations when identifying paternity could be physically dangerous for a parent or a child.

<sup>194</sup>Sean Cahill and Kenneth T. Jones, "Leaving Our Children Behind: Welfare Reform and the Gay, Lesbian, Bisexual and Transgender Community," The Policy Institute of the National Gay and Lesbian Task Force, 2001.

<sup>195</sup>U.S. Dept. of Health and Human Services, Administration for Children and Families, The Building Strong Families Project, 2010.

<sup>196</sup>While the definition of "food insecurity" is fluid, the Dept. of Agriculture defines it to mean that individuals or families fell into at least one of the following categories: "they worried whether their food would run out before they got money to buy more; the food they bought didn't last, and they didn't have the money to get more; they couldn't afford to eat balanced meals; adults ate less than they felt they should; adults cut the size of meals or skipped meals and did so in three or more months." See "What Is Food Security and Food Insecurity?" [www.ers.usda.gov/briefing/foodsecurity/measurement.htm](http://www.ers.usda.gov/briefing/foodsecurity/measurement.htm).

<sup>197</sup>Mark Nord, Alisha Coleman-Jensen, Margaret Andrews and Steven Carlson, "Household Food Security in the United States, 2009, ERR-108," U.S. Dept. of Agriculture, Econ. Res. Serv., 2010.

- **The Supplemental Nutrition Assistance Program (SNAP)**<sup>198</sup> provides monthly assistance to low-income households to purchase food. The U.S. Department of Agriculture directs funds for the program to state agencies, which determine eligibility and distribute assistance. After unemployment insurance, SNAP is often one of the first government programs that families turn to in times of economic challenge because its eligibility requirements are relatively simple.<sup>199</sup> Individuals and families qualify for SNAP if they have gross monthly income at or below 130% of the federal poverty guidelines.<sup>200</sup> In 2010, 43.2 million people received SNAP assistance, 75% of whom lived in households with children.<sup>201</sup> The assistance amount for a family is approximately 30% of the household's monthly income. A family of three, for example, would receive maximum monthly SNAP assistance of \$526.
- **The National School Lunch Program** provides free or reduced-price lunches to low-income students. The program is funded by the federal government but administered by state education agencies in conjunction with local school districts. Children in families with incomes at or below 130% of the poverty guidelines are eligible for free lunches, while children in families with incomes between 130% and 185% of the poverty guidelines are eligible for reduced-price meals. On the average school day in 2009, 31.3 million children were provided lunches through this program.<sup>202</sup>
- **The Special Supplemental Nutrition Program for Women, Infants and Children (WIC)** gives grants to states to provide food assistance to infants and children under five years old who live in low-income families, and to provide food assistance and nutrition education to pregnant and postpartum women. A qualifying three-year old child would receive a monthly food package containing juice, milk, breakfast cereal, eggs, fruit and vegetables, whole wheat bread, and peanut butter or legumes. Pregnant women and children eligible for SNAP, Medicaid or TANF are automatically eligible for WIC, as are women and children whose incomes fall between 100% and 185% of the poverty guidelines. Pregnant women and children who are deemed to be at "nutrition risk" are also eligible for WIC. In 2009, WIC helped approximately 9.1 million women and children each month.<sup>203</sup>

### LGBT Families and Food Assistance

Unlike other means-tested programs, food and nutrition assistance programs use a broad definition of what constitutes a household. Eligibility is based on household size and economic resources, yet a household can include a person or group of people living together who buy food and make meals together. There is no requirement that applicants be related legally or by blood.<sup>204</sup> Furthermore, the work requirement for adult applicants is waived for individuals living in homes with children, regardless of the legal relationship between the adult and the child.<sup>205</sup>

This broad definition of household is important for LGBT families, who research suggests may be disproportionately food insecure. For example, the 2007 California Health Interview Survey found that 50% of LGB Californians with children whose incomes were at or below 200% of the poverty guideline were food insecure compared to 41% of similarly situated heterosexual Californians.<sup>206</sup> Poor LGB individuals with children also were more likely to receive SNAP benefits (32% vs. 18% of poor heterosexual individuals with children, see *Figure 27* on the next page).

One obstacle to obtaining needed food assistance for many LGBT and other families is that adults and children must be citizens or eligible permanent residents of the U.S. to qualify. This requirement can be harder for LGBT families to meet because they cannot sponsor partners or non-legally recognized children for immigration.<sup>207</sup> An additional disparity arises from the fact that ineligible immigrant family members still have their income included and are counted as part of a household in determining its eligibility for food assistance. This makes it harder for a binational family to qualify, and when they do, only eligible family members actually receive assistance, reducing overall household assistance amounts.<sup>208</sup>

<sup>198</sup>Previously called the Food Stamp Program.

<sup>199</sup>Center on Budget and Policy Priorities (CBPP), "Policy Basics: Introduction to the Food Stamp Program," 2010.

<sup>200</sup>A family of three would qualify with a gross monthly income of \$1,984 or less.

<sup>201</sup>CBPP, "The Food Stamp Program."

<sup>202</sup>*ibid.*

<sup>203</sup>*ibid.*

<sup>204</sup>U.S. Dept. of Agriculture (USDA), "FNS Pre-Screening Tool Help System," [www.snap-step1.usda.gov/fns/tool/tutorial/helpfull.html#household](http://www.snap-step1.usda.gov/fns/tool/tutorial/helpfull.html#household).

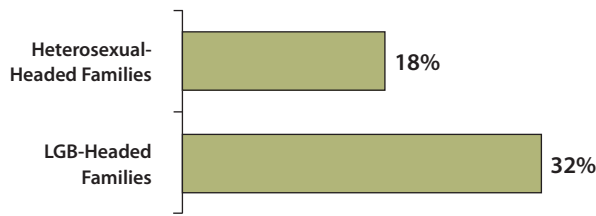
<sup>205</sup>U.S. Dept. of Agriculture, "Supplemental Nutrition Assistance Program," [www.fns.usda.gov/snap/rules/Memo/PRWORA/abawds/abawdspage.htm](http://www.fns.usda.gov/snap/rules/Memo/PRWORA/abawds/abawdspage.htm); Washington State Dept. of Social and Health Services, "Basic Food Work Requirements," [www.dshs.wa.gov/manuals/eaz/sections/FSETabawds.shtml#388-444-0035](http://www.dshs.wa.gov/manuals/eaz/sections/FSETabawds.shtml#388-444-0035).

<sup>206</sup>MAP analysis of the 2007 and 2009 California Health Interview Survey.

<sup>207</sup>U.S. Dept. of Agriculture, "SNAP," [www.fns.usda.gov/snap/applicant\\_recipients](http://www.fns.usda.gov/snap/applicant_recipients).

<sup>208</sup>Nord et al., "Household Food Security."

**Figure 27: Percent of Low-Income Californians with Children Receiving Supplemental Nutrition Assistance Program (SNAP) Benefits (2007 & 2009 California Health Interview Survey)**



Note: Low-income is defined as 200% of the federal poverty guideline.  
Source: MAP analysis of the 2007 and 2009 California Health Interview Survey.

Lastly, since most states do not recognize two parents of the same sex, even eligible LGBT families may not understand that they can apply for food assistance—and they may face discrimination when doing so. Applications for food assistance require an in-person eligibility interview, and agency workers may be hostile, making applicants uncomfortable about listing same-sex partners. Similarly, the National Center for Transgender Equality notes that if a transgender person fills out food assistance paperwork with a gender other than that assigned to them at birth, inconsistencies between the paperwork and gender attached to their Social Security number may trigger disqualifications in food assistance programs.<sup>209</sup>

### Public Housing and Housing Assistance

Two primary federal programs help vulnerable people obtain safe and affordable housing: the Public Housing Program and the Section 8 Voucher program. The U.S. Department of Housing and Urban Development (HUD) provides most of the funding for these programs, which are administered locally by public housing agencies.<sup>210</sup> For both programs, qualifying families receive subsidized rent or rental assistance but are still required to pay some portion of the rental cost, usually 30% of their monthly income.<sup>211</sup>

- *The Public Housing Program* provides rental housing for eligible individuals and families, the elderly and persons with disabilities.<sup>212</sup> To qualify, individuals or households must be considered “low-income,” which HUD defines as having a household income at or below 80% of the median income for same-sized households in the same geographic area. In 2008, 2.2 million people lived in public housing.<sup>213</sup> Household incomes among this population

averaged \$13,600,<sup>214</sup> 41% of these households had children,<sup>215</sup> and 69% of public housing residents identified as people of color.<sup>216</sup>

- **Section 8 Housing Choice Voucher Program** provides vouchers to eligible families, the elderly and disabled individuals to find housing in the private market.<sup>217</sup> Eligible individuals and families may find any housing that meets the requirements of the program and then use a voucher to pay all or some of the rent. Individuals or households qualify if they are “very low-income,” defined as having income at or below 50% of the median income in the area.<sup>218</sup> In 2008, 5.1 million people received Section 8 housing vouchers.<sup>219</sup> Households receiving vouchers had an average household income of \$13,100, 54% were families with children, and 62% of individual voucher recipients were people of color.<sup>220</sup>

While local public housing agencies determine eligibility for both of these programs, HUD sets maximum income limits for recipients. Because income levels vary by region, HUD income limits for “low-income” or “very low-income” households vary accordingly (see *Table 5* on the next page).

### LGBT Families and Housing Assistance

HUD uses a broad definition of family for the purposes of granting housing assistance. It encompasses “two or more persons related by blood, marriage, adoption or other operation of law (such as guardianship or a custody order), or two or more persons who are not so related but will live together in a stable relationship and share resources.”<sup>221</sup> This definition of family covers many different living situations and accurately counts LGBT families.

<sup>209</sup>National Center for Transgender Equality, “Transgender Equality and the Federal Government,” 2009.

<sup>210</sup>Some states also provide funds to assist families in securing safe, affordable housing.

<sup>211</sup>U.S. Dept. of Housing and Urban Development, “Housing Choice Voucher Program Guidebook,” 2001; U.S. Dept. of Housing and Urban Development, “HUD’s Public Housing Program,” [http://portal.hud.gov/hudportal/HUD?src=/topics/rental\\_assistance/phprog](http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog).

<sup>212</sup>Dept. of Housing and Urban Development (HUD), “FY 2010 HUD Income Limits Briefing Material,” 2010.

<sup>213</sup>HUD, “A Picture of Subsidized Households—2008,” [www.huduser.org/portal/picture2008/index.html](http://www.huduser.org/portal/picture2008/index.html).

<sup>214</sup>*Ibid.*

<sup>215</sup>CBPP, “Policy Basics: Introduction to Public Housing,” 2008.

<sup>216</sup>HUD, “Subsidized Households 2008.”

<sup>217</sup>“Very low-income” is defined as having incomes that do not exceed 50% of the median income in the area. HUD, “FY 2020 Income Limits.”

<sup>218</sup>HUD, “FY 2020 Income Limits.”

<sup>219</sup>HUD, “Subsidized Households 2008.”

<sup>220</sup>CBPP, “Policy Basics: The Housing Choice Voucher Program,” 2009.

<sup>221</sup>HUD, “Public Housing Occupancy Guidebook,” 2003.



However, LGBT families receiving Section 8 Housing Choice Vouchers must still find a place to live, and many voucher recipients (especially those who are African American or Latino/a) report that landlords refuse to rent to them.<sup>222</sup> Similarly, one study (not specific to Section 8 vouchers) showed that same-sex couples encountered discrimination in 27% of cases where they sought to rent or buy a home.<sup>223</sup> Another study showed that 19% of transgender respondents had been refused a home or apartment because of their gender identity or expression (see *Figure 28*).<sup>224</sup> Documented race-based discrimination in housing means that LGBT families of color likely face an even greater challenge when trying to use housing vouchers.

In addition to hurdles in the private housing market, LGBT applicants face barriers when trying to access public housing or public housing assistance. These barriers arise from three primary factors. First, local housing agency officials may not know that LGBT families are eligible for housing (see sidebar, page 62). Second, LGBT families themselves may not know that they are eligible. And third, LGBT families may face discrimination or hostile treatment from other residents.

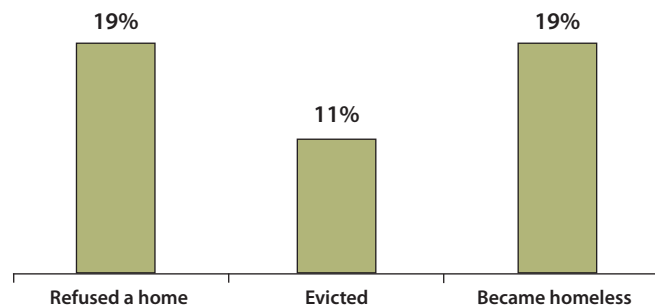
Experiences of discrimination are most likely in communities that lack fair housing laws prohibiting discrimination based on sexual orientation and gender identity. Currently 15 states and D.C. have such laws,<sup>225</sup> while another six states prohibit discrimination based on sexual orientation only.<sup>226</sup> The federal Fair Housing Act prohibits housing discrimination based on sex and gender (among other things) but does not include protections for sexual orientation, gender identity or marital status. It may be possible, however, for individuals who were discriminated against because of their gender identity to make a claim of sex/gender discrimination. In early 2011, HUD distributed fliers to educate the LGBT community about this protection (see flier at right).

Additionally, HUD has recently announced several proposals designed to ensure equal access to housing for LGBT

Area of Residence	Public Housing: Low-Income Threshold (80%)	Section 8 Vouchers: Very Low-Income Threshold (50%)
New York, NY Metro Area	\$63,350	\$39,600
Des Moines, IA	\$58,550	\$36,600
Gulfport-Biloxi, MS	\$42,000	\$26,250

Source: Dept. of Housing and Urban Development (HUD), "FY 2010 HUD Income Limits Briefing Material," 2010

Figure 28: Percent of Transgender Americans Reporting Housing Discrimination



Source: Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice At Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.



Fliers released by HUD in 2010 to educate LGBT Americans about housing discrimination.

<sup>222</sup>Martha M. Galvez, "What Do We Know About Housing Choice Voucher Program Location Outcomes?" What Works Collaborative, 2010; Margery Austin Turner, Stephen L. Ross, George C. Galster and John Yinger, "Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000," Urban Institute, 2002. This study found that African American renters experienced negative treatment in more than one out of five instances, and Latino/a renters experienced negative treatment in one out of four instances.

<sup>223</sup>Fair Housing Center of Southeastern Michigan, "Sexual Orientation and Housing Discrimination in Michigan: A Report of Michigan's Fair Housing Centers," 2007.

<sup>224</sup>Grant et al., "Injustice at Every Turn."

<sup>225</sup>California, Colorado, Connecticut, D.C., Hawaii, Illinois, Iowa, Maine, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington.

<sup>226</sup>Delaware, Maryland, Massachusetts, New Hampshire, New York and Wisconsin.

### Despite Broad Definition of Family, Housing Agencies Discriminate Against LGBT Families

Despite HUD's broad definition of family, LGBT families may be denied assistance by local housing agencies. For example, in 2009, Mitch Cain, a transgender man living in Washington, was not permitted to add Michelle DeShane, his domestic partner, to his Section 8 housing voucher. When the Richland Housing Agency receptionist handed them the application to add Michelle to the voucher, she told them, "I don't think we take your kind here." When the couple attempted to return the completed application they were told that they should go to Benton County where housing authorities "accept everyone, even Martians." Mitch and Michelle were denied the opportunity to live together because Richland Housing Agency staff erroneously believed Mitch and Michelle didn't meet the definition of "family."<sup>227</sup>

Similarly, in response to a HUD proposal that would clarify that current guidelines are already inclusive of LGBT families, the Kirbyville Housing Authority in Texas submitted comments that the new rule (which simply clarifies existing regulations) would "abandon all the morality and values our country was founded on" and violates "traditional definitions of the family, morality and decency."<sup>228</sup>

people. These include amending the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity,<sup>229</sup> studying housing discrimination against LGBT people,<sup>230</sup> adopting a new rule clarifying that the term "family" includes LGBT individuals and couples,<sup>231</sup> and providing non-discrimination training for housing agency staff.

### Medicaid and Children's Health Insurance Program (CHIP)

Federal and state governments jointly offer several means-tested programs to ensure that low-income and vulnerable children have access to health care. The two largest of these programs are Medicaid and the Children's Health Insurance Program (CHIP). (For a discussion of insurance coverage through employers, see "Ensuring Health and Well-Being For Children".)

- **Medicaid** provides healthcare coverage to poor older adults, disabled people, pregnant women,

children, and families who meet household size, income and asset criteria. Children under 6 years of age are eligible for Medicaid if they live in households with household incomes at or below 133% of federal poverty guidelines.<sup>232</sup> Children ages 6 to 18 years qualify with household incomes at or below 100% of poverty guidelines. States must provide eligible children with a minimum set of services such as immunizations, doctor visits and hospital care. Some states add coverage for items including vision care and prescription drugs.

- **CHIP** allows states to insure children from low-income families whose incomes may be too high to qualify for Medicaid. While eligibility for CHIP varies by state, most states cover uninsured children with household incomes as high as 400% of the poverty guidelines. CHIP provides less extensive health coverage than Medicaid, but generally still includes regular checkups, immunizations, hospital care and supplemental services for children with special needs.

Together, Medicaid and CHIP insure one-third of American children (26 million children).<sup>233</sup> And yet one in ten children in the U.S. (8.3 million) still lack health insurance entirely (see sidebar on page 63). In some states, CHIP and Medicaid are administered jointly, while in other states they are two separate programs. The specific health services available to children through Medicaid and CHIP vary by state. For both programs, the federal government sets minimum eligibility criteria, but states may expand eligibility and pay an additional share of program costs, and many states do so. The Affordable Care Act, passed in March 2010, expands coverage for children who were previously ineligible for Medicaid and CHIP and prohibits denial of health insurance coverage for children with preexisting conditions.<sup>234</sup>

<sup>227</sup> Adapted from Northwest Fair Housing Alliance, "Domestic Partnered Couple Raise Awareness of Discrimination," [www.nwfairhouse.org/projects.php?id=269](http://www.nwfairhouse.org/projects.php?id=269).

<sup>228</sup> Adapted from Regulations.gov, "Comment Submitted by Wesley Bell, Kirbyville Housing Authority," HUD-2011-0014-0170, [www.regulations.gov/#!documentDetail;D=HUD-2011-0014-0170](http://www.regulations.gov/#!documentDetail;D=HUD-2011-0014-0170).

<sup>229</sup> HUD, "The State of Fair Housing: Annual Report of Fair Housing FY 2009," 2010.

<sup>230</sup> HUD, "FY 2020 Income Limits."

<sup>231</sup> This rule would also require local housing agencies to comply with local and state non-discrimination laws covering sexual orientation and/or gender identity. Finally, the rule specifies that receipt of an FHA-insured mortgage must be based on the credit-worthiness of the applicants and not on unrelated factors such as sexual orientation or gender identity. HUD, "Proposed Rule: Equal Access to Housing in HUD Programs—Regardless of Sexual Orientation or Gender Identity," Federal Register, 2011.

<sup>232</sup> In 2014, as a result of changes to healthcare laws, virtually all individuals (including children) living in households with incomes at or below 133% of poverty guidelines will be eligible for Medicaid.

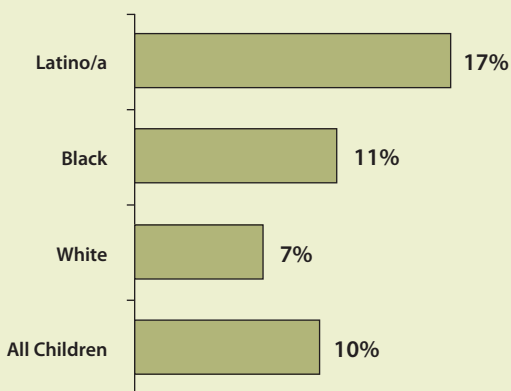
<sup>233</sup> Estimates culled by Urban Institute and the Kaiser Commission on Medicaid and the Uninsured from U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic Supplement.

<sup>234</sup> Families USA, "Fact Sheet: Understanding the New Health Reform Law," July 2010. [www.familiesusa.org/assets/pdfs/health-reform/Low-Income-Children.pdf](http://www.familiesusa.org/assets/pdfs/health-reform/Low-Income-Children.pdf).

## Uninsured American Children

Nearly all uninsured American children live in families with incomes below 200% of the federal poverty guidelines. Although most children (75%) have at least one parent who is employed full time,<sup>235</sup> many employers do not offer insurance and many families cannot afford to pay their own premiums. Access to health insurance varies by race and ethnicity.

Percent of Children Without Health Insurance, By Race



Source: Federal Interagency Forum on Child and Family Statistics, "America's Children in Brief: Key National Indicators of Well-Being," 2010.

### LGBT Families and Medicaid and CHIP

Medicaid and CHIP use a narrow definition of family, considering only a child's legal parents when calculating income and household size. Because the federal government gives states flexibility in setting eligibility guidelines, states may recognize same-sex partners if they choose, even if both are not the legal parents of the child. However, few states have adopted a broader recognition of LGBT families in their Medicaid and CHIP programs since the federal government withholds funds for families falling outside of federal guidelines.<sup>236</sup> This is true even among states that extend marriage or comprehensive relationship recognition to LGBT couples.

### Supplemental Security Income (SSI)

The Supplemental Security Income (SSI) program provides financial assistance to adults and children who are blind or disabled and who lack financial resources. The SSI program is administered by the Social Security Administration. Some states supplement federal SSI assistance with additional state support.

In 2010, 7.6 million people received SSI assistance based on blindness or disability, including 1.2 million children.<sup>237</sup> While the assistance amounts vary based on an individual's income and household size, the average assistance amount is \$499 per month; the maximum assistance is \$674 for an individual and \$1,011 for a married couple.

### LGBT Families and SSI

SSI employs a narrow definition of family. The Social Security Administration will only consider the resources of a federally recognized spouse of an adult applicant or the legal parents of a minor applicant to determine eligibility. Even if a same-sex couple is legally married or in another valid union, the federal government will not recognize that relationship because of DOMA.

If a blind or disabled child has two legally recognized same-sex parents, the child will be treated identically to a child with two heterosexual parents. However, if only one LGBT parent is recognized, the result is an inaccurate count of household members and economic resources. As with all means-tested programs, this inaccurate count may make it easier or harder for the child to qualify than if the family's configuration were counted accurately, depending on the family's financial situation.

Finally, a disabled or blind LGBT parent, even if married, will always be treated as a single person when applying for SSI because the parent's same-sex relationship is not recognized by the federal government.

### Child Care and Early Child Education Assistance

The rise in the number of single-parent families and two-parent families in which both parents work has focused increased attention on the importance of affordable, quality child care and early education. The average annual cost of full-time child care for an infant in a center ranges from \$18,750 in Massachusetts to \$4,550 in Mississippi.<sup>238</sup> These costs can make child care an especially difficult financial burden for low-income families.

Several government programs provide financial assistance to help low-income families obtain child care and early childhood education.

<sup>235</sup>Federal Interagency Forum on Child and Family Statistics, "America's Children in Brief: Key National Indicators of Well-Being," 2010, [www.childstats.gov/americaschildren/famsoc.asp](http://www.childstats.gov/americaschildren/famsoc.asp).

<sup>236</sup>Asserted by the U.S. Dept. of Health and Human Services, Centers for Medicaid Services, in May 2004; and explained in the plaintiff's complaint in *Massachusetts v. U.S. Dept. of Health and Human Services* 698 F.Supp.2d 234 (D.Mass. 2010).

<sup>237</sup>Consortium for Citizens with Disabilities, "Social Security Fact Sheet," 2010.

<sup>238</sup>National Association of Child Care Resource & Referral Agencies, "Issue: Ensuring Affordable Child Care," 2010.



- **Child care assistance programs** designed to help low-income families are administered at the state level and vary by state. The bulk of funding for child care assistance is federal but states may also contribute some funding.<sup>239</sup> Families receiving assistance can choose any approved care provider, including a qualified individual. In 2010, the federal government allocated \$5 billion to the Child Care Assistance Program, which supports more than 1.6 million children each month.<sup>240</sup> In 2009, the majority of children (57%) who received subsidized child care through this program were from communities of color.
- The **Head Start Program** is federally funded but operated by local nonprofit organizations across the country such as churches, public schools and nonprofit community organizations. Head Start provides free educational programming and child care to low-income preschool children to help them gain the skills needed to be successful in school. The Early Head Start Program is designed for children from birth to age three. In 2009, more than 904,000 children participated in Head Start programs at some point during the year, the majority of whom (60%) were from communities of color.<sup>241</sup> In 2010, federal spending on Head Start and Early Head Start programs totaled \$7.2 billion.<sup>242</sup>

Families who qualify for Head Start or child care assistance are usually required to share in the cost of care by making a co-payment to the provider. This co-payment is based on household income, family size, the number of children in care, and the number of hours a child is enrolled in care each week.<sup>243</sup>

### *LGBT Families and Child Care Assistance*

Child care assistance programs and Head Start both employ a narrow definition of family. Only the economic resources of parents or guardians who are related “by blood, marriage or adoption” are considered.<sup>244</sup> A non-legally recognized parent would not be considered part of the family for the purposes of establishing eligibility for child care assistance programs, Head Start or Early Head Start. As with other means-tested programs, the lack of recognition of LGBT families can make it easier to qualify for child care and early child education assistance, or result in unfair denial of this assistance, depending on the family’s circumstances.

Head Start and Early Head Start programs do not consider a child’s immigration status.<sup>245</sup> In fact, some states have specific Head Start and Early Head Start programs

designed especially for migrant and seasonal workers. Child care assistance programs, however, are more complicated because they are funded through TANF and the Child Care and Development Block Grant. As a result, only legal immigrant children who have been in the U.S. for at least five years are eligible to receive child care assistance. Because binational LGBT families cannot use family visas to sponsor spouses or their children for immigration, it may be more difficult for them to qualify for child care assistance.

### *Educational Loans, Grants and Scholarships*

In 2010, the federal government provided more than \$134 billion in loans, grants and work-study funds to 14 million students to pursue postsecondary education.<sup>246</sup> For the 2007-2008 school year (the most recent year for which data is available), 66% of all undergraduate students received some type of financial aid; the average amount of aid received by those students was approximately \$9,100, \$6,600 of which came from federal sources.<sup>247</sup> This assistance has become increasingly important as the cost of attending college has soared in recent years. In 2008, the average cost to attend a four-year public college was 48% of a low-income family’s income and 26% of a moderate-income family’s income.<sup>248</sup>

To be considered for educational aid, students are required to complete a federal form called the Free Application for Federal Student AID (FAFSA). In 2010, more than 21 million FAFSA forms were filed.<sup>249</sup> The information collected on the FAFSA is used to determine eligibility for financial aid and the amount of a student’s financial aid package. While the form is primarily designed for applying for federal educational aid, most states and private aid sources also rely on the FAFSA.

<sup>239</sup>U.S. Dept. of Health and Human Services, Administration for Child and Families, “Resources for Parents,” [www.acf.hhs.gov/programs/ccb/parents/index.htm#pay](http://www.acf.hhs.gov/programs/ccb/parents/index.htm#pay).

<sup>240</sup>U.S. Dept. of Health and Human Services, Administration of Children & Families, “FFY 2009 CCDF Data Tables,” [www.acf.hhs.gov/programs/ccb/data/ccdf\\_data/09acf800\\_preliminary/table1.htm](http://www.acf.hhs.gov/programs/ccb/data/ccdf_data/09acf800_preliminary/table1.htm).

<sup>241</sup>U.S. Dept. of Health and Human Services, “Head Start Program Fact Sheet: Fiscal Year 2010,” [www.acf.hhs.gov/programs/ohs/about/fy2010.html](http://www.acf.hhs.gov/programs/ohs/about/fy2010.html).

<sup>242</sup>*Ibid.*

<sup>243</sup>For example, a family of three with an income at 100% of the federal poverty level (\$18,530) would pay nothing in California, Indiana, Kansas, New Jersey, Rhode Island, South Dakota, or Vermont. But the same family would be responsible for \$253 per month (or 17% of their total income) in Colorado and North Dakota. National Women’s Law Center, “State Child Care Assistance Policies 2010: New Federal Funds Help States Weather the Storm,” 2010.

<sup>244</sup>U.S. Dept. of Health and Human Services, Administration for Children and Families, Early Childhood Learning & Knowledge Center, “The 2007 Family Income Guidelines, ACF-JM-HS-07-05.”

<sup>245</sup>Hannah Matthews, “Immigrant Families and Child Care Subsidies: What Federal Law and Guidance Says,” CLASP, 2010.

<sup>246</sup>U.S. Dept. of Education (DOE), “Federal Student Aid, Annual Report 2010,” 2010.

<sup>247</sup>Christina Chang Wei, Lutz Berkner, Shirley He, Stephen Lew, Melissa Cominole and Peter Siegel, “2007-08 National Postsecondary Student Aid Study (NPSA:08): Student Financial Aid Estimates for 2007-08 (First Look),” National Center for Education Statistics, Institute of Education Sciences, 2009.

<sup>248</sup>Advisory Committee on Student Financial Assistance, “The Rising Price of Inequality: How Inadequate Grant Aid Limits College Access and Persistence,” 2010.

<sup>249</sup>DOE, “Federal Student Aid 2010.”



## LGBT Families and Educational Loans

The FAFSA form uses a narrow definition of family, including only legally recognized parents and stepparents in determining household size and income.<sup>250</sup> The form asks for information about the child's parent(s), and explicitly states that only a "biological or adoptive parent" may be listed. Therefore, a child living with two same-sex parents can only list legal parents on the form. Even if the child's parents are married, a same-sex partner cannot be considered a stepparent for the purposes of completing the FAFSA, since the federal government is prohibited by DOMA from recognizing the marriage of the child's parents.<sup>251</sup> In addition, even if a child from an LGBT family has two legal parents under the FAFSA definition, the form is not gender neutral, but asks for information about "father/stepfather" and "mother/stepmother."<sup>252</sup>

LGBT parents who apply for their own educational assistance are impacted by the FAFSA's narrow definition of family as well. In estimating a family's Expected Family Contribution or EFC (the amount the family can contribute toward an individual's education on its own), the FAFSA formula favors students with spouses and/or dependent children.<sup>253</sup> In many instances, the federal government (and colleges and universities as well) may provide additional financial aid to students with dependent children, students with spouses in school, or students with spouses taking care of young children.

## Government Forms and Defining Family

Even when government programs and aid include broad definitions of family for eligibility purposes, LGBT families with children may not know that they are eligible to apply. This sometimes incorrect perception is reinforced by government forms that try to fit applicants into a series of ill-fitting boxes that ignore the reality of today's families.

Throughout their lives, children and their parents must often complete forms to receive government assistance, attend school and obtain health insurance and more. Significant numbers of these applications—including more than 70 forms across 11 federal departments alone—gather information about the legal parent(s) of a child by requiring applicants to specify both "mother" and "father" and/or asking for a "mother's maiden name."

This is almost always unnecessary. What the federal government truly needs is information about the identity, consent and/or financial position of legal

### Family Struggles to Complete FAFSA

Susan and her partner, Sara, are the legal adoptive parents of their daughter, Nina. When Nina tried to apply for federal aid using the FAFSA form, listing both of her legal parents as the form requires, she received an email from the U.S. Department of Education referring to her as an "orphan." Susan spoke directly with a staff member at the department to explain that Nina has two legal mothers, but the official repeatedly referred to DOMA and its ban on federal recognition of same-sex couples' marriages. DOMA, however, says nothing about parent/child relationships, and the official was confused by the fact that Susan and Sara are both legal parents of Nina. Even though Susan and Sara clearly indicated that Nina was adopted by both of her parents, the official asked questions that Susan could not imagine other adoptive parents being asked, such as, "Who is the biological mother?" Susan was finally able to clear up the confusion by asking the college for assistance with the FAFSA process. But the indignity and frustration of the process added to the already tense experience of choosing colleges, and Susan and Nina are not looking forward to repeating the annual application process.

Story provided by Family Equality Council.

parents—not their gender. Consider the current Social Security card application (see next page), which would be difficult for a child with two mothers or two fathers to complete. If the names on the application do not fit into the gender-based boxes on the form, the agency may return the form or simply refuse to process it.

Government forms can be especially challenging for transgender parents. When forms ask for the sex of a parent, should transgender parents list their sex assigned at birth, or the one that matches how they live their lives? Many forms, especially those for government assistance,

<sup>250</sup>DOE, "Free Application for Federal Student Aid: July 1, 2011-June 30, 2012 (2011-2012 FAFSA)," [www.fafsa.ed.gov/fotw1112/pdf/Pdffafsa11-12.pdf](http://www.fafsa.ed.gov/fotw1112/pdf/Pdffafsa11-12.pdf). For more about LGBT families and FAFSA, see Crosby Burns, "Unequal Aid: Discriminatory Treatment of Gay and Transgender Applicants and Families Headed by Same-Sex Couples in the Higher Education Financial Aid Process," *The Center for American Progress*, August 2011, [http://www.americanprogress.org/issues/2011/08/pdf/lgbt\\_higher\\_ed.pdf](http://www.americanprogress.org/issues/2011/08/pdf/lgbt_higher_ed.pdf).

<sup>251</sup>Stepparents are listed only if they are the spouse of the parent with whom the child lived most in the last 12 months. If the child lives equally with both parents, the stepparent listed is the spouse of the parent who provided the most financial support during the last 12 months. Other relatives are not considered parents for the purposes of FAFSA unless they have legally adopted the child, including grandparents, foster parents, legal guardians and other relatives.

<sup>252</sup>DOE, "2011-2012 FAFSA."

<sup>253</sup>DOE, "The 2011-2012 EFC Formula Guide," 2010, <http://ifap.ed.gov/efcformulaguide/attachments/101310EFCFormulaGuide1112.pdf>.

## Social Security Form Hinders Application

SOCIAL SECURITY ADMINISTRATION Application for a Social Security Card				Form Approved OMB No. 0950-0068	
1 NAME TO BE SHOWN ON CARD FULL NAME AT BIRTH IF OTHER THAN ABOVE OTHER NAMES USED ON YOUR SOCIAL SECURITY CARD		First	Full Middle Name	Last	
2 Social Security number previously assigned to the person listed in item 1		[ ] [ ] [ ] - [ ] [ ] [ ] - [ ] [ ] [ ]			
3 PLACE OF BIRTH (Do Not Abbreviate)		City	State or Foreign Country	4 DATE OF BIRTH	MM/DD/YYYY
5 CITIZENSHIP		<input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Legal Alien Allowed To Work <input type="checkbox"/> Legal Alien Not Allowed To Work (See instructions on Page 3) <input type="checkbox"/> Other (See instructions on Page 3)			
6 ETHNICITY Are You Hispanic or Latino? (Your Response is Voluntary)		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> American Indian <input type="checkbox"/> Other Pacific Islander <input type="checkbox"/> Black/African American <input type="checkbox"/> Asian <input type="checkbox"/> White			
7 RACE Select One or More (Your Response is Voluntary)		<input type="checkbox"/> Male <input type="checkbox"/> Female			
8 SEX		A. MOTHER'S NAME AT HER BIRTH			
9 MOTHER'S SOCIAL SECURITY NUMBER (See instructions for 9 B on Page 3)		First    Full Middle Name    Last Name At Her Birth [ ] [ ] [ ] - [ ] [ ] [ ] <input type="checkbox"/> Unknown			
10 A. FATHER'S NAME		B. FATHER'S SOCIAL SECURITY NUMBER (See instructions for 10B on Page 3)			
First    Full Middle Name    Last		[ ] [ ] [ ] - [ ] [ ] [ ] <input type="checkbox"/> Unknown			

Like many government forms, the Social Security card application includes spots only for Mother and Father. LGBT families struggle to complete such forms.

Sam and his husband applied for a Social Security card for their adopted son, Jacob, when he was six months old. As LGBT families often do to protect themselves, Sam brought with him to the Social Security office documentation beyond what the application form requires: birth records, adoption papers, judicial orders, pediatrician and vaccination records, and adoption agency papers, to name a few. Sam filled out the application, but when he turned it in, the administering clerk “did a double take” when he realized that there were two dads listed on the form. Sam asked if he should cross out “mother” on the application and write in “father 2” or “dad 2.” The clerk told Sam he could not cross off “mother” and must instead “choose one of Jacob’s dads to be listed as the mother.” Sam felt humiliated to be one of two legal fathers and yet have to list himself or his husband as a “mother.” But he did so in order to advance the application. The clerk completed the application, gave Sam a receipt, and said Jacob would receive a Social Security card in several weeks. The card never came.

When Sam called, the office had no record of the application. When Sam went to the office with the application receipt, officials said he needed to start the entire process over. They assured Sam that this “never” happens and they couldn’t imagine how the application was lost.

Story provided by Family Equality Council.

## Governments Take Small Steps in Recognizing Diverse Families

The Obama Administration has stated that it is interested in recognizing all families and progress is occurring on some fronts. For example, in December 2010 the State Department announced a redesign of the Consular Report of Birth Abroad (an application for U.S. citizenship for a child born overseas to a U.S. citizen) and the DS-11 Passport Application (required for first-time passport applicants and applicants who are under 16 years of age). The new forms request information about “Mother/Parent 1” and “Father/Parent 2” to allow a gender-neutral description of a child’s parents.<sup>254</sup> This redesign represents the first time that federal government forms will recognize the possibility of two parents of the same gender. Similar changes have been made to state and local government forms. For example, several forms required to access public health insurance in Massachusetts allow applicants to select “Mother/Co-Parent” and “Father/Co-Parent”.

require a signature stating that all the information is true and indicate that applicants may face criminal penalties if the form is completed falsely. And given that many government agencies cross-reference applications for benefits with other government systems, an application for assistance filed by a transgender person may be flagged as fraudulent and could be delayed or denied.

### Challenge: A Higher Tax Burden for LGBT Families

In addition to safety net programs targeted at families who are struggling financially, the government provides important tax credits and deductions that are designed to help all families, regardless of economic circumstance, ease the financial costs of raising a family. Of total federal spending on children in 2009, more than one-third fell into the category of federal tax credits and deductions (see *Figure 25* on page 51).

These tax credits and deductions are based on a narrow definition of family. This usually means that LGBT families are excluded from the support these programs provide. This exclusion has tangible effects on LGBT families, often by forcing them to pay higher taxes than other families in similar economic circumstances.

<sup>254</sup>U.S. Dept. of State, “Consular Report of Birth Abroad Certificate Improvements,” PRN: 2010.1854, December 22, 2010.

## Tax Credits and Deductions for Families

The primary tax credits and deductions aimed at American families include:

- **The tax exemption for dependents**, which reduces taxable income by \$3,650 for each dependent a taxpayer can claim, including a spouse and children.<sup>255</sup>
- **The Child Tax Credit**, which reduces income tax due by \$1,000 for each child under the age of 17.<sup>256</sup>
- **The Earned Income Tax Credit (EITC)**, which provides assistance to low-income working individuals and families. The credit reduces the amount of tax that an individual or couple owes and may also result in a refund.<sup>257</sup>
- **The Child and Dependent Care Credit**, which allows taxpayers to reduce their taxes by the amount spent on child care for children under the age of 13 or for other dependents to care for themselves.<sup>258</sup> The credit ranges from 20-35% of dependent care expenses paid (up to \$3,000 in expenses for one dependent or \$6,000 for two or more dependents), and also depends on the taxpayer's income.
- **Education-related deductions**, which allow families to reduce their taxable income by the cost of tuition and associated fees, up to \$4,000, for children and other family members who are pursuing higher education.
- **Adoption credits**, which reduce taxes by the amount spent on certain adoption expenses.
- **Estate tax exemption**, which allows major assets to be transferred, tax-free, to a legally-recognized spouse.

### How Tax Law Defines "Family"

The federal tax code uses a narrow definition of family. Generally speaking, the federal government only recognizes married heterosexual spouses and legally related children or relatives for the purposes of filing taxes and qualifying for tax credits and deductions. State tax law varies, but most states use similarly restrictive definitions of family.<sup>259</sup>

- **Filing Joint Federal Tax Returns.** Individuals completing their federal returns can choose from four primary filing statuses: single, married filing jointly, married filing separately, and head of household. How an individual files depends on marital status

and family circumstances. For example, married heterosexual couples must file as either "married filing jointly" or "married filing separately." When filing a joint return, a married couple's income is combined and deductions and credits are taken together. When filing separately, each spouse reports his or her own income and relevant deductions and credits.

Having two filing statuses for married couples allows families to choose which status is most beneficial to them. In most cases, married couples will pay less tax when filing jointly. This is especially true for families with just one earner or families in which there are large differences in earnings between partners. The tax rate is lower for joint filers, and some credits and deductions are only available to couples filing jointly, such as earned income tax credits and education credits (see detailed discussion below). However, filing a joint return can be a disadvantage for some families, especially those with roughly equal incomes.

Because the federal government does not recognize the relationships of same-sex couples, LGBT families cannot file a joint federal tax return, even if they are legally married. Instead, LGBT individuals must file as "single" or—if they meet the narrow criteria—as "head of household."<sup>260</sup> For example, consider an LGBT couple with one partner earning approximately \$60,000 per year and the other partner having no income. The partner earning \$60,000 would face a marginal tax rate of 25%—or a tax burden of approximately \$15,000. But if this family could file as a married couple, they would face a marginal tax rate of 15%—or a tax burden of approximately \$9,000. Because of their inability to file a federal tax return as a married couple, the LGBT family must pay \$6,000 more in taxes. Additionally, only one member of the couple can claim the credits associated with having a child, and the law generally requires that this be the legally recognized parent (even if this parent receives little benefit from the tax credit).

- **Claiming a Qualifying Child.** Households raising a minor or dependent child qualify for many tax

<sup>255</sup>Internal Revenue Service (IRS), "Six Important Facts about Dependents and Exemptions," accessed January 11, 2011, [www.irs.gov/newsroom/article/0,,id=202335,00.html](http://www.irs.gov/newsroom/article/0,,id=202335,00.html).

<sup>256</sup>IRS, "Publication 972—Child Tax Credit," 2010.

<sup>257</sup>IRS, "Earned Income Tax Credit Central," [www.eitc.irs.gov/central/main/](http://www.eitc.irs.gov/central/main/).

<sup>258</sup>IRS, "Top Ten Facts About the Child and Dependent Care Credit," accessed March 15, 2010, [www.irs.gov/newsroom/article/0,,id=106189,00.html](http://www.irs.gov/newsroom/article/0,,id=106189,00.html).

<sup>259</sup>An analysis of state tax law is beyond the scope of this report.

<sup>260</sup>Head of household filing status is reserved for unmarried individuals who paid more than half the household costs for another person who lives with the taxpayer.

Table 6: Summary of Key Tax Credits and Deductions and Impact on LGBT Families						
Credit/ deduction	What it is <sup>261</sup>	Who qualifies for the credit/ deduction		How it works for married heterosexual couples	How it works for same-sex couples	Net impact on same-sex couples
		Legal parent with a “qualifying child”	Non-legally recognized LGBT parent whose child may be considered a “qualifying relative” <sup>262</sup>			
<b>Dependency Exemption</b>  (See page 69)	Reduces taxable income by \$3,650 for the taxpayer, spouse and each qualifying child or relative	✔	❓  Only if the legal parent earns less than \$3,650	If filing separately, the higher-earning parent can claim the exemption, maximizing the tax reduction	A legal parent earning more than \$3,650 must claim the exemption, even if this results in higher overall family taxes	<b>Negative.</b> Same-sex couples cannot optimize their taxes, resulting in higher taxes than comparable heterosexual couples
<b>Child Tax Credit</b>  (See page 70)	Reduces taxes due by \$1,000 for each qualifying child	✔  If the child is under the age of 17	✘	If filing separately, the higher-earning parent can claim the credit, maximizing the tax reduction	Only the legal parent can claim the credit, even if he or she owes no taxes and cannot benefit from it	<b>Negative.</b> Same-sex couples cannot optimize their taxes, resulting in higher taxes than comparable heterosexual couples
<b>Earned Income Tax Credit</b>  (See page 70)	Reduces taxes due but may also result in a refund for low-income families	✔	✘	Couples must file jointly, but may qualify at a higher income if they have a qualifying child	Only the legal parent can claim the child and must qualify based on individual income alone	<b>Varies.</b> Like other means- tested programs, a legal parent may be more likely to qualify when considered a single parent in some cases, but in other cases could be less likely to qualify
<b>Child and Dependent Care Credit</b>  (See page 70)	Reduces taxes due by up to \$1,050 (for one dependent) or \$2,100 (for two or more dependents) for the expenses associated with taking care of a child or dependent	✔  If the child is under the age of 13 or physically or mentally incapable of self-care	❓  Only if the legal parent earns less than \$3,650 and the child meets the other criteria	Couples must file jointly, but can take the credit for their children or each other	A legal parent earning more than \$3,650 must claim the credit, even if this results in higher overall family taxes; LGBT taxpayers also cannot get a credit for care of a same-sex partner	<b>Negative.</b> Same-sex couples cannot optimize their taxes, resulting in higher taxes than comparable heterosexual couples
<b>Education Deductions</b>  (See page 71)	Reduces taxable income by up to \$4,000 in tuition expenses for children or dependents	✔	❓  Only if the legal parent earns less than \$3,650	Couples must file jointly, but can take the deduction for expenses for self, spouse or children	A legal parent earning more than \$3,650 must claim the deduction, even if his or her income is too low to benefit from it	<b>Negative.</b> Same-sex couples cannot optimize their taxes, resulting in higher taxes than comparable heterosexual couples
<b>Adoption Credit</b>  (See page 71)	Reduces taxes due by up to \$13,170 for adoption expenses	✔	Not applicable	Married couples must file jointly and the expenses must be associated with a joint adoption and can only be deducted once	Both taxpayers can take the full amount of the credit for a joint adoption, and it can also be used for a second- parent adoption	<b>Positive.</b> Both LGBT parents can claim full adoption- related expenses rather than filing one joint claim; note, however, that LGBT families also generally face more adoption expenses since state law often does not recognize both parents as legal parents (see “Securing Stable, Loving Homes for Children”)

<sup>261</sup>Not all families who qualify for these tax credits and deductions actually use them.

<sup>262</sup>Note that non-legally recognized parents of a child cannot claim that child as a “qualifying child” but, depending on circumstance, may be able to obtain a partial or full tax credit by claiming that child as a “qualifying relative.”



deductions or credits, as long as the child is a “qualifying child” as defined by tax law. Among other criteria, a qualifying child must be the taxpayer’s legal child or stepchild, a foster child, minor sibling or stepsibling, or a descendent of any of these, such as a grandchild.<sup>263</sup> This definition excludes children of LGBT parents who cannot establish a legal parent-child relationship.

- **Claiming a Qualifying Relative.** In addition to claiming a qualifying child, individuals or couples filing jointly can claim certain exemptions or credits for a “qualifying relative.” A qualifying relative must be legally related to the taxpayer or must live with the taxpayer as a member of his or her household. This individual also must have a gross income for the year that is less than \$3,650, must receive half or more of his or her support for the year from the taxpayer, and must not have been claimed as a qualifying child or relative by another taxpayer. In most cases, a child cannot be considered a qualifying relative for a non-related taxpayer because the child is already the qualifying child of another taxpayer such as the child’s legally recognized parent (who must claim the child in most cases). As a result, most LGBT taxpayers cannot claim their non-legally recognized children as qualifying relatives.

For example, a lesbian couple, Mary and Jane, are raising Jonathan. Only Mary is recognized as Jonathan’s legal parent. Jane, who earns more than Mary, would not be able to take any deductions or credits for Jonathan because he would not count as either a qualifying child or as a qualifying relative. Assuming Mary earns little income, this puts Mary and Jane at a disadvantage because Mary does not benefit from claiming Jonathan on her taxes, which must be filed independently of Jane’s.

In some limited cases, LGBT parents who cannot claim their child as a qualifying child might still be able to claim the child as a qualifying relative, though this does not result in the same level of tax credits and deductions. If the legal parent earns less than \$3,650 and is not required to file a tax return, the non-legally recognized parent can claim both his or her partner and the child as qualifying relatives.<sup>264</sup> Note that a married heterosexual family in a similar situation would be able to file a joint return and the couple would claim the child as a qualifying child, rather than as a qualifying relative.

See *Table 6* on the previous page for an overview of key tax credits and deductions and how they apply differently to LGBT families.

### *The Impact of Tax Credits and Deductions on LGBT Families*

We now explore each of the major tax credits and deductions for families—and how LGBT families may be restricted in claiming them.

**Dependency Exemption.** In general, a taxpayer is allowed to claim one dependency exemption for herself, one for a heterosexual spouse (if filing jointly and regardless of the spouse’s income) and one for each “qualifying child” or “qualifying relative.” In 2010, each dependent reduced the taxpayer’s taxable income by \$3,650, lowering the taxable income of a family of four by \$11,400. For a family of four with an income of \$45,000, this would reduce the tax due by about \$1,095.<sup>265</sup>

LGBT families can be at a significant disadvantage when it comes to claiming the dependency exemption. Unlike married heterosexual couples, an LGBT taxpayer cannot claim the dependency exemption for a same-sex spouse or partner unless the partner meets the narrow definition of a qualifying relative (explained above).<sup>266</sup> Similarly, in most cases, only the legally recognized LGBT parent can claim the dependency exemption for a qualifying child.

Consider, for example, a lesbian couple with a child where the legal parent works part-time and earns \$5,000 per year and the non-legal parent works full-time and earns \$45,000 per year. If this family could file a joint tax return, the family’s total income of \$50,000 would be reduced by \$10,950 (three dependency exemptions), leaving the family with a taxable income of \$39,050. This would save the family roughly \$1,642 in taxes (or \$547 in taxes per dependency exemption) assuming a marginal tax rate of 15%.<sup>267</sup> This family cannot file jointly, though, and the legally recognized parent must claim the child for the dependency exemption. Because her income is already so low, the family would receive no tax benefit from claiming the dependent child.

<sup>263</sup>The IRS actually uses four criteria to determine who is a qualifying child. See IRS, “A ‘Qualifying Child,’” last modified October 31, 2007, [www.irs.gov/newsroom/article/0,,id=133298,00.html](http://www.irs.gov/newsroom/article/0,,id=133298,00.html).

<sup>264</sup>This assumes that the non-legally recognized parent meets other criteria such as living in the household and providing over half of the financial support for each claimed qualifying relative.

<sup>265</sup>This tax saving assumes a 15% marginal tax rate. IRS, “IRS Bulletin, Notice 2008-5,” January 14, 2008.

<sup>266</sup>IRS, “Publication 501,” 2010.

<sup>267</sup>IRS, “2010 Individual Income Tax Rates, Standard Deductions, Personal Exemptions and Filing Thresholds,” 2009.

**Child Tax Credit.** As noted above, the Child Tax Credit reduces taxes due by up to \$1,000 for each child under the age of 17. The amount of the credit is reduced for those who earn more than a certain income level; a single person's tax credit begins to decline once his or her income reaches \$75,000, while a married couple's credit declines once their combined income reaches \$110,000.

LGBT families may be treated differently in two ways when it comes to the Child Tax Credit. First, because the marriages of same-sex couples are not recognized by the federal government, it is possible that a couple may not receive the full Child Tax Credit even though their combined household income is less than \$110,000. Imagine a situation in which one partner makes \$80,000—making him ineligible for the full Child Tax Credit as a single person. His partner has an income of \$20,000. If they were able to file as a married couple, this couple would be eligible for the full Child Tax Credit, with a total household income of \$100,000.

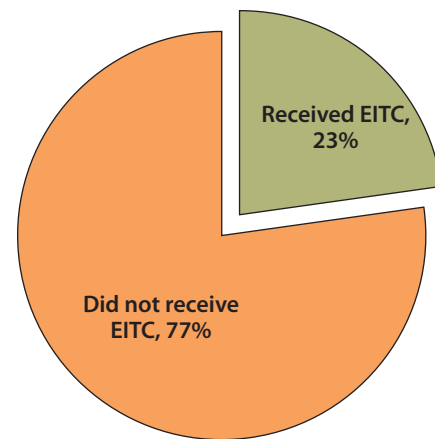
Second, because of the definition of a qualifying child, the children of a taxpayer's partner may not be claimed for the Child Tax Credit. As a result, LGBT families cannot always ensure that the higher-income parent claims a child for the purposes of the credit. This, combined with the lack of ability to file jointly, can increase the family's overall tax burden.

**Earned Income Tax Credit (EITC).** In most cases, the EITC reduces the amount of tax owed by low- or moderate-income working people, but it may also result in a tax refund. In addition to the federal EITC, 23 states and D.C. have state EITC programs.<sup>268</sup> The EITC is one of the largest sources of cash assistance to low-income working families.<sup>269</sup> A recent study found that half of all families with children receive the EITC at some point.<sup>270</sup> As shown in *Figure 29*, in 2009, 26 million households (or 23% of all households) received the EITC.<sup>271</sup> It is estimated that in 2009, 3.3 million children were lifted out of poverty as a result of the EITC, without which the poverty rate among children would have been nearly one-third higher.<sup>272</sup>

For 2010, an individual was eligible for the EITC if her adjusted gross income was less than \$13,460, with the income limit raised to \$35,535 if the individual had a qualifying child.<sup>273</sup> For married heterosexual couples, the couple's adjusted gross income must be less than \$18,470, or \$40,545 if the couple has a qualifying child.

Because the EITC is based on income and household size, it is much like the means-tested programs

**Figure 29: Percent of Households Receiving Earned Income Tax Credit (EITC) (2009)**  
100% = 113.6 million households



Source: U.S. Census Bureau, "ACS Demographic and Housing Estimates," 2009 American Community Survey 1-Year Estimates; IRS, "Earned Income Tax Credit Central."

described earlier. As a result, an individual LGBT family's circumstances will determine whether the family finds it easier than a similar heterosexual family to qualify for the EITC, whether the family receives a smaller or larger credit in relation to other families, or whether the family is unfairly denied this important benefit.

**Child and Dependent Care Credit.** Heterosexual taxpayers who pay someone to care for a qualifying child, spouse or other qualifying relative so they can work or look for work are eligible for the Child and Dependent Care Credit.<sup>274</sup> These taxpayers can reduce the amount of tax they owe by a percent of total care costs (up to \$3,000 for the care of one child or spouse and \$6,000 for the care of two or more children or a spouse and children). To be eligible, the child must be under the age of 13, or the spouse, older child or qualifying relative must be physically or mentally incapable of self-care.

Because it only applies to care for qualifying children or qualifying relatives, in most cases a non-legally recognized LGBT parent cannot use this credit even if that parent pays the child care costs. Moreover, because same-sex couples are not legally recognized by the federal government, an LGBT individual cannot

<sup>268</sup> CBPP, "State Earned Income Tax Credits," Policy Basics, 2009.

<sup>269</sup> Frank Sammartino, Eric Toder and Elaine Maag, "Providing Federal Assistance for Low-Income Families Through the Tax System: A Primer," Urban Institute, 2002.

<sup>270</sup> CBPP, "The Earned Income Tax Credit," Policy Basics, 2009.

<sup>271</sup> IRS, "Earned Income Tax Credit Statistics," 2011.

<sup>272</sup> CBPP, "Earned Income Tax Credits."

<sup>273</sup> IRS, "Up-to-Date Tax Credit Eligibility Information for Tax Year 2010," <http://eitcoutreach.org/wp-content/uploads/2008/03/Income-Guidelines-20101.pdf>.

<sup>274</sup> IRS, "Publication 503."

use this tax credit for care of a physically or mentally incapacitated partner or spouse unless the partner or spouse meets the criteria for a qualifying relative.

**Education Deduction.** Taxpayers who pay for educational expenses for themselves, spouses or dependents can reduce their taxable income by deducting up to \$4,000 in tuition expenses and mandatory enrollment fees. Many families use this deduction to help with the cost of college for children. In most cases, however, only the legally recognized parent can take this deduction. So if the non-legally recognized parent in an LGBT family pays for a child's education, that parent cannot take the deduction. An exception to this rule is in cases when the non-legally recognized parent provides all of the financial support for the child and the legally recognized parent has no income, so the taxpayer can claim the child as a qualifying relative.

**Adoption Credit.** If a family adopts a child under the age of 18, all qualified adoption expenses up to \$13,170 (in 2010) may be deducted from the family's taxable income, including state-imposed fees, attorney's costs and fees, home evaluation fees and filing fees.<sup>275</sup>

LGBT families can use the adoption credit in several ways. First, like married heterosexual couples, LGBT parents can use the credit to offset the costs of a joint adoption. Married heterosexual couples must file a joint return in order to claim the credit. Because same-sex couples are not treated as married couples and cannot file a joint return, each partner can claim up to \$13,170 in expenses, meaning that a same-sex couple could use adoption credits to offset up to \$26,340 in joint adoption costs.

In addition, LGBT families can use the adoption credit to help offset the costs associated with a second-parent adoption for the non-legally recognized parent. By contrast, married heterosexual couples cannot use adoption credits for costs associated with a stepparent adoption.<sup>276</sup> However, as explained in "Securing Stable, Loving Homes for Children," LGBT parents are often forced to adopt their own children to secure parenting rights. So, while this tax credit can help LGBT families with adoption costs, LGBT families often pay additional costs to obtain the same parenting rights that married heterosexual couples receive automatically. Finally, this tax credit is not available to parents, whether LGBT or heterosexual, who complete an adoption through a surrogate parenting arrangement.

**Gift and Estate Taxes.** Because the relationships of same-sex couples are not recognized by the federal

government, LGBT couples are limited in their ability to transfer tax-free assets from one partner to another. This is particularly an issue for LGBT couples where one partner has more economic resources than the other.

Any time one partner in a same-sex couple transfers assets to the other (such as putting a person on the title of a car or a house), the federal government considers that a gift subject to federal gift taxes. Married heterosexual couples, on the other hand, are exempt from the federal gift tax when such transfers occur. For same-sex couples, if one partner gives more than \$13,000 in cash or assets to the other partner in any given year, the giving partner must file a gift tax return. This can make it difficult to put even simple purchases like a second family car in the name of the lower-income spouse. Asset transfers between non-recognized parents and their children also may also be subject to the gift tax.

Similarly, when a heterosexual spouse dies, the surviving spouse will pay no taxes on the transfer of assets such as a home, money in bank accounts and furniture. Yet, because same-sex couples are not legally recognized by the federal government, surviving same-sex partners are required to pay the estate tax if the value of the assets they receive is greater than \$5 million (as of 2011).<sup>277</sup>

### *Calculating the Impact of an Unequal Tax Code*

In order to see how the tax code's different treatment of LGBT and other families has a real and substantial impact on economic security for LGBT families and their children, let's consider two families that meet the following criteria:



- Each family has two children<sup>278</sup>
- The first family is headed by a married heterosexual couple and the second by a same-sex couple where only one partner is the legal parent of the children
- The primary earner in each couple makes \$40,000 per year
- The secondary earner of each couple makes \$5,000 per year and is enrolled in community college part-time, but the primary earner pays the tuition of \$1,000

<sup>275</sup> IRS, "Topic 607—Adoption Credit," accessed December 9, 2010, [www.irs.gov/taxtopics/tc607.html](http://www.irs.gov/taxtopics/tc607.html).

<sup>276</sup> IRS, "Adoption Benefits FAQs," accessed November 19, 2010, [www.irs.gov/individuals/article/0,,id=231663,00.html](http://www.irs.gov/individuals/article/0,,id=231663,00.html).

<sup>277</sup> Michael D. Steinberger, "Federal Estate Tax Disadvantage for Same-Sex Couples," The Williams Institute, 2009.

<sup>278</sup> Each couple has two children under 12, but with the same-sex couple, those children are legally related only to the secondary earner.

Table 7: Unfair Taxation Burdens LGBT Families			
	Married Heterosexual Couple (Filing Jointly) 	Same-Sex Couple (Filing Separately) 	
		Same-sex primary earner, not legal parent	Same-sex secondary earner, legal parent
<b>Income</b>	\$45,000	\$40,000	\$5,000
<b>Deductions</b>			
Standard Deduction <sup>279</sup>	(\$11,400)	(\$5,700)	(\$5,700)
Dependent Exemption <sup>280</sup>	(\$14,600)	(\$3,650)	(\$10,950)
Tuition & Fees Deduction <sup>281</sup>	(\$1,000)	\$0	\$0
<b>Taxable Income</b>	\$18,000	\$30,650	\$0
<b>Tax</b> <sup>282</sup>	\$1,866	\$4,175	
<b>Credits</b>			
<i>Non-Refundable</i> <sup>283</sup>			
Child Credit <sup>284</sup>	\$1,440	\$0	\$2,000
Child and Dependent Care Credit <sup>285</sup>	\$560	\$0	\$0
<i>Refundable</i>			
Earned Income Tax Credit	\$50	\$0	\$2,010
<b>Tax Due/Refund Amount</b>	\$50 Refund	\$4,175 Tax Due	\$2,010 Refund
<b>Net Family Refund/ Taxes Owed:</b>	\$50 Refund	\$2,165 Due in Taxes	
<b>Bottom Line:</b>	<b>LGBT family loses more than \$37,019 over 12 years</b>	<ul style="list-style-type: none"> <li>• The heterosexual family has an extra \$2,215 tax liability annually vs. the LGBT family</li> <li>• Over 12 years, invested at a 5% rate of return, this equates to an additional \$37,019 for the heterosexual family</li> <li>• If this amount remains invested, when the children are 18 and headed to college, the total would be \$49,609</li> </ul>	

- Each couple has two children under 12; in the same-sex couple's family, the children are legally related only to the secondary earner
- The primary earner in each couple pays \$2,800 in child care costs

As shown in *Table 7*, the LGBT family pays \$2,215 more in taxes compared to the married heterosexual couple family because of the LGBT family's inability to access various tax credits and deductions.<sup>286</sup>

<sup>279</sup>Standard deductions are \$11,400 for married couples filing jointly; \$5,700 for single filers.

<sup>280</sup>Dependent exemption is equal to \$3,650 for each of the following: taxpayer, spouse, child and other dependents.

<sup>281</sup>Taxpayers can take a deduction for tuition and fees paid. If income is less than \$130,000 for married couples, families can take up to \$4,000.

<sup>282</sup>Calculated using IRS, "1040 Instructions," 2010.

<sup>283</sup>This credit is not refundable, meaning that if it is greater than the amount of tax due, the family does not get a refund for the balance. So in this case, the family's tax burden is reduced to \$0 as a result of both the Child Tax Credit and the Child and Dependent Care Credit.

<sup>284</sup>Assumes the primary earner of each couple pays \$2,800 in child care costs. Families can take up to \$1,000 per child, but the amount is reduced by the amount of the Child and Dependent Care Credit. For the married family in this example, the child credit would then be \$2,000 minus \$560, or \$1,440.

<sup>285</sup>Families can earn a credit for child and dependent care paid. The amount of the credit depends on the income level of the taxpayer. For example, for an income level of \$45,000, taxpayers can take 20% of tuition and fees paid, but no more than \$4,000.

<sup>286</sup>If these families' financial situations stay the same and tax rates do not change, this will be the amount these families pay until the children turn 13. Past age 12, child care expenses are no longer eligible for the Child and Dependent Care Credit, so the additional amount that the LGBT family pays in taxes will be reduced.



## Family of Five Pays \$1,490 More in Taxes

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Suzanne and Geraldine Artis, along with their three boys, paid \$1,490 more in taxes in 2009 because they could not file a joint tax return.

The Artis Family—Suzanne and Geraldine and their three boys, Geras, Zanagee and Gezani—lives in Clinton, Connecticut. Suzanne and Geraldine have been together for more than 16 years, and in 2009 they were legally married. They are both legal parents of their boys. While they can file a joint return in Connecticut, DOMA prevents them from filing a joint federal tax return. As a result, they have to “carve up” their family on their tax forms, because they can’t both claim their children as dependents. In some years, Suzanne claims all three boys, while in others, Geraldine claims all three boys. There have been also been years where Suzanne has claimed one of the boys, while Geraldine has claimed the other two. “I don’t like to have to divide them up. They’re not property, they’re my family,” said Suzanne.

Because they can’t file joint returns, the couple paid an extra \$1,490 to the federal government in 2009—money that they would like to have put toward college funds for the boys. Additionally, the family worries about having a paper trail linking only one of them to their children; Suzanne wonders, “If the papers say that I’m the only parent, or vice versa, I worry that if something happened to one of us, would there be an issue?”

Adapted from GLAD, “They’re Not My Property, They’re My Family,” <http://www.glad.org/doma/stories/theyre-not-property-theyre-my-family>.

## Challenge: Children Denied Protections When a Parent Dies or is Disabled

The death or disablement of a parent is a devastating event for a child. Most families can be assured, however, that they will be recognized and protected by laws designed to provide stability and economic security when a parent dies or becomes disabled.

Heterosexual families can access Social Security benefits designed to protect a deceased or disabled worker’s family. These benefits comprise 5% of total federal government spending on programs benefiting children (see *Figure 25* on page 51). Additionally, if a married heterosexual parent dies without a will, all of the couple’s assets—such as the home and savings—will immediately transfer to the surviving spouse (or surviving spouse and children). If a parent dies as a result of a negligent or willful act of someone else, minor children (and in some cases, legal spouses) can sue for wrongful death and obtain further economic support. LGBT families, however, have no such assurance. Therefore, children in these families face not only the emotional trauma of the death or disablement of a parent, but often the added burden of losing their family home or becoming destitute.

### Social Security Survivors and Disability Insurance Benefits

Most people think of Social Security as a program designed to provide benefits to older Americans. In fact, however, the Old-Age, Survivors and Disability Insurance (OASDI) program, administered by the Social Security Administration, provides more benefits to children than any other social program.<sup>287</sup> The OASDI program functions much like life or disability insurance for families: when a worker who is entitled to Social Security benefits retires, becomes disabled or dies, the worker and his or her spouse and unmarried children under the age of 18 may be eligible for benefits.

As shown in *Figure 30* on the next page, of the 4.3 million children receiving OASDI benefits, the majority of children (87%) receive benefits as a result of the disablement or death of a parent.<sup>288</sup> Many more children live in households that receive OASDI benefits, but they may not themselves be direct recipients of such benefits. The following scenarios focus on benefits given to workers and their families after a worker’s disablement or death, rather than retirement, given that very few families have children under the age of 18 when a worker retires.

<sup>287</sup>In March 2010, 3.3 million children received TANF benefits compared to 4.3 million children receiving OASDI benefits. TANF data available from U.S. Dept. of Health and Human Services, Administration for Children and Families, “TANF: Total Number of Child Recipients, Fiscal and Calendar Year 2010,” March 16, 2011, [www.acf.hhs.gov/programs/ofa/data-reports/caseload/2010/2010\\_children\\_tan.htm](http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2010/2010_children_tan.htm); Social Security benefit data available from Social Security Administration (SSA), “Fact Sheet on the Old-Age, Survivors and Disability Insurance Program,” accessed July 1, 2010.

<sup>288</sup>*Ibid.*

- **When a working parent becomes disabled.** OASDI benefits are available to individuals who have worked and earned a wage for a set amount of time but who are now prevented from working for a year or more due to a medical disability. The monthly benefit amount is based on an individual's age and past earnings. Eligible family members, including children under the age of 18, can also receive benefits when a worker is disabled. The average monthly benefit for a child of a disabled worker was \$318 in 2010 (approximately 75% of the parent's monthly benefit).<sup>289</sup>
- **When a working parent dies.** When a worker dies, unmarried minor children and a surviving spouse who cares for minor children may be eligible for OASDI survivor benefits. These benefits are designed to help families with the loss of income associated with the worker's death. Similar to disability benefits, survivor benefits are tied to the worker's years of work and past earnings. In 2011, the average monthly benefit for a child of a deceased working parent was \$751 per month, though many children receive higher benefits.<sup>290</sup> For example, in 2010, if a 41-year old worker making \$40,000 each year died, each surviving child would receive approximately \$963 per month, with a maximum monthly family benefit for his surviving spouse and any children totaling approximately \$2,328.<sup>291</sup>

OASDI benefits are crucial for the children who receive them. In 2008, Social Security benefits lifted more than 1 million children out of poverty.<sup>292</sup> Social Security benefits are particularly vital for children of color: 20% of all children receiving Social Security survivor benefits are African American, while African American children comprise only 14% of all U.S. children.<sup>293</sup> The National Urban League found that Social Security lifts four times as many African American children out of poverty than white children.<sup>294</sup> In addition, the U.S. Government Accountability Office found that African American and

<sup>289</sup>The maximum Social Security retirement benefit for a worker retiring at age 66 is \$2,366 (assumes maximum taxable income each year from age 21 to 66), SSA, "Maximum Social Security Retirement Benefit," May 6, 2011, [http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/5/~/\\_/maximum-social-security-retirement-benefit](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/5/~/_/maximum-social-security-retirement-benefit).

<sup>290</sup>*Ibid.*

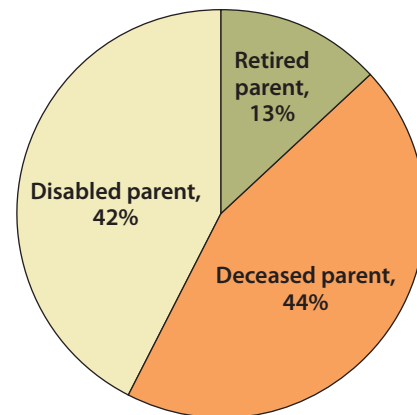
<sup>291</sup>Calculated using the Social Security Quick Calculator, [www.ssa.gov/OACT/quickcalc/index.html](http://www.ssa.gov/OACT/quickcalc/index.html).

<sup>292</sup>Paul N. Van de Water and Arloc Sherman, "Social Security Keeps 20 Million Americans Out of Poverty: A State-by-State Analysis," Center on Budget and Policy Priorities, 2010.

<sup>293</sup>SSA, "Social Security Is Important to African Americans," June 2010; U.S. Census Bureau, "Table S0901: Children Characteristics," 2006-2008 American Community Survey 3-Year Estimates, available through <http://factfinder.census.gov>.

<sup>294</sup>Valerie Rawlston, "The Impact of Social Security on Child Poverty," The National Urban League Research and Public Policy Dept., May 2000, [www.nul.org/content/impact-social-security-child-poverty-may-2000](http://www.nul.org/content/impact-social-security-child-poverty-may-2000).

Figure 30: Why Children Receive OASDI Benefits  
2010 Data



Note: May not add to 100% due to rounding.  
Source: U.S. Census Bureau, "ACS Demographic and Housing Estimates," 2009 American Community Survey 1-Year Estimates; IRS, "Earned Income Tax Credit Central."

### Family Plans for the Worst Because Social Security Benefits May Not Be Available

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Paul and Bob Ruseau with their two children, Matthew and Nev. The family worries about what would happen if Paul were to get sick or die unexpectedly.

Paul and Bob Ruseau adopted their sons, Matthew and Nev, from foster care. "We began parenting like most families—by jumping into the deep end of the pool," says Bob. "We wanted to have a stay-at-home parent, so the day that we got the call that we were matched with Matthew and Nev, I made the choice to leave my job... having a parent at home makes the kids feel stable and secure, but it has been a big financial challenge to lose my income." Like most families, Paul and Bob worry about providing for their children, and about what would happen to their children if one of them were to get sick or die unexpectedly. Paul has taken out extra life insurance because Bob would not receive Social Security survivor benefits if something were to happen to Paul.

Adapted from GLAD, "DOMA Stories: Jumping in the Deep End of the Pool," <http://www.glad.org/doma/stories/jumping-in-the-deep-end-of-the-pool>.

Latino/a workers had higher disability rates than white workers, so their families were more likely to receive OASDI benefits resulting from disability.<sup>295</sup>

### *LGBT Families and Social Security Survivors and Disability Insurance Benefits*

OASDI uses a narrow definition of family. Unlike many federal programs, OASDI benefits for children are not tied to the marital status of a child's parents, but rely on the legal relationship between the retired, disabled or deceased parent and the child. Despite the importance of OASDI benefits to the well-being of children and families following the disability or death of a working parent, children of LGBT parents may be denied these protections.

**Eligibility for the child of a deceased or disabled worker.** In general, only the legal child of a worker is eligible for OASDI benefits. Legally recognized children of two same-sex parents, whether or not those parents are allowed to marry, can access OASDI benefits in the same manner as a child with heterosexual parents.<sup>296</sup> In instances where a child seeks to access benefits through a legal parent who is not a biological or adoptive parent (such as a parent with a parentage judgment or parental presumption), current Social Security policy requires that all claims be referred to the Social Security Administration's regional counsel, which can result in additional delays or denials.<sup>297</sup> A child cannot access OASDI benefits if a non-legally recognized parent retires, is disabled or dies.

**Eligibility for the stepchild of a deceased or disabled worker.** Unlike children of heterosexual parents, children of legally married same-sex couples cannot receive OASDI benefits through a stepparent. In general, a child is eligible for OASDI benefits through a heterosexual stepparent if the child was receiving at least half of his or her support from the stepparent<sup>298</sup> and has been a stepchild for at least one year before the stepparent becomes disabled (if applying for disability benefits), or for at least nine months before the death of the stepparent (if applying for survivor benefits).<sup>299</sup> While the government generally relies on a state's determination of a parent-child relationship to establish a child's right to benefits, in December 2010 the Social Security Administration determined that, unlike children in heterosexual families, children in LGBT families are not eligible for benefits through a non-adoptive stepparent, even if the parents are legally married in their state.<sup>300</sup>

### **Family Left Destitute After Being Denied Social Security Survivor Benefits**

In 1998, Nicolaj (Nic) Caracappa was born through donor insemination to New Jersey couple Eva Kadray and Camille Caracappa. Eva gave birth to Nic, who was given Camille's last name. Eva became a stay-at-home mom while Camille continued working as an oncology nurse. They consulted a lawyer about completing a second-parent adoption of Nic by Camille, but they wanted to wait until they had another child so they could adopt both children at the same time. Sadly, they never had a chance to bring another child home. When Nic was two years old, Camille left for work one day and never came home; she suffered a brain aneurysm and died the same day.

Eva applied for child Social Security survivor benefits for Nic. Those benefits—many thousands of dollars a year—are designed to compensate a child for the economic loss of a parent. The Social Security Administration denied Nic the benefits because Camille had not been Nic's legal parent. Had New Jersey recognized Camille as Nic's legal parent upon his birth, the two-year-old would not have been denied those benefits, and Nic's loss of a parent would not have been compounded by economic catastrophe—the loss of his family's entire income.

Adapted from Polikoff, "A Mother Should Not Have to Adopt Her Own Child," 266-7.

<sup>295</sup>U.S. General Accountability Office, "Social Security and Minorities: Earnings, Disability Incidence and Mortality Are Key Factors That Influence Taxes Paid and Benefits Received (GAO-03-387)," 2003.

<sup>296</sup>In 2007, the Dept. of Justice issued a memorandum clarifying eligibility of children born into a legally recognized same-sex marriage, civil union or domestic partnership for the purposes of Social Security benefits. See Steven A. Engel, "Memorandum Opinion," October 16, 2007, [www.justice.gov/olc/2007/saadomaopinion10-16-07final.pdf](http://www.justice.gov/olc/2007/saadomaopinion10-16-07final.pdf). There have been several cases in which the SSA has granted OASDI benefits to children who have not been legally adopted, but whose parents obtained a parentage order. In 2009, after two years of delay, the SSA granted benefits to the children of a gay man based on a parentage order; but in this case, the father was also listed on the children's birth certificate. It is not clear if the children would have been able to access OASDI benefits if the man had not been listed on the birth certificate of his children, but had only obtained an order of parentage. See Lambda Legal, "Day v. SSA, et al.," [www.lambdalegal.org/in-court/cases/day-v-social-security-administration.html](http://www.lambdalegal.org/in-court/cases/day-v-social-security-administration.html).

<sup>297</sup>National Center for Lesbian Rights, "Public Benefits Guide," *in press*.

<sup>298</sup>SSA, "GN 00306.232 Dependency Requirements—Stepchild," <https://secure.ssa.gov/apps10/poms.nsf/lrx/0200306232>.

<sup>299</sup>SSA, "331. Stepchild-Stepparent Relationship," Social Security Handbook, June 2004, [www.socialsecurity.gov/OP\\_Home/handbook/handbook.03/handbook-0331.html](http://www.socialsecurity.gov/OP_Home/handbook/handbook.03/handbook-0331.html).

<sup>300</sup>SSA, "SSA's Program Operations Manual System," Section PR 01605.035 New York, accessed January 20, 2011, <https://secure.ssa.gov/apps10/poms.nsf/lrx/1501605035>. This link has subsequently been removed, and requests for more information via a Freedom of Information Act request have been denied.



### Eligibility for a surviving spouse taking care of a child.

The OASDI program also provides benefits to surviving spouses or ex-spouses to help care for a child under the age of 16 in the case of a worker's death. To qualify, the spouse or ex-spouse must have been married to the deceased worker for at least nine months and must be taking care of the deceased spouse's child. Because the federal government does not recognize same-sex relationships, surviving same-sex spouses cannot access such OASDI benefits. The child might still receive his or her own survivor benefit, but only if the deceased worker was a legally recognized parent.

### Inheritance

When a person dies, any property titled in the deceased's name at the time of death becomes part of the deceased's gross estate. These assets are distributed according to either the deceased's will or living trust, or, in the absence of these documents, according to state intestacy law.

People are generally advised to establish a will to ensure that their wishes are respected after they die, yet a 2009 survey found that only 35% of Americans had done this.<sup>301</sup> When someone dies intestate (without a will), state law dictates how and to whom the assets are distributed. Intestacy laws are designed to distribute assets in a way that people would likely choose to distribute them through a will. These laws essentially serve as default wills, ensuring that those closest to the deceased—often spouses, children and other family members—will be provided for in the absence of the deceased's intentional distribution of assets.

In 16 states, when someone dies without a will, the surviving spouse receives all the assets, regardless of whether the couple has children.<sup>302</sup> In the other states, the surviving spouse receives a percentage (often 50%) and the remaining percentage is split among any surviving children.<sup>303</sup> If the deceased does not have a surviving, legally recognized partner or child, the estate will instead be distributed to the deceased's parents and relatives based on bloodline and adoption.

### LGBT Families and Inheritance

Intestacy laws vary by state, but most use a narrow definition of family that excludes same-sex partners and children who lack legal ties to their parents.

**Most same-sex partners cannot inherit intestate.** Intestacy laws first and foremost recognize the surviving

spouse of the deceased. Because same-sex partners are legal strangers under the law in most states, intestacy statutes generally do not provide for surviving same-sex partners. While 15 states and D.C. recognize the relationships of same-sex couples and another three states provide the ability for same-sex partners to inherit as a spouse under intestacy laws,<sup>304</sup> same-sex partners in the remaining 32 states cannot inherit if their partner dies intestate.

**Children cannot inherit intestate from non-legally recognized parents.** Whether or not a child inherits also depends on the legal relationship between the child and the deceased parent. Any child who is not a legally recognized child of the deceased is not covered by intestacy statutes, even if the deceased acted as a parent and provided for the child since birth.

There is an exception in some states for children born through donor insemination. In 2009, the Uniform Probate Code, which acts as a model law for issues pertaining to probate, was amended to establish a presumption of parenthood for the purposes of inheritance from parents of these children. As a result, three states and D.C. now allow a child born to a lesbian couple using donor insemination to inherit from both mothers.<sup>305</sup> However, the Uniform Probate Code amendment only appears to apply to couples having a child using reproductive assistance. It does not apply to situations where a same-sex partner acts as a stepparent but cannot adopt the child.

The two broad problems outlined above can result in the following complications for LGBT families where one or both parents die without a will:

- **Nobody inherits.** In cases where neither the child nor the surviving partner had a legal relationship to the deceased (the non-legally recognized mother dies and the family lives in a state that did not recognize the relationship of the parents),

<sup>301</sup> Lawyers.com Wills and Estate Planning Survey conducted by Harris Interactive, December 2009, [www.lexisnexis.com/media/press-release.aspx?id=1268676534119836](http://www.lexisnexis.com/media/press-release.aspx?id=1268676534119836).

<sup>302</sup> In Alaska, Colorado, Hawaii, Minnesota, Montana, New Jersey, North Dakota and West Virginia, the surviving spouse receives the entire deceased's estate if the surviving spouse is the parent of all the deceased's children and the deceased spouse is the parent of all the surviving spouse's children. In Arizona, Iowa, Ohio, Oregon, South Dakota, Utah, Virginia and Washington, the surviving spouse receives the entire estate if the surviving spouse is the parent of all the deceased's children. Kurt R. Nilson, "Interactive Summary of State Laws," MyStateWill.com, accessed January 19, 2011, [www.mystatewill.com/state\\_summaries.htm](http://www.mystatewill.com/state_summaries.htm).

<sup>303</sup> *Ibid.*

<sup>304</sup> Colorado, Maine and Wisconsin.

<sup>305</sup> As of January 2011, Colorado, New Mexico, North Dakota and Utah have adopted the 2008 Uniform Probate Code Amendments. Uniform Law Commission, "Legislative Fact Sheet - Probate Code Amendments (2008)," [http://uniformlaws.org/LegislativeFactSheet.aspx?title=Probate%20Code%20Amendments%20\(2008\)](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Probate%20Code%20Amendments%20(2008)).



neither survivor would be able to inherit under state intestacy laws, and the family's home and all financial assets could be given to the deceased's parents, siblings or distant relatives.

- Only the surviving child inherits. In cases where only the surviving child has a legal relationship to the deceased, that child will then inherit the entirety of the decedent's estate. This can happen when a legal parent dies and the surviving parent—who may or may not also be the child's legal parent—is deemed a legal stranger to the deceased due to lack of relationship recognition. When a child under the age of 18 inherits from his or her deceased parent's estate, either through a will or through intestacy law, a responsible adult is usually designated to provide financial guardianship until the minor reaches 18 or 21, depending on the state in which the child lives. This is particularly likely if the child inherits property or assets in excess of \$20,000, but that number varies by state.<sup>306</sup> In these situations, a court would need to designate a financial guardian to manage the assets. Depending on the characteristics of the family and the jurisdiction, it is possible that a court might designate someone other than a surviving partner (especially if that partner is not the child's legal parent) as a guardian. As a result, the family's assets could be controlled by a relative who has no caretaking relationship to the child, putting the family's home and financial security at risk.
- A child only receives a partial inheritance. Finally, if both parents die, the surviving child may have the ability to inherit only from the legally recognized parent. The child could be entirely cut off from inheriting a non-legally recognized parent's assets.

As these scenarios demonstrate, intestacy statutes do not adequately protect same-sex couples and their families, who may be left unprotected in the event of intestate death of one of the parents. Same-sex couples can get legal counsel to try and address some of the shortcomings of intestacy laws, but this can be costly for families (see sidebar). Furthermore, it requires sophisticated knowledge about the gaps in the law and does not provide fail-safe protection.

### *LGBT Families Face Added Challenges in Probate*

Even when LGBT families have engaged in estate planning and established a will, it must still be validated through the probate process. Probate is a public process, through

### Costs of Legal Planning

Because LGBT families and their relationships—partner-to-partner and parent-to-child—are often not legally recognized, many LGBT families must undertake complicated and costly legal and financial planning in an attempt to replicate the legal protections taken for granted by most heterosexual couples and their children.

Most people are advised to have in place an array of legal documents, regardless of whether they are LGBT or not. For LGBT families, these documents are crucial if a couple's relationship or a parent-child relationship is denied legal recognition. Even if they have legal recognition, LGBT families are still advised to undertake the legal and financial planning to ensure that their families are protected when they cross state lines.

While many of the necessary forms can be downloaded online, LGBT families often seek out the advice of lawyers to help resolve the complexities of family configurations and varied federal, state and local laws. This can substantially add to the costs of legal planning. The total cost for getting all legal documents in place can range from \$300 to more than \$6,000 depending on the complexities of a family's financial and personal situation. These do not include the costs of a second-parent adoption or other parentage action, if needed. A detailed list of recommended legal forms and documents is included in the Appendix on page 120.

which family members may contest the terms of the will by raising objections. Depending on the particular family situation, it is possible that surviving biological family members could argue that the relationship between the surviving partner and child was not a "real" relationship. This could lead the probate court to ignore the wishes of the deceased person as expressed in the will and award the assets to other surviving family members, again leaving a surviving partner and children without a legal right to the assets.

<sup>306</sup>ENotes.com, "Encyclopedia of Everyday Law: Guardianships and Conservatorships," accessed January 19, 2011, [www.enotes.com/everyday-law-encyclopedia/guardianships-and-conservatorships](http://www.enotes.com/everyday-law-encyclopedia/guardianships-and-conservatorships).

## Wrongful Death

When a person dies, depending on the situation, it may be possible for family members to sue for wrongful death. Such a suit may result in family members receiving financial payments from the responsible party.

In general, a wrongful death suit can be brought by a family member when someone's negligent or intentional actions caused a person's death. The most common incidents that result in wrongful death suits are fatal car accidents and medical malpractice. If successful, wrongful death suits can result in monetary awards for the loss of the deceased's expected earnings, pain and suffering for the survivors and funeral expenses, among other things. Receiving this financial compensation may help surviving partners and children ease the financial loss associated with the death of a loved one.

### *LGBT Families and Wrongful Death*

In most states, the determination of which family members can sue for wrongful death follows the same lines as intestacy law—that is, only legally recognized family members can sue for wrongful death, with spouses having first priority, followed by children, parents and other more distant relatives. As a result, in most states, same-sex partners cannot sue for the wrongful death of a partner, and children who are not the legally recognized children of the deceased cannot sue either. LGBT families may thus be excluded from the potential financial assistance that a wrongful death suit may provide.

This is not true in all states, however. Recognizing that wrongful death suits are an important part of the legal structure in place to help families who endure a loss due to negligence or intentional acts, some states with even minimal recognition of LGBT couples allow a same-sex partner to sue for wrongful death. Also, LGBT families living in states that recognize same-sex couples through marriage or comprehensive relationship recognition can sue for the wrongful death of a partner.

The ability of a child to sue for the wrongful death of a non-legally recognized parent, on the other hand, is less certain. In most states, a child without a legal tie to the deceased is excluded from suing. However, several states have expanded the definition of who can sue for wrongful death. For example, in Arizona and Michigan, any person named in the deceased's will is able file a suit. In West Virginia, any individual who can establish that he was financially dependent on the deceased can

sue. Similarly, in California, any minor who lived with the deceased for at least three months and was dependent for half of his support on the deceased can file a suit.

## Recommendations Overview: Ensuring Economic Security for Children

The recommendations table at the end of this report provides a detailed and comprehensive overview of how to address the inequitable laws and stigma that make it harder for children with LGBT parents to achieve economic security. However, broadly speaking, recommendations fall into the following major categories:

### **BROAD LEGAL RECOGNITION OF LGBT FAMILIES**

- Pass comprehensive state legislation to allow legal recognition of LGBT parents
- Legalize and federally recognize marriage for same-sex couples
- Provide pathways to immigration and citizenship for binational LGBT families

### **EQUAL ACCESS TO GOVERNMENT-BASED ECONOMIC PROTECTIONS**

- Recognize LGBT families and children across government safety net programs or adopt a broad definition of family for the following government safety net programs:
  - a. Temporary Assistance for Needy Families (TANF)
  - b. Public Housing and Housing Assistance
  - c. Medicaid and Children's Health Insurance Program (CHIP)
  - d. Supplemental Security Income (SSI)
  - e. Educational loans, grants and scholarships
  - f. Tax credits and deductions for families
- Revise the Internal Revenue Service (IRS) tax code to provide equitable treatment for LGBT families
- Provide equitable economic protections when a parent dies or is disabled, including in:
  - a. Social Security Survivors and Disability Insurance Benefits
  - b. Inheritance law
  - c. The right to sue for a wrongful death

## NON-DISCRIMINATION/CULTURAL COMPETENCY

- Pass employment non-discrimination protections
- Strengthen agency and service provider non-discrimination policies
- Provide cultural competency training for frontline agency workers

## RESEARCH AND EDUCATION

- Educate LGBT families about current laws and how to protect themselves, including information on government program eligibility, tax law and estate planning, and the establishment of needed legal documents



## GOAL 3: ENSURING HEALTH AND WELL-BEING FOR CHILDREN

Concern for the health and well-being of American families is an important focus of social policy. Governments at all levels have policies in place to help ensure that children are physically and mentally healthy, and that they live in communities that provide them with what they need to grow into happy, productive adults. This includes access to health insurance and quality care and supportive educational, religious and community environments.

Unfortunately, inequitable laws and social stigma often act against the health and well-being of children in LGBT families. The unique challenges facing these children fall into four major categories:

- 1. Children experience inequitable access to health insurance.** Healthcare policy should help ensure that all American children have access to quality physical and mental health care. Yet children in LGBT families are often denied health insurance extended to children in heterosexual families, and when they have insurance, LGBT families pay additional taxes.
- 2. Children face unwelcoming health care environments.** Even when children with LGBT parents do obtain health insurance coverage, they and their parents can face hostile or culturally incompetent health care providers, making their experience with the healthcare system needlessly stressful and discouraging LGBT families from seeking needed care.
- 3. Laws and policies make it more difficult for LGBT families to take care of one another.** Committed couples should be able to take care of each other,

and parents should be able to take care of their children. Yet in LGBT families, parents may be denied the ability to visit or make medical decisions for their children or for each other. They may also be unable to take leave to care for a sick spouse or partner, which further weighs on a family's well-being.

- 4. A climate of social stigma creates special challenges for LGBT families.** Children should be welcomed and supported in schools, public institutions, places of worship and the broader communities in which they live. Yet because LGBT families continue to be stigmatized and are often rendered invisible, children in these families face an array of added challenges that create barriers to feeling safe and welcome.

The impact of these barriers on LGBT families is profound. This section of the report explains how these barriers impede LGBT family health and well-being and proposes solutions for addressing the problems outlined above.

## Challenge: Unequal Access to Health Insurance

### Health Insurance Disparities

Most Americans obtain health insurance through their employer or the employer of a family member.<sup>307</sup> In general, employers may choose whether or not to offer health insurance to their workers and their families, as well as which family members an employee may enroll in employer-sponsored programs. However, once set, an employer's policies must be applied consistently to its employees. For example, an employer is not required to offer a retirement plan, but if the employer does offer such a plan, it cannot be made available to only men, but must be offered to both men and women.

Regulation of employee benefits falls under the federal Employee Retirement Income Security Act (ERISA), which does not recognize same-sex couples because of DOMA. This means that many employers are not required to offer health insurance benefits to

<sup>307</sup>58.5% of workers get insurance from their employers; see Elise Gould, "Employer-Sponsored Health Insurance Erosion," Economic Policy Institute, 2009, [www.epi.org/publications/entry/health\\_picture\\_20090910](http://www.epi.org/publications/entry/health_picture_20090910). Kaiser Family Foundation (KFF) reached a similar conclusion (59% of firms of three or more workers); see "Employer Health Benefits: 2010 Annual Survey," KFF and Health Research & Education Trust, 2010, 48, <http://ehbs.kff.org/pdf/2010/8085.pdf>. For children specifically, see "Health Coverage of Children: The Role of Medicaid and CHIP," KFF, July 2010, [www.kff.org/uninsured/upload/7698-04.pdf](http://www.kff.org/uninsured/upload/7698-04.pdf). KFF found that in 2008, of the nearly 79 million children in the United States, the majority (58%) received health insurance from a parent's employer-sponsored plan or through private sources.

the partners of LGBT workers, even if those workers are legally married in their state (although employers may choose to offer these benefits electively).<sup>308</sup> An added complication is that sometimes insurance companies will refuse to underwrite policies extending health insurance to same-sex partners.<sup>309</sup>

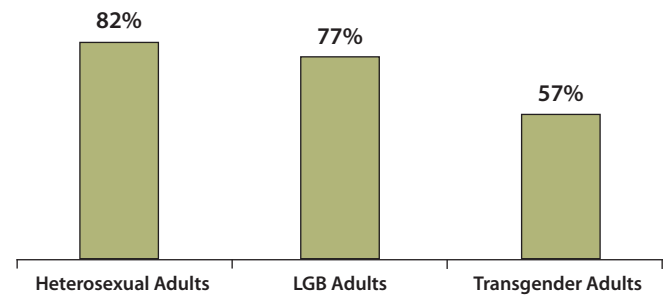
Not surprisingly, this inconsistent extension of health insurance benefits leads to reduced health insurance access for LGBT people, including couples and families. Data show that LGBT Americans are less likely to have health insurance than their heterosexual counterparts, and researchers believe that children raised by LGBT parents are also less likely to have health insurance:

- For LGBT adults:
  - As shown in *Figure 31*, approximately 82% of heterosexual adults have health insurance, compared to 77% of LGB adults and 57% of transgender adults<sup>310</sup>
  - Only 51% of transgender Americans have health insurance through an employer, compared to 58% of the general population<sup>311</sup>
- For same-sex couples:
  - Same-sex couples are two to three times more likely to be without health insurance coverage than married different-sex couples<sup>312</sup>
  - Partnered gay men were 42% as likely to have received employer-sponsored dependent coverage as were married heterosexual men<sup>313</sup>
  - Partnered lesbians were only 28% as likely as married heterosexual women to receive health benefits through the employer of a spouse or partner<sup>314</sup>

These disparities are especially pronounced among LGBT people of color. For example, data from the California Health Interview Survey find that Asian or Pacific Islander and white LGB adults are more likely to have health insurance (91% and 88%, respectively) than are black and Latino/a LGB adults (86% and 64%, respectively) (see *Figure 32*).<sup>315</sup>

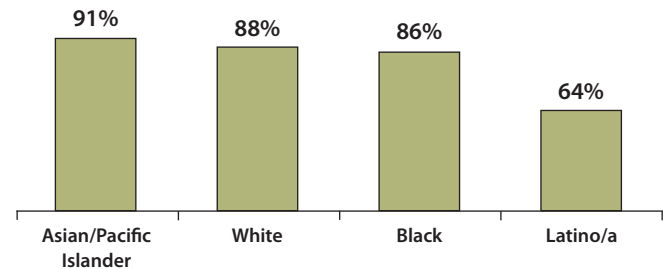
While these studies do not include insurance rates for the children of same-sex couples, research suggests that companies that do not extend health insurance benefits to an employee's domestic partner are unlikely to extend benefits to children of that domestic partner.<sup>316</sup> Likewise, an employer might offer health

**Figure 31: Percent of Adults with Health Insurance**



Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009.

**Figure 32: LGB Adults with Health Insurance by Race/Ethnicity**



Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009.

<sup>308</sup> Employers that provide health insurance benefits directly to employees (self-insured plans) are not required to offer domestic partner benefits because ERISA preempts state law. Employers who purchase health insurance from an insurance company (fully insured plans) must adhere to state insurance laws and DOMA's application to ERISA does not apply. In some states with relationship recognition, the state insurance department has stated that such employers are required to provide benefits equally to same-sex spouses and partners.

<sup>309</sup> GLAD, "Domestic Partnership Benefits Overview," December 2010.

<sup>310</sup> Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009, [www.americanprogress.org/issues/2009/12/pdf/lgbt\\_health\\_disparities\\_race.pdf](http://www.americanprogress.org/issues/2009/12/pdf/lgbt_health_disparities_race.pdf).

<sup>311</sup> Grant et al., "Injustice at Every Turn." A previous survey by the National Center for Transgender Equality and the National Gay and Lesbian Task Force found those figures were 40% and 62% respectively. See [www.thetaskforce.org/downloads/reports/fact\\_sheets/transsurvey\\_prelim\\_findings.pdf](http://www.thetaskforce.org/downloads/reports/fact_sheets/transsurvey_prelim_findings.pdf).

<sup>312</sup> Michael A. Ash and M.V. Lee Badgett, "Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples," *Contemporary Economic Policy*, 24, 582-599, <http://wipw.law.ucla.edu/wp-content/uploads/Badgett-Ash-HealthInsuranceInequality-Oct-2006.pdf>.

<sup>313</sup> Ninez A Ponce, Susan D. Cochran, Jennifer C. Pizer, and Vickie M. Mays, "The Effects of Unequal Access to Health Insurance for Same-Sex Couples in California," *Health Affairs*, 29, 1539-1548, <http://content.healthaffairs.org/cgi/content/abstract/hlthaff.2009.0583>.

<sup>314</sup> Ninez et al., "The Effects of Unequal Access."

<sup>315</sup> Krehely, "How to Close the LGBT Health Disparities Gap."

<sup>316</sup> Ninez et al., "The Effects of Unequal Access."



insurance to a worker's domestic partner but not to the domestic partner's child(ren). Of employers that offer benefits to domestic partners, 83% also offer coverage to their dependents.<sup>317</sup> Therefore, the child of a same-sex couple will sometimes be denied coverage unless he or she is the legal child of the employee.<sup>318</sup>

Finally, LGBT families also face disparities in keeping coverage when losing or changing jobs through the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), which enables employees to keep their existing job-related health insurance coverage for themselves and their families for 18 months after they have lost their jobs. Current law does not require that employers, even those who provide domestic partner benefits, give employees the opportunity to enroll same-sex partners and spouses in insurance provided through COBRA, nor to avail themselves of the funding Congress has authorized to help families pay for it.<sup>319</sup> COBRA is currently unclear about whether children without a legal relationship to the covered employee are considered dependent children for the purposes of continuing coverage. In certain situations, domestic partners and their children can only obtain COBRA coverage if the covered employee authorizes it, which can leave partners and children uncovered if a couple's relationship ends.<sup>320</sup>

When LGBT families are deemed ineligible for health insurance benefits or COBRA, they must obtain their own insurance or go without it, creating added costs to family security.<sup>321</sup> The average annual cost to purchase health insurance for a family of four on the private market is \$7,102 (compared to \$3,997 for an employee's portion of the premiums of a plan through an employer). This means the average LGBT family would pay \$3,105 more each year because the parents cannot enroll their family in an employer-sponsored plan.<sup>322</sup>

### **LGBT Families Pay Extra Taxes on Health Insurance**

Even when employers electively offer extended health insurance benefits for same-sex partners and non-related children, families who use these benefits will be taxed on the value. This is because federal tax law currently allows an employer to provide health insurance to the heterosexual spouse of an employee and to the employee's legal children as a tax-free benefit. However, when employers offer the same benefit to same-sex couples or the non-legally related child of an employee, federal law treats the value

## **Family Spends \$5,000 Per Year for Health Insurance Because Federal Government Doesn't Recognize LGBT Families**

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Jerry Savoy, John Weiss and their three children have higher health insurance costs because John cannot be enrolled in health insurance through Jerry's job.

Jerry Savoy is an attorney at the Office of the Comptroller of the Currency for the federal government. He lives in Danbury, Conn., with his husband, John, who is a stay-at-home dad taking care of the couple's three children. Because Jerry is a federal employee, and the federal govern-

ment doesn't offer domestic partner benefits, Jerry is unable to provide health insurance for his husband. So, while the couple's three children have health insurance through the federal government as part of Jerry's family plan, Jerry had to purchase an individual plan for John that costs \$440 per month. "We have three kids that we have to raise," says Jerry. "We live paycheck to paycheck just like everybody else. We are a family just like the person across the street that's entitled to put their spouse on their health insurance. Why can't we do that?"

Adapted from GLAD, "The Pedersen Plaintiffs: Damon 'Jerry' Savoy & John Weiss," [http://www.glad.org/doma/plaintiffs-pedersen/#plaintiff\\_1206](http://www.glad.org/doma/plaintiffs-pedersen/#plaintiff_1206).

<sup>317</sup>Employee Benefit Research Institute, "Domestic Partner Benefits: Facts and Background," 2009, [www.ebri.org/pdf/publications/facts/0209fact.pdf](http://www.ebri.org/pdf/publications/facts/0209fact.pdf).

<sup>318</sup>Health coverage of children should improve in coming years as a result of the 2010 Affordable Care Act, which requires most Americans to enroll in a qualified health insurance plan by 2014, when state health insurance exchanges will be established to help more Americans afford coverage. The law also takes several steps to expand children's access to healthcare coverage, including extending federal funding for the Children's Health Insurance Program (CHIP); providing federal funding to states to assist children in gaining access to this program; and creating tax credits and incentives as well as other mechanisms to lower the cost of health care for children and expand access to preventive care. Yet disparities between children in LGBT families and those in other families are likely to persist as long as LGBT families cannot establish full parent-child relationships. See "The Affordable Care Act Gives Parents Greater Control Over Their Children's Health Care," [www.whitehouse.gov/files/documents/health\\_reform\\_for\\_children.pdf](http://www.whitehouse.gov/files/documents/health_reform_for_children.pdf) and Kellan Baker and Jeff Krehely, "Changing the Game: What Health Care Reform Means for Gay, Lesbian, Bisexual, and Transgender Americans," March 2011, [www.americanprogress.org/issues/2011/03/pdf/aca\\_lgbt.pdf](http://www.americanprogress.org/issues/2011/03/pdf/aca_lgbt.pdf).

<sup>319</sup>HRC, "Equal Access to COBRA Act," <http://www.hrc.org/laws-and-legislation/federal-legislation/equal-access-to-cobra-act>.

<sup>320</sup>"Qualified beneficiaries" (defined by COBRA as spouses or dependent children of the covered employee) have an independent right to elect coverage, while certain other categories of beneficiaries may only elect COBRA coverage if given permission by the covered employee. See IRS Code at 26 U.S.C. § 4980B(g)(1) (2006); DOL Code at 29 U.S.C. § 1167(3) (2006); and HHS Code at 42 U.S.C. § 300bb-8(3) (2006).

<sup>321</sup>As noted above, some of this may change as a result of the 2010 Affordable Care Act.

<sup>322</sup>Estimate of average annual premium for family from KFF, "Survey of People Who Purchase Their Own Insurance," 2010 and "Employer Health Benefits: 2010 Annual Survey,"

of the extended insurance benefits as taxable income.<sup>323</sup> In some cases, same-sex couples also have to pay additional state taxes. Taxation of health benefits costs the average employee with domestic partner benefits \$1,069 more per year in taxes than a married heterosexual employee with the same coverage. Employers also are required to pay payroll taxes on the value of domestic partner benefits, costing them an estimated \$57 million per year.<sup>324</sup>

### Disparities in Coverage Through Private Employment

Data from the Bureau of Labor Statistics finds that fewer than three in ten (29%) private sector employees have access to healthcare benefits for domestic partners.<sup>325</sup> Similarly, the vast majority of private companies (96% of companies with 50 or more employees, and 69% of those with three or more employees) offer health insurance to their workers, and many of these also extend benefits to workers' families.<sup>326</sup> Yet just 57% of large firms electively offer health insurance to workers' same-sex domestic partners (see *Figure 33*).<sup>327</sup> For the overwhelming majority of these firms (88%), the cost of offering this extended insurance is less than 2% of total benefit costs.<sup>328</sup>

### Disparities in Coverage Through Government Employment

**Coverage for federal employees.** Federal employees and their families are eligible for more than 300 health insurance plans under the Federal Employees Health Benefits Program.<sup>329</sup> To be eligible for federal family health insurance benefits, a person must be a covered federal worker's heterosexual spouse or legal child, stepchild or foster child (children must be unmarried, under 22 years old, and live with the covered worker).<sup>330</sup>

<sup>323</sup>When these benefits are offered, the IRS typically requires employers to determine a fair market value of the benefit, report it on the W-2 form, and then tax it. In an effort to offset the inequitably applied tax, some employers, including Apple, Facebook and Google have begun to use their own funds to pay additional compensation to workers in same-sex partnerships. Employees with partners who qualify as "dependents" are not required to pay this additional tax. As described in "Tax Credits and Deductions for Families" on page 69, for an individual to qualify as an employee's dependent, the employee must provide more than half the person's total support, the person must have total income less than \$3,650, the person must live with the employee, and the person cannot be claimed as anyone else's dependent.

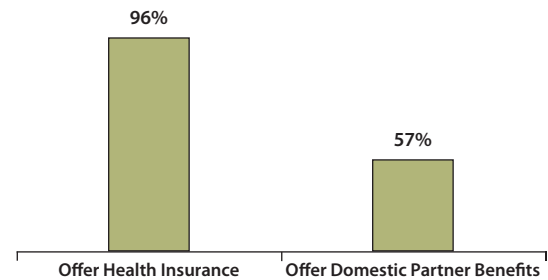
<sup>324</sup>M. V. Lee Badgett, "Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits," The Williams Institute and the Center for American Progress, December 2007, <http://wiwp.law.ucla.edu/wp-content/uploads/Badgett-UnequalTaxesOnEqualBenefits-Dec-2007.pdf>.

<sup>325</sup>Access to domestic partner benefits varies by employer and employer and whether the partner is of the same-sex or different-sex. U.S. Dept. of Labor, Bureau of Labor Statistics, "Employee Benefits in the United States – March 2011," July 26, 2011, <http://www.bls.gov/news.release/ebs2.nr0.htm>.

<sup>326</sup>Bloomberg says 96% of 50+ employers provide health insurance, but it is not clear if that includes coverage for families. John Tozzi, "Small Employers Struggle to Offer Health Insurance," Bloomberg *Businessweek*, October 6, 2009, [www.businessweek.com/smallbiz/content/oct2009/sb2009106\\_487565.htm](http://www.businessweek.com/smallbiz/content/oct2009/sb2009106_487565.htm) and "Employer Health Benefits: 2010 Annual Survey."

<sup>327</sup>HRC, "Corporate Equality Index 2011," 7, [http://www.hrc.org/files/assets/resources/CorporateEqualityIndex\\_2011.pdf](http://www.hrc.org/files/assets/resources/CorporateEqualityIndex_2011.pdf).

Figure 33: Large Companies Offering Health Insurance



Source: HRC, "Corporate Equality Index 2011."

### University Professor Could Lose Benefits for Her Family

Corey Seemiller and her partner, Karrie Mitchell, live in Arizona with their infant daughter. Because Corey and Karrie can't marry in Arizona, and because the availability of second-parent adoption is uncertain, Karrie is their daughter's only legal parent. Corey and Karrie have tried to create as much security for their daughter as possible. Through a co-parenting agreement and a power of attorney, Corey can make decisions about their daughter's medical care and education, and the couple has created a trust to care for their daughter if anything were to happen to one of them.

Fortunately, Corey works for the University of Arizona, which offers domestic partner benefits to the partners of gay and lesbian employees and their children. However, in 2009 Arizona passed legislation that prohibited any state institution from offering domestic partner benefits. This legislation is being challenged in court, but if it is allowed to take effect, families like Corey and Karrie's will be unable to access domestic partner benefits and family health insurance coverage.

Adapted from Lambda Legal, *Diaz v. Brewer* (formerly *Collins v. Brewer*), [http://www.lambdalegal.org/in-court/legal-docs/collins\\_az\\_20100107\\_amended-complaint-us-district-court.html](http://www.lambdalegal.org/in-court/legal-docs/collins_az_20100107_amended-complaint-us-district-court.html).

<sup>328</sup>Hewitt Associates, "Benefit Programs for Domestic Partners and Same-Sex Spouses," July 2005.

<sup>329</sup>Naomi G. Goldberg, Christopher Ramos and M.V. Lee Badgett, "The Fiscal Impact of Extending Federal Benefits to Same-Sex Domestic Partners," The Williams Institute, September 2008, <http://wiwp.law.ucla.edu/wp-content/uploads/Badgett-Goldberg-Ramos-S2521FiscalAnalysis-Sept-2008.pdf>.

<sup>330</sup>U.S. Office of Personnel Management, "FEHB Eligibility," [www.opm.gov/insure/health/eligibility/index.asp](http://www.opm.gov/insure/health/eligibility/index.asp).

Figure 34: Coverage of State Employees



Because of the restrictive federal definition of family, same-sex partners and any children not legally related to the worker (as interpreted under federal law) are denied health insurance coverage.<sup>331</sup> In 2008, the government paid an average family health insurance benefit of \$8,137, although this coverage and benefit was denied to the families of LGBT workers.<sup>332</sup>

**Coverage for state employees.** Twenty-two states plus D.C. offer benefits to same-sex partners of state employees (see *Figure 34*).<sup>333</sup> But children of domestic partners might not be covered if the child is not also the legal child of the worker. As of March 2011, the Department of Labor estimated that 33% of state and local government employees had access to healthcare benefits for domestic partners.<sup>334</sup>

### Health Disparities for LGBT Individuals and Families

LGBT families' lower rates of health insurance are particularly troubling given that LGBT adults face health disparities when compared to the general population (see *Figure 35* on the next page). Key disparities can be seen in access to care and in the incidence of HIV/AIDS, mental health disorders, and chronic physical conditions such as diabetes and arthritis among LGBT individuals and families. Factors that give rise to these health disparities include: high rates of stress due to systematic harassment and discrimination; medical providers' lack of cultural competency; and lower rates of health insurance.

For example, unwelcoming health care environments (described below) mean that LGBT people are more likely than their heterosexual peers to delay testing and screening for certain illnesses like heart disease and breast cancer. This may explain why LGB adults are more likely to have had cancer.<sup>335</sup> While the vast majority of LGBT adults are well adjusted and mentally healthy,<sup>336</sup> LGBT adults are more likely to report experiencing psychological distress, which researchers have attributed to the accumulated effects of stigma and discrimination (see *Figure 36* on the next page).<sup>337</sup> While several studies provide information about the health status of the LGBT population, much is still not known about LGBT people and families due to a consistent lack of data collection.

<sup>331</sup> See the first section of this report, "Securing Stable, Loving Homes" for the challenges faced by LGBT families in establishing legal relationships.

<sup>332</sup> Goldberg et al., *Extending Federal Benefits to Same-Sex Partners*, 2008.

<sup>333</sup> HRC, "Statewide Employment Laws & Policies," [www.hrc.org/documents/Employment\\_Laws\\_and\\_Policies.pdf](http://www.hrc.org/documents/Employment_Laws_and_Policies.pdf). According to HRC, these states offer "benefits" generally, i.e., not just health benefits. Note that although Nevada has comprehensive relationship recognition, the state's domestic partnership law excluded healthcare benefits from being offered to state employees. Note also that while Delaware was not listed by HRC, its recent passage of civil unions for same-sex couples will also extend health insurance coverage to public state employees.

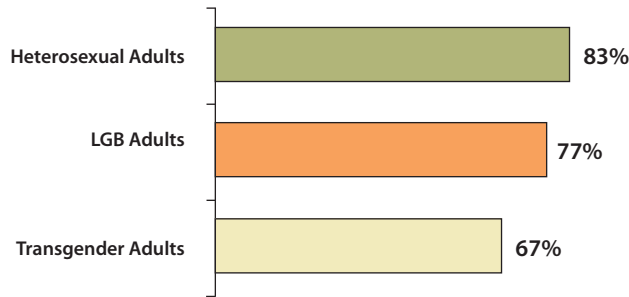
<sup>334</sup> Bureau of Labor Statistics, "Employee Benefits in the United States – March 2011."

<sup>335</sup> Krehely, "How to Close the LGBT Health Disparities Gap."

<sup>336</sup> Institute of Medicine, "The Health of Lesbian, Gay, Bisexual, and Transgender People," March 31, 2011, 158. <http://iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>.

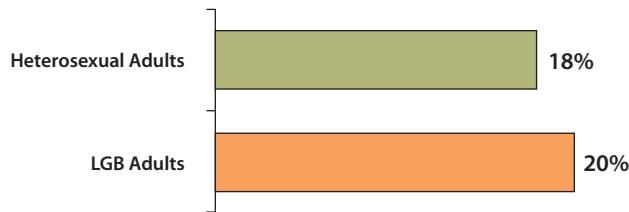
<sup>337</sup> Ilan H. Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence," *Psychological Bulletin*, 129:5 674-697.

**Figure 35: Percent of Adults Reporting Excellent or Very Good Overall Health**



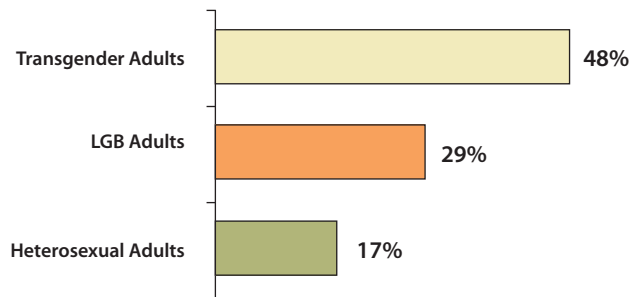
Source: Massachusetts Department of Public Health, "The Health of Lesbian, Gay, Bisexual and Transgender Persons in Massachusetts," 2009.

**Figure 36: Percent of Adults Reporting Psychological Distress**



Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009.

**Figure 37: Percent of Adults Delaying or Avoiding Medical Care**



Source: Jeff Krehely, "How to Close the LGBT Health Disparities Gap," Center for American Progress, December 2009; Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman and Mara Keisling, "Injustice At Every Turn: A Report of the National Transgender Discrimination Survey," National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

## Challenge: Unwelcoming Health Care Environments

Having health insurance coverage does not always mean having access to quality care, as health care environments are often inhospitable to LGBT families. Many professional caregivers—from physicians to counselors to the receptionists at medical facilities—are not accepting of, or trained to work with, LGBT families. These providers may be hostile, discriminatory or simply unaware that LGBT families exist. Some medical providers have even refused to treat LGBT people citing religious or personal reasons. According to one study, the result of these and other barriers is that 29% of LGB adults delayed or never sought medical care for themselves, versus only 17% of heterosexual adults;<sup>338</sup> a recent national study found that the figure for transgender adults was 48%.<sup>339</sup> (See *Figure 37*.)

Research confirms anti-LGBT bias within many areas of the medical profession.<sup>340</sup>

- A study by the Public Advocate of New York found that in New York City's health care facilities, "LGBT individuals experience hostility and discrimination in care," and "concerns about homophobia and transphobia keep LGBT individuals from using health care services."<sup>341</sup>
- In a New York "needs assessment survey," 42% of LGBT respondents said that community fear or dislike of LGBT people was a problem for them in accessing health care, and nearly 40% said there were not enough health professionals who are adequately trained and competent to deliver health care to LGBT people.<sup>342</sup>
- Up to 39% of transgender people face harassment or discrimination when seeking routine health care.<sup>343</sup> A comprehensive report on discrimination faced by transgender Americans found that 19% were refused medical care due to their transgender or gender non-conforming status, with larger percentages for transgender people of color.<sup>344</sup>

While little data exists on the specific experiences of children of LGBT parents, children are also affected by the hostility extended to their parents, and, as a result, may suffer inferior health care treatment or outcomes. A family may, for instance, shy away from scheduling a child's doctor's visit in an effort to shield him or her from hostile questions or misunderstandings. For parents who must rely on medical professionals with unknown

<sup>338</sup> Center for American Progress analysis of the 2007 California Health Interview Survey.

<sup>339</sup> Grant et al., "Injustice at Every Turn."

<sup>340</sup> Lambda Legal, "Achieving Health Care Fairness: Medical Providers' Obligation to Follow Anti-Discrimination Laws," August 2009, [http://data.lambdalegal.org/publications/downloads/fs\\_achieving-health-care-fairness.pdf](http://data.lambdalegal.org/publications/downloads/fs_achieving-health-care-fairness.pdf).

<sup>341</sup> Public Advocate for the City of New York, *Improving Lesbian, Gay, Bisexual and Transgender Access to Health Care at New York City Health and Hospital Corporation Facilities*, 2008.

<sup>342</sup> Somjen Frazer, "LGBT Health and Human Services Needs in New York State," 2009, [www.prideagenda.org/Portals/0/pdfs/LGBT%20Health%20and%20Human%20Services%20Needs%20in%20New%20York%20State.pdf](http://www.prideagenda.org/Portals/0/pdfs/LGBT%20Health%20and%20Human%20Services%20Needs%20in%20New%20York%20State.pdf).

<sup>343</sup> MAP, "Advancing Transgender Equality," 2009.

<sup>344</sup> Grant et al., "Injustice at Every Turn."



attitudes toward LGBT patients, concerns linger about treatment of them and their children, which can make care more difficult to obtain.<sup>345</sup>

## Challenge: Family Members Restricted in Taking Care of Each Other

### Hospital Visitation and Medical Decision-Making

Every day, government and private health care providers apply different definitions of the word “family”—both legal and social—when making life-and-death decisions about individuals’ well-being. Most hospitals have policies that specifically define who may visit or make decisions for an incapacitated patient, generally prioritizing or restricting such rights to legally-defined “immediate family” members such as legal spouses, siblings, children and parents.<sup>346</sup> These policies must conform to state law, where it exists, but can sometimes include expanded family definitions.

Unfortunately, the restrictive definition of family still used by too many state laws and hospital policies not only hurts LGBT families, but can also mean that unmarried heterosexual couples, single people, widows and widowers, members of religious orders and those relying on close friends are denied the comfort of a loved one in their time of need.

**Hospital visitation disparities.** In the 15 states, plus D.C., that allow marriage or comprehensive relationship recognition for same-sex couples, same-sex couples have the same hospital visitation rights as heterosexual couples. Several other states ensure visitation rights either through a general (but limited) relationship recognition law or through a specific “designated visitor” policy designed for hospital scenarios.<sup>347</sup> Hospitals also set their own policies. According to the Human Rights Campaign’s Health Equality Index, which reviewed a representative sample of 200 major health care facilities, less than a third of hospitals in 2010 had policies that allowed same-sex couples and parents the same visitation access as heterosexual couples and parents.<sup>348</sup>

To address these disparities, the Obama administration issued a memorandum in 2010 requiring all hospitals nationwide that participate in Medicaid and Medicare to honor the wishes of patients regarding approved visitors. The new policy, which took effect in January 2011, makes it a “condition of participation” for these hospitals to allow such visitation on an equal basis

with immediate family members, and to develop written policies stating they will not deny visitation privileges on the basis of sex, sexual orientation or gender identity.<sup>349</sup>

While the new policy was an important step forward, it is only helpful in cases where the patient is capable of designating preferred visitors. If an LGBT person is rushed to the hospital and is mentally incapacitated, depending on the state and hospital, that person’s same-sex partner may not be allowed to visit the patient. Also, if the patient is a child living with a non-legally recognized parent, that parent may not be allowed to visit the child.

**Medical decision-making for an incapacitated partner.** Unless an LGBT patient has specific and often expensive legal documents in place, his or her partner may be excluded from making medical decisions. While the Obama administration’s hospital visitation memo described above requires hospitals to respect valid decision-making designations if patients have them in writing, this policy does not help patients who are incapacitated and do not have, and cannot sign, such forms.

LGBT adults who want to pre-designate their wishes and their medical decision-makers need both a living will (a set of health care instructions that outline one’s wishes for treatment should one become incapacitated) and a healthcare power of attorney (which designates a trusted person to make medical decisions on one’s behalf should one become incapacitated). These two documents are often combined into an advanced healthcare directive (AHD). Individual state laws govern how medical providers must respond to AHDs,<sup>350</sup> including what powers designated individuals are entitled to, what the documents must say, and when they are presumed valid.<sup>351</sup>

<sup>345</sup> See, for instance, Baker and Krehely, “Changing the Game.”

<sup>346</sup> Matthew Stiff, “Breaking Down Barriers: An Administrator’s Guide to State Law and Best Policy Practice for LGBT Healthcare Access,” HRC Foundation, June 2010, [www.hrc.org/documents/HRC\\_Foundation\\_-\\_Breaking\\_Down\\_Barriers\\_-\\_An\\_Administrators\\_Guide.pdf](http://www.hrc.org/documents/HRC_Foundation_-_Breaking_Down_Barriers_-_An_Administrators_Guide.pdf).

<sup>347</sup> Three states extend equal visitation through limited relationship recognition laws: Colorado, Maryland and Wisconsin. Six states allow visitation through a “designated visitor” policy, similar to the policy required of hospitals by the Obama administration’s 2010 directive: Kentucky, Minnesota, Nebraska, North Carolina, Virginia and West Virginia. In addition, Georgia and South Carolina allow patients to designate a “healthcare agent” for visitation. See HRC, “Hospital Visitation Laws,” [www.hrc.org/documents/hospital\\_visitation\\_laws.pdf](http://www.hrc.org/documents/hospital_visitation_laws.pdf).

<sup>348</sup> HRC Foundation, “Healthcare Equality Index 2010: Creating a National Standard for Equal Treatment of Lesbian, Gay, Bisexual and Transgender Patients and Their Families,” April 2010, 16, [http://www.hrc.org/files/assets/resources/HealthcareEqualityIndex\\_2010.pdf](http://www.hrc.org/files/assets/resources/HealthcareEqualityIndex_2010.pdf).

<sup>349</sup> “Presidential Memorandum Hospital Visitation,” April 15, 2010, [www.whitehouse.gov/the-press-office/2010/04/15/presidential-memorandum-hospital-visitation](http://www.whitehouse.gov/the-press-office/2010/04/15/presidential-memorandum-hospital-visitation). The new rules are part of the Code of Federal Regulations, at 42 CFR 482.13(h) and 42 CFR 485(f).

<sup>350</sup> In 1982, the Uniform Law Commission began drafting model law on health care consent policy, but not all states have adopted these laws. See Stiff, “Breaking Down Barriers,” 8. The American Bar Association Commission on Law and Aging has information on specific state laws at [www.abanet.org/aging/legislativeupdates/home.shtml](http://www.abanet.org/aging/legislativeupdates/home.shtml).

<sup>351</sup> Stiff, “Breaking Down Barriers.” Healthcare.

While obtaining an AHD seems straightforward in theory, relying on one has many weaknesses in practice:

- First, many people are not aware of the need for, or do not have the means to obtain, these types of legal documents. Although the exact percentage of Americans with AHDs is unknown, one study by the Pew Research Center found that just under a third of American adults had living wills.<sup>352</sup>
- Second, medical providers often ignore or refuse to honor the AHDs of LGBT people. While this may be illegal, many LGBT people do not have the resources to challenge these actions, nor can these actions usually be challenged in the timeframe required in a medical emergency.
- Third, in order to successfully protect themselves, LGBT families must remember to carry their AHDs with them at all times—if an individual is rushed to the hospital without these documents, a loved one can legally be denied decision-making rights.

Given the limitations of AHDs and the fact that few people have them, it is important that state laws designate default medical decision-makers for an adult patient who is incapacitated. States with marriage or comprehensive relationship recognition for same-sex couples recognize such couples for medical decision-making. Additionally, some states have specific statutes that address medical decision-making by same-sex partners. As shown in *Figure 38* on the next page, states can be roughly categorized as follows:<sup>353</sup>

- **“LGBT-inclusive” states.** Nineteen states and D.C. offer legal recognition of same-sex couples through marriage or comprehensive relationship recognition or by including “same-sex spouse” or “domestic partner” in priority lists (default lists outlining who can make medical decisions for an incapacitated patient), giving same-sex partners equal or substantially equivalent standing to a heterosexual spouse.
- **“Limited recognition” states.** Thirteen states offer some recognition for LGBT partners through broad language, such as inclusion of “close friend” in the priority lists, usually after legally-related family members.
- **“Legal stranger” states.** Eighteen states use narrow definitions of family that even exclude “close friends.” In these states, a same-sex partner has no chance to be designated as a medical decision maker for an incapacitated partner absent an AHD.

### Excerpt from President Obama’s 2010 Hospital Visitation Memo:

Every day, all across America, patients are denied the kindnesses and caring of a loved one at their sides—whether in a sudden medical emergency or a prolonged hospital stay. Often, a widow or widower with no children is denied the support and comfort of a good friend. Members of religious orders are sometimes unable to choose someone other than an immediate family member to visit them and make medical decisions on their behalf. Also uniquely affected are gay and lesbian Americans who are often barred from the bedsides of the partners with whom they may have spent decades of their lives—unable to be there for the person they love, and unable to act as a legal surrogate if their partner is incapacitated.

For all of these Americans, the failure to have their wishes respected concerning who may visit them or make medical decisions on their behalf has real consequences. It means that doctors and nurses do not always have the best information about patients’ medications and medical histories and that friends and certain family members are unable to serve as intermediaries to help communicate patients’ needs. It means that a stressful and at times terrifying experience for patients is senselessly compounded by indignity and unfairness. And it means that all too often, people are made to suffer or even to pass away alone, denied the comfort of companionship in their final moments while a loved one is left worrying and pacing down the hall.

Source: “Presidential Memorandum Hospital Visitation,” April 15, 2010, [www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation](http://www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation).

Note that medical institutions are bound by state law and could be subject to punishment if they defer medical decision-making to someone not authorized by the state’s priority list. This means that even when a hospital would prefer to have an LGBT-friendly policy, it may not have that option if it is in a state with restrictive law.

<sup>352</sup>The Pew Research Center, “Strong Public Support For Right To Die,” January 6, 2006, <http://people-press.org/reports/pdf/266.pdf>.

<sup>353</sup>Stiff, “Breaking Down Barriers,” 14-17. This was updated by MAP to classify Delaware, Illinois and Nevada as “LGBT-inclusive” given that these states all have comprehensive relationship recognition for same-sex couples. State classification is shown in Figure 38.

Figure 38: Medical Decision-Making Policies



**Medical decision-making for a child.** With some exceptions, minors are not considered capable of making major medical decisions on their own and are not allowed to enter into AHDs.<sup>354</sup> Therefore, state law generally requires hospitals and medical providers to obtain a legal parent’s consent for medical treatment (which is documented as part of the medical records of the child). A non-legally recognized LGBT parent (or anyone who functions as a de facto parent, such as a family friend or extended relative raising a child) will often be unable to make routine or emergency medical decisions for a child. This hurts not only children in LGBT families, but also children raised in other households that lack full, legal parental recognition (a fact that disproportionately affects children of color).

Defining who is a parent for the purposes of consenting to a minor’s medical treatment is a complex matter. While state laws usually address a parent’s right to make medical decisions for a dependent child, many such laws do not spell out who qualifies as a parent; some states do not codify these parental rights at all. Amid such legal uncertainty, individual institutions are left to set policies about parental consent while conforming to broad state legal requirements that mandate the “informed consent of a parent” for major medical procedures.

Like state laws, these institutional policies can vary widely. Some hospitals define precisely who is a parent, while others do not. Among those that include definitions in their policies, some have liberal interpretations (covering

de facto parents, foster parents and stepparents) while others define parent or guardian narrowly to include only custodial or biological parents.<sup>355</sup>

In addition, demonstrating that someone is a de facto parent to a child can be difficult, especially in the stressful and sometimes desperate setting of a medical emergency. The legally recognized parent can sign documentation such as a “power of attorney for parental authority” granting a non-legally recognized parent the power to make medical decisions for a child, but state law and the unfamiliarity of medical providers with the legal processes involved can limit how effective such documents are in practice.<sup>356</sup> Many families may not be able to afford such documents and many may not even know they are required. Parents who do have such documents may not always carry them at all times. Finally, in cases where a de facto parent is informally raising the child of an absentee parent, the de facto parent may not be able to gain needed signatures.

<sup>354</sup>The exceptions, depending on state statute, can include treatment for sexually transmitted diseases, substance abuse, sexual assault and family planning. In addition, “emancipated minors” tend to be covered under laws governing AHDs and surrogate selection. See Stiff, “Breaking Down Barriers.”

<sup>355</sup>Stiff, “Breaking Down Barriers,” 14-17.

<sup>356</sup>All states have laws addressing the validity of powers of attorney, and depending on the state and the situation, the power granted by such documents can be limited or broad. These documents are in no way a substitute for full legal recognition of a parent, particularly because they rely on the consent of the recognized parent, which may not be granted in cases of relationship dissolution or death. See “Power of Attorney and Health Care Forms by State,” U.S.LegalForms.com, [www.uslegalforms.com/powerofattorney](http://www.uslegalforms.com/powerofattorney).

## Lack of Family Recognition Impacts Children, Family's Health Care



Photo by Leslie Von Pless. Reprinted with permission from Lambda Legal.

Maureen Kilian and Cindy Meneghin, with their two children, faced uncertainty during a medical emergency when the hospital staff didn't understand their family.

Together for more than 35 years, Maureen Kilian and Cindy Meneghin have raised two children. The couple has always tried to prepare their children for the questions that may come with having lesbian parents, including ways for them to cope with discrimination. However, Maureen and Cindy were not prepared for how their children would react to the

political discussion about civil unions and marriage in New Jersey. Their son, Josh, sent a letter to the governor asking why his parents can't marry. As Cindy explains, "He has said to me, 'No one is giving us a real answer for why they have the right to deny us our right as a family.' What am I supposed to say to him?"

When Cindy was admitted to the hospital, one of the nurses didn't know what a civil union was, and Cindy worried that Maureen wouldn't be able to make medical decisions on her behalf if she were incapacitated. The hospital staff was also reluctant to share important medical information with Maureen, despite their civil union.

Adapted from Lambda Legal, "Plaintiffs in the New Jersey Marriage Lawsuit: Lewis v. Harris," [http://www.lambdalegal.org/publications/factsheets/fs\\_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html](http://www.lambdalegal.org/publications/factsheets/fs_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html).

This means children facing a medical emergency may be in the care of a parent who is not authorized to make life-saving or life-altering decisions. Hospitals that wish to adopt more liberal interpretations of who constitutes a parent open themselves up to liability risks, which is a disincentive to establishing more inclusive policies.<sup>357</sup>

### Family Leave

The 1993 federal Family and Medical Leave Act (FMLA) requires public and large private employers to grant up to 12 weeks of unpaid annual leave to allow workers to care for a spouse, child or parent (except in-laws) with a serious health condition.<sup>358</sup> The FMLA gives these caregivers flexibility, leave and job security.

**Taking care of a child.** The FMLA has a broad definition of who can take leave to care for a child. It defines a worker's "son or daughter" as a biological, adopted or foster child; a stepchild; or "a child of a person standing *in loco parentis*."<sup>359</sup> In 2010, the U.S. Department of Labor issued a clarification indicating that the *in loco parentis* clause allows any worker who is acting (or intends to act) as a parent to take leave under FMLA to care for that sick or newborn (or newly adopted) child, even if the worker is not recognized as a legal parent under state law. This not only allows non-legally recognized LGBT parents to take leave to care for their children, but also, for example, an uncle to take leave to care for a child whose single parent is on active military duty. The clarification was an important step and sent a strong signal that the many different kinds of caretakers who act as parents can take leave to continue their care under FMLA. The Williams Institute estimates the clarification will allow care for up to 100,000 additional children living in LGBT households.<sup>360</sup>

**Taking care of a partner.** Unfortunately, the FMLA is not similarly broad in allowing workers to take care of a loved one who is not a legally recognized spouse or blood relative, even if the non-recognized family member shares a household. Although they may do so electively, employers are not required to grant leave to allow an employee to care for a same-sex partner or spouse, an unmarried heterosexual partner or a non-legally recognized family member (for example, close friends who share a home together). Again, this disproportionately affects not only LGBT families, but also families of color who are often less likely to fall within commonly defined boundaries.

Among LGBT families, a worker taking time off to care for a sick or injured partner risks losing his or her job. In addition, many LGBT workers are not safe taking such leave because doing so could require revealing their sexual orientation (and they may lack employment non-discrimination protections in their state). While it is important for parents to be able to care for their children, it is also important for families and the children they raise that parents be able to care for each other. A child should never see one parent forced to choose between providing for the family or taking care of his or her partner.

<sup>357</sup>Stiff, "Breaking Down Barriers," 14-17.

<sup>358</sup>U.S. Dept. of Labor, "Family and Medical Leave Act," [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla). Workplaces of fewer than 50 employees are not required to grant leave.

<sup>359</sup>U.S. Dept of Labor, "Administrator's Interpretation No. 2010-3," June 22, 2010, [www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010\\_3.htm](http://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.htm).

<sup>360</sup>M.V. Lee Badgett, "The Impact of Expanding Leave Rights to Care for Children of Same-Sex Partners," The Williams Institute, June 2010, <http://wiwp.law.ucla.edu/wp-content/uploads/Badgett-FMLA-Jun-2010.pdf>.



## Department of Labor Issues New Guidance That Broadly Interprets “Child” Within FMLA

“No one who loves and nurtures a child day in and day out should be unable to care for that child when he or she falls ill. No one who steps in to parent a child when that child’s biological parents are absent or incapacitated should be denied leave by an employer because he or she is not the legal guardian. No one who intends to raise a child should be denied the opportunity to be present when that child is born simply because the state or an employer fails to recognize his or her relationship with the biological parent. These are just a few of many possible scenarios. The Labor Department’s action today sends a clear message to workers and employers alike: all families, including LGBT families, are protected by FMLA.”

Source: Hilda L. Solis, Secretary, U.S. Department of Labor, June 23, 2010.

States that wish to address the inadequacies of FMLA can create their own laws that provide broader medical leave, and a number of states do so. For example, the California Family Rights Act (CFRA) requires large employers to give 12 weeks of unpaid leave to care for a seriously ill domestic partner.<sup>361</sup>

## Challenge: Social Stigma and Discrimination

The lived experiences of LGBT families vary widely and defy generalization. Indeed, despite the unique pressures LGBT families face, what is perhaps most remarkable about children raised by LGBT parents is how much they are like other children.<sup>362</sup> Yet several themes emerge when LGBT families are asked to describe their everyday lives. These include:

- The unique family pressures associated with being LGBT families being rendered invisible and not valued
- Laws and practices that prevent these families from being welcomed within broader community institutions
- Unsafe and unwelcoming schools that fail to provide safety for children
- The added challenges facing racially and ethnically diverse LGBT families

This section examines the experiences of LGBT families and how experiences of stigma are stressful and detrimental to the well-being of children and their parents.

## Unique Pressures for LGBT Families and Their Children

Many of the challenges LGBT families face stem from a society that assumes, expects and too often demands behaviors and family configurations based on heterosexual assumptions. Even today, many Americans assume that all children live in a family with two married heterosexual parents. The stresses resulting from these expectations and demands are heightened for LGBT families of color, who also have to contend with the inadequate attention given by laws, policies and institutions to the needs and concerns of racial and ethnic communities. Transgender parents and their children also face added strains; a child with a visibly gender non-conforming transgender parent may be more identifiable than a child with LGB parents and, as a result, more likely to face onerous mistreatment.<sup>363</sup> This section briefly describes some of the key social and emotional challenges faced by LGBT families.

### Lack of legal recognition is emotionally burdensome.

The vulnerability of families where parents lack legal ties to their children adds stress, fear and uncertainty for everyone. LGBT parents who lack legal recognition are sometimes less certain about their own place in the family. For example, in a study of African American lesbian families, this sense of displacement is particularly true for lesbian stepparents.<sup>364</sup> This research also suggests that in situations where there is one legal parent and one non-legal parent, a power dynamic may arise where the legal parent has more power and consequently an unequal footing in the relationship, the household decisions and the decisions pertaining to the care of the child.

<sup>361</sup>HRC, “FMLA Equivalent Benefit for LGBT Workers,” <http://www.hrc.org/resources/entry/family-and-medical-leave-act-fmla-equivalent-benefit-for-lgbt-workers>. The California law grants registered domestic partners the same benefits as heterosexual spouses.

<sup>362</sup>As described in the introduction of the report, a large body of research finds that the children of LGBT parents are psychologically similar to children raised by married heterosexual couples. Studies have found that children raised in LGBT families have a somewhat greater understanding and awareness of diversity than other young people. Children of LGBT parents also report they are more likely to feel empathy for those who encounter discrimination due to race, income, class or religion, and more likely to challenge homophobia or discrimination when they see it. Goldberg, *Research on the Family Life Cycle*.

<sup>363</sup>Tina Fakhrid-Deen and COLAGE, *Let’s Get This Straight: The Ultimate Handbook for Youth with LGBTQ Parents*, Seal Press, 2010; COLAGE, “Not So Gay: Differences Between KOTs and Children with LGB/Q Parents,” [www.colage.org/resources/not-so-gay-differences-between-kots-and-children-with-lgbq-parents](http://www.colage.org/resources/not-so-gay-differences-between-kots-and-children-with-lgbq-parents).

<sup>364</sup>Mignon Moore, “Gendered Power Relations Among Women: A Study of Household Decision Making in Black, Lesbian Stepfamilies,” *American Sociological Review*, 75(6), 2008.

In the event that a relationship dissolves, the possibility of having a parent-child relationship torn apart at the hands of an ex-partner or a court creates additional stress for non-recognized parents and uncertainty for children. Transgender parents and their children in particular may live in fear that their relationship will be severed. In the National Transgender Discrimination Survey, 29% of respondents whose intimate relationships ended as a result of their coming out as transgender indicated that their ex-spouse or partner limited or stopped their relationship with children because of their transgender identity; 13% of the respondents reported that a court or judge stopped or limited their relationships with their children. Both multiracial and African American transgender parents were more likely than others to report these obstacles to maintaining a relationship with their children, as were low-income respondents.<sup>365</sup>

**Trouble finding language to talk about family.** LGBT families develop language with which to talk about themselves, including words to identify and describe the household's parents. Outside the home, children and parents in LGBT families encounter books, television shows, teachers, peers and other parents with a limited awareness of the diversity of today's families. Children may be asked, "Who is your real mother?," a question that can confuse and offend both the child and the non-biological parent, whose connection to her child is called into question.<sup>366</sup> People may also assume that a child is "missing" a parent and ask, for example, "Where is your father?" For younger children, in particular, these questions can be confusing and disorienting and can undermine, over time, a healthy sense of their own family.<sup>367</sup>

**Facing the pressure to be perfect.** LGBT families often feel pressure to be a model family, surpassing standards to which all other families are held. Especially if they are the only LGBT family in a school or community, they may worry that others will form judgments about all LGBT people based on their individual family.<sup>368</sup> This pressure can be difficult for both parents and children. Parents may feel they cannot ask for help in dealing with the usual stresses of parenting, and children may feel they cannot talk about the struggles they face growing up. Some fear that any problem they "go public with" will be mistakenly attributed to having LGBT parents. They also may fear that their parents—and other LGBT parents—will be criticized or even politically penalized or restricted in their ability to be parents as a result of any problems they share.<sup>369</sup>

**Hostile and inappropriate questions or comments directed at children of LGBT parents.** According to children of LGBT parents, reactions to discussing their families include surprise, disapproval and hostility, often followed by intrusive questions attempting to further clarify the family structure. An additional challenge for children of LGBT parents is persistent outside questioning of the child's own sexual orientation. Children of LGBT parents report that strangers often assume that since the child's parents are LGBT, the child might be also, leading to invasive questions about a child's sexual orientation starting at a very young age. Children of LGBT parents may therefore be wary about discussing their families, and may further feel guilt about this wariness. In some cases, any questions about the sexual orientation of family members may feel like a threat. The concealment that children may engage in as a result can create a sense of shame and may also discourage them from seeking needed help out of fear that they could "out" their family with harmful consequences.

**Politicizing the family.** Over the past 20 years, LGBT families have often been on the front lines of culture wars, even when they have not sought out the fight. In the news, on television and on street corners, opponents and proponents of LGBT rights have debated the ability of LGBT people to be parents and what impact their orientation may have on children. For LGBT families, these political debates and conversations are deeply personal. One can only imagine how a young child might react to seeing a political ad claiming so-called dangers of letting two women marry if that child himself has two moms, let alone news reports about a hate crime against someone who is LGBT.<sup>370</sup> During the public dialogue about California's Proposition 8, which restricts marriage to a man and a woman in California, one newspaper quoted the child of same-sex parents wondering, "What's going to happen to my family?" if the measure passes.<sup>371</sup>

<sup>365</sup> Grant et al., "Injustice at Every Turn."

<sup>366</sup> H.J. Makadon, K.H. Mayer, J. Potter, and H. Goldhammer, *The Fenway Guide to Lesbian, Gay, Bisexual, and Transgender Health*, American College of Physicians, 2007.

<sup>367</sup> Family Equality Council, "Talking to Our Children About Our Families," [www.familyequality.org/pdf/talkingtochildren.pdf](http://www.familyequality.org/pdf/talkingtochildren.pdf).

<sup>368</sup> "Every time children with LGBT parents agree to talk, . . . participate in research, or even come out about their family in a social setting, they know they are not only representing their own families—they are opening the window to an entire population." Abigail Garner, *Families Like Mine: Children of Gay Parents Tell It Like It Is*, Harper Collins, 2004, 20.

<sup>369</sup> Goldberg, *Research on the Family Life Cycle*. See also Garner, *Families Like Mine*, 20. One lesbian parent poignantly expressed her concerns in a blog post: "This pressure to be perfect places an enormous strain on our families and can prevent us from seeking important mental health, substance abuse or other services that could address the very problems we feel constrained from discussing. It leaves service providers unaware of the need to put certain programs in place. And it can prevent us from reaching out to friends and family for support." Cindy Rizzo, "LGBT Families and the Pressure to Be Perfect," [www.equalfamily.org/blog/?p=327](http://www.equalfamily.org/blog/?p=327).

<sup>370</sup> Garner, *Families Like Mine*, 96.

<sup>371</sup> Seth Hemmelgarn, "Kids Feel the Impact of Prop 8," *The Bay Area Reporter*, 2009, [www.ebar.com/news/article.php?sec=news&article=3770](http://www.ebar.com/news/article.php?sec=news&article=3770).

### Strained relationships with extended family.

Despite growing visibility and acceptance, many LGBT people still lack traditional sources of support from parents, siblings and other blood relatives—relationships disrupted as a result of prejudice after coming out as LGBT. The absence of familial support can impact how LGBT families function.<sup>372</sup> In one study, lesbians and gay men who adopted children reported less support from their families than their heterosexual counterparts.<sup>373</sup> Support from extended family also varies within LGBT families. For example, a survey of lesbian couples with children found that biological mothers enjoyed more familial support than non-biological mothers. In those cases where the non-biological mothers later secured legal parentage, their families then became more devoted to the child(ren).<sup>374</sup> Yet, in a 2010 survey of LGBT parents of color, the majority of black, Latino and Asian/Pacific Islander LGBT parents said that they were supported by their families as an LGBT person; with two of out five LGBT black, Latino and Asian/Pacific Islander parents saying they were “completely supported” by their families.<sup>375</sup>

**Disconnect from LGBT community.** While the number of LGBT families is increasing, it is still the case that an LGBT family could be the only one in a town or community. Similarly, childrearing rates in the LGBT community are lower than in the heterosexual community. As a result, there are few models, limited resources and less social support for LGBT parents to seek out as challenges arise. Some LGBT people who have children feel alienated or excluded from the broader LGBT community. Lesbian mothers in one survey said they felt less support from their LGBT friends after becoming parents.<sup>376</sup> While media attention to LGBT families frequently focuses on financially comfortable, white couples who created a family together, that configuration is not reflective of the bulk of LGBT families. The popular narrative excludes the varied experiences and challenges of a wide range of LGBT parents, including those who are low-income, families of color and those who live outside urban, coastal communities. Moreover, the experiences of LGBT parents who came out after becoming parents are often very different from those of LGBT parents who had children after coming out. One researcher found that “mothers becoming lesbians” (women who had children before coming out) were less likely to be involved in the LGBT community than were “lesbians becoming mothers” (women who came out before having children).<sup>377</sup>

### Family Loses Health Insurance Because of “Inadequate Documentation”

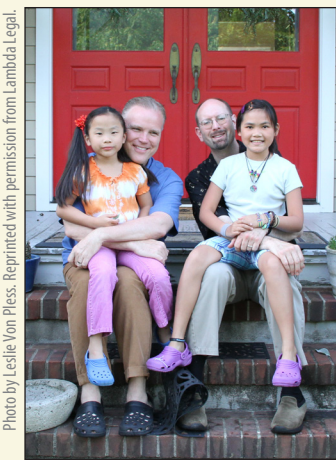


Photo by Leslie Von Pless. Reprinted with permission from Lambda Legal.

Tom Davidson and Keith Heimann, with their daughters, lost health insurance for several months because they lacked “adequate documentation” of their family’s legal ties.

Having spent nearly 25 years together, Tom Davidson and Keith Heimann are raising their two adopted daughters, Grace and Marie. Keith teaches at a community college, and his family received health insurance benefits through his employer. During a statewide audit, however, Keith’s family coverage was canceled because they lacked

“adequate documentation” of his relationship with Tom and his children. Even though Tom and Keith entered a civil union in New Jersey in 2007 and were married in California in 2008, the state auditor failed to recognize their relationship. Tom and the couple’s daughters went several months without health insurance while Tom and Keith sought to provide documentation and have the family’s insurance reinstated.

Adapted from Lambda Legal, *Garden State Equality, et al., v. Dow, et al.*, [http://www.lambdalegal.org/in-court/legal-docs/gse\\_nj\\_20110629\\_complaint-for-declaratory-and-injunctive-relief.html](http://www.lambdalegal.org/in-court/legal-docs/gse_nj_20110629_complaint-for-declaratory-and-injunctive-relief.html).

<sup>372</sup>For instance, children may overhear negative comments about their parents from extended family or may simply be aware of their extended family’s disapproval of their parents and their relationship. Goldberg, *Research on the Family Life Cycle*.

<sup>373</sup>Erich, Leung and Kindle (2005) cited in Goldberg, *Research on the Family Life Cycle*. Interestingly, gay and lesbian couples report that they received more support from their families after they become parents than when they were childless. Goldberg, *Research on the Family Life Cycle*.

<sup>374</sup>Goldberg, *Research on the Family Life Cycle*.

<sup>375</sup>Preliminary analysis of 2010 Social Justice Sexuality Survey conducted by Juan Battle, Antonio (Jay) Pastrana, Jr. and Jessie Daniels, [www.socialjusticesexuality.com](http://www.socialjusticesexuality.com).

<sup>376</sup>Goldberg, *Research on the Family Life Cycle*.

<sup>377</sup>Mignon Moore, in press, *Invisible Families: Gay Identities, Relationships and Motherhood Among Black Women*, University of California Press, 2011.



## LGBT Families in the Broader Community

**Everyday concerns and traveling from state to state.** Even for LGBT families who are able to establish legal parent-child relationships in their home states, they worry that they may not be recognized as a family when they travel or have to relocate for work. Many LGBT parents carry thick packets of paperwork, including copies of birth certificates, adoption decrees, domestic partnership agreements and living wills, just to make sure they will be recognized as a legitimate family if the worst-case scenario were to occur. As one family in Colorado explained, “We have to carry cards right now that allow access to our powers of attorney, but we’re at the mercy of that paperwork arriving in time for it to be useful and [must wonder if] medical personnel will even respect it.”<sup>378</sup>

**Constraints on employment options.** Americans primarily receive health insurance through their employers—so much so that some people purposely seek out a job with a specific employer because of the health insurance benefits. For LGBT families who receive coverage through work, changing employers could mean the loss of domestic partner benefits, which could leave a partner and her children without insurance. Similarly, while 21 states and D.C. have laws prohibiting discrimination on the basis of sexual orientation and 15 states and D.C. prohibit discrimination based on gender identity, LGBT parents who have to relocate for a job risk losing such protections. As a result, LGBT parents can feel constrained in where to live and how to economically provide for their families.

**Faith and religion.** LGBT families of faith may find it challenging to be a part of a religious community. A growing number of churches and communities of faith are welcoming of LGBT families.<sup>379</sup> Yet some LGBT parents, especially those living in a community that takes a conservative stance on the notion of family, may not be able to find a religious community that affirms their families.<sup>380</sup>

- A study of same-sex couples living in downstate Illinois found that only 28% reported membership in a supportive congregation.<sup>381</sup>
- A study of gay Catholics found that only 44% were out to clergy in their local churches.<sup>382</sup>

Some LGBT families who attend more conservative churches try to hide the parents’ relationship. As a black lesbian couple remarked in a dissertation about

black lesbians and community, “We don’t go to church holding hands..., we don’t go to church for that. We go for the Word.”<sup>383</sup> Such families, and especially the children of same-sex couples, can struggle with hearing negative things said about their family from the pulpit. As a result, if an LGBT family cannot find a welcoming place of worship, many may choose to stop attending services rather than put themselves in unwelcome settings. Despite the challenges in finding acceptance in communities of faith, in a 2010 survey of LGBT people of color, 73% of Asian/Pacific Islander LGBT parents, 73% of black LGBT parents and 63% of Latino LGBT parents said their religious tradition or spiritual practice had a positive influence or no influence on their understanding of their LGBT identities.<sup>384</sup>

**Community belonging.** Being part of an LGBT family is not the only aspect of a child’s or parent’s identity or sense of self. LGBT families are diverse and so are their needs and interests. Some LGBT parents worry about how they or their children will be received by a sports team or at the public library, or how the family will be otherwise received in the broader community. For example, a report by San Francisco LGBT Family Collaborative includes the story of a lesbian couple with a special-needs daughter who worried about participating in a disability advocacy organization because of its more conservative, religious membership.<sup>385</sup>

Community acceptance can be a particular problem for transgender parents and their children. Research shows that transgender people are at a much greater risk of experiencing discrimination and hate crimes than are LGB or heterosexual people, and in many states they are not legally protected from discrimination. As one transgender parent noted, LGBT parenting groups

<sup>378</sup>Ginger Delgado, “Couple Vows to Carry Torch for Gay Marriage in Colorado,” [www.kdvr.com/news/kdvr-couple-gay-marriage-colo-20110406\\_04819824.story](http://www.kdvr.com/news/kdvr-couple-gay-marriage-colo-20110406_04819824.story).

<sup>379</sup>Regina Kleiner, May 19, 2010, [www.examiner.com/lgbt-parenting-in-hartford/catholic-church-provides-spirituality-option-for-lgbt-families](http://www.examiner.com/lgbt-parenting-in-hartford/catholic-church-provides-spirituality-option-for-lgbt-families).

<sup>380</sup>Very few studies inquire about LGBT Americans’ experiences with religious communities. A 2000 survey of black LGBT Americans found that 43% of respondents had negative experiences in religious communities, and black lesbians and transgender people were more likely than black gay men to report such experiences; Juan Battle, Cathy J. Cohen, Dorian Warren, Gerard Ferguson and Suzette Audam, “Say It Loud, I’m Black and I’m Proud,” [www.thetaskforce.org/downloads/reports/reports/SayItLoudBlackAndProud.pdf](http://www.thetaskforce.org/downloads/reports/reports/SayItLoudBlackAndProud.pdf).

<sup>381</sup>Ramona Faith Oswald, Abbie Goldberg, Kate Kivalanka and Eric Clausell, “Structural and Moral Commitment Among Same-Sex Couples,” *Journal of Family Psychology*, 22:3 411-19, <http://clarkscene.clarku.edu/faculty/goldberg/OSWALD%20GOLDBERG%20ET%20AL.%20JFP%202008.pdf>.

<sup>382</sup>Andrew KT Yip, “Dare to Differ,” *Sociology of Religion*, 1997, 58:2 165-180, <http://socrel.oxfordjournals.org/content/58/2/165.full.pdf>.

<sup>383</sup>Valerie Quinn Glass, “Black Lesbian Families and their Relationships with their Families of Origin,” 2010 dissertation, [http://scholar.lib.vt.edu/theses/available/etd-11092010-124413/unrestricted/Glass\\_VQ\\_D\\_2010.pdf](http://scholar.lib.vt.edu/theses/available/etd-11092010-124413/unrestricted/Glass_VQ_D_2010.pdf).

<sup>384</sup>Preliminary analysis of 2010 Social Justice Sexuality Survey.

<sup>385</sup>This collaborative includes COLAGE, Our Family Coalition and the San Francisco LGBT Community Center. “Our Families,” LGBT Family Collaborative, 2007, [www.sfcenter.org/pdf/OurFamilyReport.pdf](http://www.sfcenter.org/pdf/OurFamilyReport.pdf).



become places for LGB parents to socialize, whereas her transgender parenting group focuses on the different challenges and fears of transgender parents.<sup>386</sup>

## The School Experiences of Children with LGBT Parents

Even when LGBT families can create affirming and supportive social networks, many LGBT parents express concern about the environment that their children will encounter at school.

Geographic and financial constraints mean that LGBT families often cannot choose which school their child attends. Parents with more economic resources or who live in areas with multiple schools may have more flexibility in choosing places to live or sending children to schools where harassment is less likely to occur. While only 17% of all LGBT families reported choosing the school their child attends because it had a reputation for being welcoming of LGBT families, 46% of LGBT parents who send their children to private, non-religiously affiliated schools reported that this was a top reason for choosing that school.<sup>387</sup> Perhaps for this reason, fewer children of LGBT parents attend public school (78% versus 89% of all children).<sup>388</sup>

Even for those LGBT parents who have the resources to choose a private school,<sup>389</sup> not all private schools are open to the children of LGBT families. For example, several Catholic schools have refused, or withdrawn admission to, children of LGBT parents. In 2010, Catholic schools in Boulder, Colorado, and Hingham, Massachusetts, withdrew the acceptances of children upon learning that the children had lesbian parents.<sup>390</sup> There are, however, other parochial schools that have revised policies to be inclusive. For example, in January 2011 the Archdiocese of Boston revised school admission policies to indicate that schools cannot “discriminate against or exclude any categories of students.”<sup>391</sup>

LGBT parents and their children face several school-related concerns:

**Bullying and harassment.** As efforts to prevent bullying of LGBT youth in schools have grown, far less attention has been paid to the children of LGBT parents who also can experience bullying and harassment. A 2008 survey of LGBT parents and their school-age children found that 40% of students with LGBT parents reported being verbally harassed about their families.<sup>392</sup> Additionally, over a third (38%) of these students reported being harassed for their real or, usually, perceived sexual orientation. This

Reprinted with permission of Jeff Lutes.



Jeff Lutes (Left) and his partner, Gary Stein, are raising three children. Gary and two of the couple's children are deaf. They have written a book about diversity, adoption and deaf culture called *Okim the Panda Bear Finds His Family*.

study also found that children from LGBT families who reported high levels of harassment were more likely to report missing school because they felt unsafe.

Even when children in LGBT families are not the targets of bullying or harassment, three-quarters of students in such families reported hearing derogatory terms about LGBT people at school<sup>393</sup>—terms used to refer to people like their own parents.<sup>394</sup> In very few cases did students report that school personnel intervened. In fact, a large minority of respondents (39%) said they heard teachers or other school staff make inappropriate remarks about LGBT people.<sup>395</sup>

**Hostile administrators, teachers and parents.** Many LGBT parents note that they face prejudice or hostility from school personnel.<sup>396</sup> For example, having a teacher position the presence of a child with LGBT parents in his classroom as “an issue” to be dealt with automatically injects a feeling of abnormality for that child, his classmates, other parents and school personnel. Similarly, school personnel may

<sup>386</sup>MAP telephone interview with Vivienne Ling, board member, Our Family Coalition, December 3, 2010.

<sup>387</sup>Kosciw and Diaz, *Involved, Invisible, Ignored*.

<sup>388</sup>Survey of LGBT families conducted by GLSEN, COLAGE and the Family Equality Council. See also J.G. Kosciw and E.M. Diaz, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K-12 Schools*, GLSEN, 2008, [www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1104-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1104-1.pdf).

<sup>389</sup>The average annual tuition at a private school is \$8,549, but it rises to \$17,316 for a non-sectarian private school. Council for American Private Education, “Facts and Studies,” [www.capenet.org/facts.html](http://www.capenet.org/facts.html).

<sup>390</sup>Lisa Wangsness, “Two Views on Excluding Lesbians’ Son,” *The Boston Globe*, May 13, 2010, [www.boston.com/yourtown/hingham/articles/2010/05/13/students\\_exclusion\\_draws\\_denial](http://www.boston.com/yourtown/hingham/articles/2010/05/13/students_exclusion_draws_denial); Valerie Richardson, “Colorado Catholic School Rejects Gay Parents’ Children,” *The Washington Times*, March 10, 2010, [www.washingtontimes.com/news/2010/mar/10/colorado-catholic-school-rejects-gay-parents-kids](http://www.washingtontimes.com/news/2010/mar/10/colorado-catholic-school-rejects-gay-parents-kids).

<sup>391</sup>Wangsness, “Archdiocese Issues No-Discrimination Admissions Policy,” *The Boston Globe*, January 13, 2011, [www.boston.com/news/education/k\\_12/articles/2011/01/13/archdiocese\\_issues\\_no\\_discrimination\\_admissions\\_policy](http://www.boston.com/news/education/k_12/articles/2011/01/13/archdiocese_issues_no_discrimination_admissions_policy).

<sup>392</sup>Kosciw and Diaz, *Involved, Invisible, Ignored*.

<sup>393</sup>*Ibid.*

<sup>394</sup>Garner, *Families Like Mine*.

<sup>395</sup>Kosciw and Diaz, *Involved, Invisible, Ignored*.

<sup>396</sup>Daniel Ryan and April Martin, “Lesbian, Gay, Bisexual, and Transgender Parents in the Schools Systems,” *School Psychology Review*, 29:2 207-216, 2000.

## Family in New Mexico Files Lawsuit Against School

In June 2011, the Bissell-Peterson family filed a lawsuit against Martin Luther King Elementary in Rio Rancho, N.M., where their 11-year-old daughter, Jenna, was enrolled. Shannon, one of Jenna's parents, alleges that her daughter was bullied because of her family. For example, when Jenna wrote a story about her mothers getting married, her teacher responded by telling her that her parents' marriage was disgusting and that no one needed to know about it. The teacher then required Jenna to write her story about something else. The girl also experienced bullying from her fellow classmates, including being pushed to the ground and scraping her face.

Adapted from Jeff Maher, "Suit Claims Girl Discriminated Against for Having Gay Parents," *KOB Eyewitness News* 4, June 9, 2011.

## Every Trip to the Doctor or School Requires an Explanation for Family in New Jersey



Photo by Leslie VonPless. Reprinted with permission from Lambda Legal.

The Nicholson-McFadden Family has to cross things out on forms at school and the doctor and explain their family to staff.

Anytime that Karen and Marcye Nicholson-McFadden and their two children, Kasey and Maya, travel out of New Jersey, they worry about what may happen. While the couple has a civil union in New Jersey, they are very aware that other states may not recognize their relationship or their legal ties to their children. Every time the family visits the doctor or the children's schools, Karen and Marcye are treated differently. They have to explain their family to staff, and they regularly have to cross things out on government, doctor and school forms to make those forms represent their family.

Adapted from Lambda Legal, "Plaintiffs in the New Jersey Marriage Lawsuit: *Lewis v. Harris*," [http://www.lambdalegal.org/publications/factsheets/fs\\_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html](http://www.lambdalegal.org/publications/factsheets/fs_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html).

question the ability of a non-legal parent to participate in school activities, attend parent-teacher conferences, or pick up a child from school. This renders such a parent invisible, harming both the parent and the child. School forms that ask for a "mother" and a "father" may also alienate and make invisible LGBT parents and their children, as may curricula such as family tree exercises that ask children to talk about their "mom and dad," without any understanding that many children are raised by parents, grandparents, aunts and other family members.

**Added pressure to perform.** As noted earlier, LGBT families often feel the pressure to be perfect. This pressure manifests itself in at least two ways at school. First, despite hostile school climates, LGBT parents are more likely than other parents to be involved in their children's schools—they are more likely to volunteer, attend parent-teacher conferences and to contact teachers about their children's academic performance or school experience.<sup>397</sup> Second, because the issue of LGBT parenting is sometimes politicized and can appear under a public magnifying glass, children may not seek out the academic help they need because they worry that any academic challenges or social difficulties they demonstrate will be associated with the fact that they have LGBT parents. One scholar of LGBT families notes the example of a teen raised by two women who never discussed with teachers or friends the fights she had with her parents because of concerns that they would reflect poorly on all lesbian parents. In another case, a daughter kept from her mothers the fact that she had been harassed at school for being part of an LGBT family in an effort to shield her parents from homophobia.<sup>398</sup>

## Challenges for LGBT Parents of Color and Their Children

Until recently (and still today), few LGBT organizations have taken steps to address the intersections of racism, homophobia and transphobia that result in economic and educational barriers for many LGBT people of color.<sup>399</sup> In a 2010 survey of LGBT people of color, LGBT parents of color indicated that non-discrimination and economic issues, access to marriage and relationship recognition, and overall equality and acceptance were the top three issues they personally faced (while discrimination and

<sup>397</sup> Kosciw and Diaz, *Involved, Invisible, Ignored*.

<sup>398</sup> Garner, *Families Like Mine*.

<sup>399</sup> Applied Research Center, "Better Together: Findings on the Relationship between Organizations and LGBT Communities," 2010, [www.arc.org/images/lgbt%20report\\_091710\\_final.pdf](http://www.arc.org/images/lgbt%20report_091710_final.pdf).

overall equality and acceptance, HIV/AIDS and sexual health, were the top issues facing LGBT communities of color).<sup>400</sup> Yet, half of black LGBT parents (51%), Latino LGBT parents (50%) and Asian/Pacific Islander LGBT parents (52%) said that the LGBT community was not doing enough to address economic justice. Additionally, more than half (55%) of black LGBT parents, 47% of Latino LGBT parents and 43% of Asian/Pacific Islander LGBT parents said that the LGBT community was not doing enough to address racial justice and equality.

Next, in large cities, LGBT community organizations are often based in heavily LGBT neighborhoods. Yet many LGBT people of color do not live in these areas, instead living in communities with other racial or ethnic minorities.<sup>401</sup> As a result, LGBT families of color may have less access to programming offered by LGBT organizations.

Even when LGBT families of color can access LGBT organizations, they often do not feel welcome. In a 2000 survey of black LGBT people, 31% of respondents indicated that they have had only negative experiences with primarily white LGBT organizations.<sup>402</sup> In a 2010 survey of nearly 5,000 LGBT people of color, LGBT parents of color indicated that, for the most part, they felt comfortable as a person of color in the LGBT community.<sup>403</sup> Yet, one-third (34%) of black LGBT parents said that they have sometimes or always felt uncomfortable in the LGBT community compared to 30% of Latino LGBT parents and 27% of Asian/Pacific Islander LGBT parents. Similar numbers of LGBT parents of color said that they had sometimes or always felt uncomfortable in their racial or ethnic community because of their sexual orientation; 34% of Asian/Pacific LGBT parents said they had felt uncomfortable because of their sexual orientation compared to 32% of Latino parents and 28% of black parents.

A survey of black lesbians found that they were much less likely to turn to the LGBT community for support and social ties than are white lesbians. Black lesbians instead turn to their extended families and the black community for support.<sup>404</sup> Similarly, LGBT parents of color often feel they must choose between their sexual orientation/transgender identity and their racial or ethnic identity. Many LGBT families of color express a desire to feel welcome as an LGBT family within their own communities as opposed to needing to seek out LGBT spaces that will welcome them as a family of color. As one black lesbian parent said, "I want to know who is queer-friendly in my community center, not to join a white group to be queer."

## Lesbian Parents Worry About Children's Experiences at School

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The Lael Family, from New Jersey, worries about how their children will be treated at school by teachers, other parents and other children.

Suyin and Sarah Lael, from New Jersey, are raising their three children: Zenzali, Tenaj and Danica. The couple thinks a lot about how their children are treated at school by their teachers, their peers and by other parents. For example, even though Suyin and Sarah can't get married because they live in New Jersey, they legally changed their last names so that the entire family would have the same name. "We decided to do this before she [Zenzali] entered kindergarten because... we wanted to add another signal for teachers and administrators that they should deal with both of us as parents and treat our daughter's family as a family," Suyin explained. Children at the girls' schools understand what it means to be married and divorced, but that when Suyin and Sarah's children try to explain a civil union their friends are confused. The family also talks openly about the discrimination that their children may face because they are African American.

Adapted from Lambda Legal, "Plaintiffs in the New Jersey Marriage Lawsuit: *Lewis v. Harris*," [http://www.lambdalegal.org/publications/factsheets/fs\\_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html](http://www.lambdalegal.org/publications/factsheets/fs_plaintiffs-in-nj-marriage-lawsuit-lewis-v-harris.html).

Many LGBT families are multiracial, which can present unique challenges. For example, parents raising children of different racial or ethnic background report struggling to help their children feel fully a part of their community of origin. Children raised in such families may experience confusion and disconnect from both their parents' communities and the communities with which they identify.

<sup>400</sup> Preliminary analysis of 2010 Social Justice Sexuality Survey.

<sup>401</sup> Unpublished research conducted by Gary J. Gates.

<sup>402</sup> Battle et al., "Black and I'm Proud."

<sup>403</sup> Preliminary analysis of 2010 Social Justice Sexuality Survey.

<sup>404</sup> Vickie M. Mays, Linda M. Chatters, Susan D. Cochran and Joanna Mackness, "African American Families in Diversity: Gay Men and Lesbians as Participants in Family Networks," *Journal of Comparative Family Studies*, 29:173-87, 1998.



## Recommendations Overview: Ensuring Health and Well-Being

The recommendations table at the end of this report provides a detailed and comprehensive overview of how to address the inequitable laws and stigma that make it harder for children with LGBT parents to achieve health and well-being. However, broadly speaking, recommendations fall into the following major categories.

### BROAD LEGAL RECOGNITION OF LGBT FAMILIES

- Pass comprehensive state legislation to ensure recognition of LGBT parents as legal parents
- Legalize and federally recognize marriage for same-sex couples
- Provide pathways to immigration and citizenship for binational LGBT families

### HEALTH INSURANCE AND ACCESS TO QUALITY CARE

- Pass laws ensuring that workers' domestic partners and dependent children have access to health insurance on equal terms with other families, including equal tax burdens
- Encourage private employers to offer domestic partner benefits
- Work to ensure that the Affordable Care Act defines "family" broadly for the purposes of LGBT family inclusion

### FAMILY MEMBERS TAKING CARE OF EACH OTHER

- Pass or revise state visitation and medical decision-making laws to be inclusive of LGBT families and de facto parents
- Work with hospitals and other medical facilities and providers to enact LGBT-friendly policies related to visitation, AHDs and related issues
- Revise the FMLA to broaden the definition of covered caregivers

### SOCIAL STIGMA AND DISCRIMINATION

- Pass laws barring discrimination in employment, health services, housing and credit
- Pass legislation to prohibit bullying and harassment in schools and universities
- Expand supportive learning environments with teacher certification programs, school psychologist and counselor programs, and curriculum reform
- Educate and provide cultural competency training to a wide array of professionals including adoption agencies, government agency workers, health service providers, schools and faith communities
- Work with the Department of Health and Human Services to ensure that its proposed work to expand health care training programs addresses the needs of LGBT families
- Work with organizations that accredit health service providers to develop standards for serving LGBT families

### SERVICES TO SUPPORT LGBT FAMILIES

- Create stronger support services for LGBT families
- Work with faith communities to ensure that LGBT families feel welcome in places of worship
- Be more inclusive of transgender parents and their families in LGBT community spaces
- Provide greater support for LGBT families of color and multiracial LGBT families within LGBT organizations
- Work with organizations of color to support multiracial LGBT families and LGBT families of color

### RESEARCH ON LGBT FAMILIES

- Expand research and data collection on LGBT family health disparities and needs
- Emphasize research and data collection on transgender parents and LGBT families of color



## CONCLUSION AND DETAILED RECOMMENDATIONS

Today's American families are diverse. Some children are raised by grandparents or aunts and uncles. Others live in families headed by a single parent, an LGBT parent or a same-sex couple. Still others live in adoptive families or foster homes. But the needs of children are the same regardless of what their family looks like.

Archaic and discriminatory laws ignore the modern realities of American families. Such laws make it difficult for many children to have a legal connection to a parent who cares for them. Lack of recognition can have a detrimental impact on children if a parent dies or becomes disabled, or if the parents' relationship dissolves. Families may not be able to access safety net programs designed to support and protect children because these programs rely on outdated definitions of family. Finally, a child's access to emotional and physical support can be severely limited by the invisibility of their family configurations.

Children raised in LGBT families also face social and cultural stigma that can stand in the way of becoming full, welcomed members of their communities. Similarly, these children may lack competent and caring health providers or may face hostile school environments.

LGBT families—and all diverse families—need not be marginalized and excluded from the vital economic, social and cultural networks that exist to ensure that American children can achieve their full potential. This report provides recommendations ranging from federal legislative solutions to suggestions for continuing education for physicians and teachers. Taken together, they provide a framework to help ensure that all children can thrive, regardless of what their families look like. In fact, all American families are strengthened when the diversity of families is recognized.

The recommendations provided in this report can be summarized as three broad points:

- Allowing all children to create legal bonds with parents, regardless of their parents' sexual orientation, gender identity or marital status
- Changing law and public policy to provide diverse families with equal access to government-based economic protections and programs
- Actively creating a culture that affirms the value of all children and decreases stigma and discrimination against LGBT and other 21st century families

Important changes to law and society can make certain that all children are valued and that families have the tools they need to raise strong, healthy children. LGBT families—like all American families—want the opportunity to provide stable, loving homes to their children. They want the economic and emotional resources to raise healthy, successful children, and the opportunity to be an integral part of broader communities that are welcoming and supportive of them and their children. We hope that national attention to the challenges and solutions outlined here will help make this a reality for more American families.

## Detailed Recommendations Table

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<b>LEGALLY RECOGNIZE LGBT FAMILIES</b>			
<b>RECOGNIZE LGBT PARENTS AS LEGAL PARENTS</b>			
<p><b>Pass comprehensive parental recognition laws at the state level to fully protect children in LGBT families.</b></p> <ul style="list-style-type: none"> <li>• Revise parentage and adoption statutes to allow joint and second-parent adoption, parental presumption, and legal recognition of de facto parents and the intended parents of children born using assisted reproduction (these recommendations are explained in detail beginning on the next page)<sup>405</sup></li> <li>• Passing comprehensive parental recognition laws would solve at least 13 major problems outlined in this report: <ul style="list-style-type: none"> <li>• Help provide forever homes to children in foster and government care</li> <li>• Ensure that a child with same-sex parents enjoys the security of legal ties to both parents</li> <li>• Hold parents financially and legally accountable for providing for their child</li> <li>• Help prevent awarding of custody that is not in the child's best interests in cases of parental death or relationship dissolution</li> <li>• In the case of death or disablement of a parent: <ul style="list-style-type: none"> <li>• Protect children's rights to Social Security survivor and disability benefits</li> <li>• Ensure appropriate awarding of inheritance</li> <li>• Allow children to sue for wrongful death of a parent</li> </ul> </li> <li>• Help provide economic security by accurately counting LGBT parents for the purposes of: <ul style="list-style-type: none"> <li>• Applying for safety net programs</li> <li>• Accessing federal tax credits</li> </ul> </li> <li>• Enhance LGBT family health and well-being by ensuring all parents have full access to: <ul style="list-style-type: none"> <li>• Hospital visitation of a child</li> <li>• Medical decision-making for a child</li> </ul> </li> <li>• Help ensure a parent's health insurance benefits also cover their child</li> <li>• Ensure that both parents are recognized for everything from picking up a child from daycare to signing school forms</li> </ul> </li> </ul>			

<sup>405</sup>These reforms could be achieved through revisions to the Uniform Parentage Act, last amended in 2002. The legal mainstream has acknowledged the need to protect children in LGBT and other non-traditional families by ensuring that parenting law protects all families without regard to sexual orientation or marital status. Both the American Bar Association and the National Conference of Commissioners on Uniform State Laws have recommended model laws that incorporate the realities of such family configurations for the purposes of recognizing parentage in cases of assisted reproduction and intestate succession. See American Bar Association Model Act Governing Assisted Reproductive Technology § 603, 2008, [www.abanet.org/family/committees/artmodelact.pdf](http://www.abanet.org/family/committees/artmodelact.pdf) and Unif. Probate Code § 2-120(f), 2008.














RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<b>ADOPTION AND FOSTERING LAWS</b>			
<p><b>Pass or amend state adoption laws or regulations to allow unmarried and same-sex couples to jointly adopt and foster children.</b></p> <ul style="list-style-type: none"> <li>Laws and policies should specifically affirm the rights of same-sex and unmarried couples to jointly adopt children (which may involve changing laws and policies that currently specify that a "husband and wife" may jointly adopt and updating the language to make it neutral with respect to gender and marital status)</li> <li>Possible models for legislative/regulatory action include: New York's 2010 statute allowing unmarried partners to adopt jointly;<sup>406</sup> and regulations in Oregon stating that unmarried couples may petition to adopt jointly<sup>407</sup></li> </ul>	✓	✓	✓
<p><b>Repeal or overturn discriminatory state law restricting adoption and fostering by same-sex or unmarried couples.<sup>408</sup></b></p> <ul style="list-style-type: none"> <li>Nebraska and Utah currently restrict fostering. Nebraska, North Carolina, Mississippi, Louisiana and Utah prohibit joint adoption while Arizona gives preference to married couples</li> <li>States should also strike language from statutes or regulations that explicitly authorizes the consideration of moral or religious beliefs as reason to discriminate in placement decisions (North Dakota, for example, allows agencies to deny placement based on religious or moral beliefs)</li> </ul>	✓	✓	✓
<b>DONOR INSEMINATION LAWS</b>			
<p><b>Pass or amend donor insemination laws to clarify the parenting rights and obligations of all parties.</b></p> <ul style="list-style-type: none"> <li>Laws should allow same-sex and unmarried couples who intend to parent together to establish legal parentage of their children</li> <li>These laws should include consent-to-insemination provisions that make clear the rights and obligations of intended parents and of donors</li> <li>Regulatory fixes or official statements should recognize intended parents by ensuring that offices of vital statistics place the names of both parents on birth certificates. For example: <ul style="list-style-type: none"> <li>The New Mexico donor insemination statute currently does not have a birth certificate provision, which could be resolved with a regulatory fix</li> <li>Iowa, where same-sex couples can marry and should therefore enjoy parental presumption, has no donor insemination statute and the attorney general has refused to place the names of two women on a birth certificate</li> </ul> </li> </ul>	✓	✓	✓
<b>PARENTAL PRESUMPTION LAWS</b>			
<p><b>Pass or amend state parental presumption laws that are neutral with respect to sexual orientation and marital status.</b></p> <ul style="list-style-type: none"> <li>Even where a couple does not or cannot marry or otherwise formalize their partnership parenting law can determine intent (and thereby distinguish who should be considered a legal parent)</li> <li>This can be done through consent and "hold out" provisions that allow a court to adjudicate whether someone has consented to parent or has functioned as a parent<sup>409</sup></li> </ul>	✓	✓	✓

<sup>406</sup>Laws of New York, Domestic Relations, Article 7, Title 1, §110 states "any two unmarried, adult intimate partners together may adopt another person," [http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$SDOM110\\$\\$@TXDOM0110+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=21690900+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$SDOM110$$@TXDOM0110+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=21690900+&TARGET=VIEW).

<sup>407</sup>The regulations state that the Office for Services to Children and Families or any contracted private agency "shall accept applications from couples (married or unmarried) or individuals (married or unmarried)." OR. ADMIN. R. 413-120-0200(3) and HRC, "Oregon Adoption Law," <http://www.hrc.org/laws-and-legislation/entry/oregon-adoption-law>.

<sup>408</sup>At the federal level, legislation such as the Every Child Deserves a Family Act would encourage states to amend their laws to ensure non-discrimination in foster care and adoption. See page 110 for more about this legislation.

<sup>409</sup>See, for instance, Washington State's 2011 revision of its parenting act, which has such a provision and bases it on the Uniform Parentage Act. Clarifying and Expanding the Rights and Obligations of State Registered Domestic Partners and Other Couples Related to Parentage, H.R. 1267, [www.washingtonvotes.org/2011-HB-1267](http://www.washingtonvotes.org/2011-HB-1267).

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
			
<b>SURROGACY LAWS</b>			
<p><b>Create or update surrogacy statutes to clarify parentage and avoid needless legal battles.</b></p> <ul style="list-style-type: none"> <li>Surrogacy law should clarify who is a parent; potential solutions include: <ul style="list-style-type: none"> <li>Legislation such as a bill introduced in Connecticut to allow intended parents using surrogacy to obtain a parentage finding and to be named on a replacement birth certificate<sup>410</sup></li> <li>Laws governing and facilitating the award of pre-birth parentage judgments, which are commonly granted in California and give judges the needed leeway to create parentage for intended parents of children born through surrogacy</li> </ul> </li> </ul>			
<b>SECOND-PARENT ADOPTION LAWS</b>			
<p><b>Pass or revise state adoption laws to permit second-parent adoption by same-sex or heterosexual partners, irrespective of marital status.</b></p> <ul style="list-style-type: none"> <li>Statutes should allow someone who intends to parent a child, and who has the permission of the legal parent, to gain parenting rights without terminating the rights of the legal parent</li> <li>These laws should ensure that the same-sex or unmarried partner of a biological or adoptive parent can adopt without undergoing a home study, and in an affordable, streamlined manner (second-parent adoptions should be no more burdensome than stepparent adoptions and could conceivably be granted using the stepparent adoption process)</li> <li>States that have laws explicitly allowing such adoptions include Montana and Colorado</li> </ul>			
<b>DE FACTO PARENTING LAWS</b>			
<p><b>Pass state laws allowing courts to recognize de facto parenting as a basis for full legal parentage.</b></p> <ul style="list-style-type: none"> <li>While an adoption is the most secure and widely recognized way to legalize a non-biological child-parent tie, states may also pass de facto parenting statutes which are similar to second-parent adoption statutes but result in a court judgment rather than an adoption judgment</li> <li>These laws should allow those who show they have functioned as parents to seek not only custody and visitation rights but full parentage, so they may enjoy appropriate legal standing in the lives of children with whom they have formed a relationship, whether or not they have a biological or legal relationship to the children</li> <li>The 2009 de facto parenting law in Delaware provides a model:<sup>411</sup> <ul style="list-style-type: none"> <li>Allows those who have functioned as (and assumed the role of) parents to become full legal parents (either with the consent of the legal parent or by a court judgment in the case of a custody dispute)</li> <li>Is neutral with respect to sexual orientation and marital status</li> <li>Can also be used for a wide variety of family configurations besides LGBT families, such as when a legal parent's sibling or close friend has functioned as a parent and the child's best interest is served by continuing and formalizing that relationship</li> </ul> </li> </ul>			
<b>PARENTAGE JUDGMENTS</b>			
<p><b>Pass or amend state laws clarifying when courts have the power to issue parentage judgments awarding full parenting rights and obligations.</b></p> <ul style="list-style-type: none"> <li>Courts may issue a parentage judgment based on a parental presumption, consent-to-inseminate provision, de facto parenting doctrine or law, or in other circumstances</li> <li>For example, some courts have issued pre-birth parentage judgments for children born using assisted reproduction (for states where no such case law exists, it would be helpful to pass laws articulating this as an option)</li> </ul>			

<sup>410</sup>HRC, "Equality From State to State," 2009. Some such laws only apply to gestational surrogacy. Other restrictions apply in current statutes, which should be reconsidered to ensure applicability to same-sex couples.

<sup>411</sup>Note that this report looks almost exclusively at how changes in law impact LGBT families with children—there are many other ways DOMA's repeal would benefit same-sex couples but are not specific to LGBT families with children (for example, access to Social Security spousal benefits). These are not captured here.



RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
LEGALIZE AND FEDERALLY RECOGNIZE MARRIAGE FOR GAY AND LESBIAN COUPLES			
<p><b>Repeal the Defense of Marriage Act (DOMA).</b></p> <ul style="list-style-type: none"> <li>• DOMA prevents the federal government from recognizing same-sex couples under various laws and safety net programs—even couples who are legally married in their states</li> <li>• Repeal of DOMA is a critical step but would only help same-sex couples living in states where they can legally marry. Also, some federal programs independently define spouses to include only individuals of a different sex; consequently, DOMA's repeal would not automatically result in equal treatment for LGBT families across all programs</li> </ul>			
<p><b>Legalize marriage for same-sex couples in all states.</b></p> <ul style="list-style-type: none"> <li>• Marriage for same-sex couples, together with the repeal of DOMA, would address at least five of the major problems identified in this report:<sup>412</sup> <ul style="list-style-type: none"> <li>• Allow same-sex couples to jointly adopt, complete stepparent adoptions and enjoy the presumption of parenthood</li> <li>• Allow LGBT Americans to sponsor a spouse for immigration purposes, furthering family permanence</li> <li>• Help provide economic security by accurately counting LGBT spouses<sup>413</sup> for the purposes of: <ul style="list-style-type: none"> <li>• Applying for safety net programs</li> <li>• Accessing tax credits and deductions that rely on legal relationships between a couple filing taxes</li> <li>• Protecting the inheritance of a surviving spouse/parent should the other parent die intestate</li> <li>• Protecting a surviving parent's rights to Social Security survivor and disability benefits should the other parent die</li> </ul> </li> <li>• Enhance LGBT family health and well-being by ensuring that all parents have full access to: <ul style="list-style-type: none"> <li>• Medical decision-making for a spouse</li> <li>• Family medical leave to take care of a sick spouse</li> </ul> </li> <li>• Help ensure that a parent's health insurance also covers the child's second parent</li> </ul> </li> </ul>			
PROVIDE PATHWAYS TO IMMIGRATION AND CITIZENSHIP FOR BINATIONAL FAMILIES			
<p><b>Pass legislation such as the federal Uniting American Families Act (UAFSA), which would add the category "permanent partner" to the list of family members already entitled to sponsor a foreign national for U.S. immigration.</b></p> <ul style="list-style-type: none"> <li>• Allow binational, same-sex couples to sponsor a foreign national partner or spouse for immigration in order to: <ul style="list-style-type: none"> <li>• Prevent scenarios where families are needlessly ripped apart because one parent cannot become a permanent resident or citizen</li> <li>• Assure children that they need not fear the dissolution of their families</li> <li>• Ease constraints in applying for safety net programs, tax credits and deductions that impose restrictions based on immigration status</li> </ul> </li> <li>• Alternatively, the freedom to marry and the repeal of DOMA would allow the sponsorship of a legally-recognized, same-sex spouse for immigration purposes</li> </ul>			

<sup>412</sup>Note that this report looks almost exclusively at how changes in law impact LGBT families with children—there are many other ways DOMA's repeal would benefit same-sex couples but are not specific to LGBT families with children (for example, access to Social Security spousal benefits). These are not captured here.

<sup>413</sup>Note that while some of the addressed problems appear duplicative of the problems addressed by parental recognition, in fact, this is not the case. For example, parental recognition may address a surviving *child's* right to inheritance or Social Security survivor benefits, but spousal recognition addresses the right of a surviving *parent* to the same. Both impact the family's economics.

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<p><b>Enact comprehensive immigration reform that includes avenues to legal status for undocumented immigrants already living and working in the U.S.</b></p> <ul style="list-style-type: none"> <li>In addition to UAFA, comprehensive immigration reform would provide legal paths to permanent residency and citizenship for LGBT and other immigrants</li> <li>Lawmakers should include UAFA language in any comprehensive immigration reform legislation</li> </ul>			
<p><b>Call on U.S. Citizenship and Immigration Services, the U.S. Department of Homeland Security, the U.S. Attorney General and the U.S. Department of State to take other actions to support LGBT families such as:</b><sup>414</sup></p> <ul style="list-style-type: none"> <li>Prohibiting discrimination in immigration decisions on the basis of sexual orientation or gender identity and conducting cultural competency training in all relevant immigration agencies</li> <li>Refraining from denying green card applications of same-sex spouses, and stop deportations of those spouses while DOMA litigation is ongoing<sup>415</sup></li> <li>Allowing same-sex partnerships that are legally recognized in foreign or domestic jurisdictions to be legally valid for U.S. immigration purposes</li> <li>Counting LGBT partnerships on an equal basis with heterosexual partnerships in determining eligibility for release from immigration detention, and recognizing the status of a family entering the U.S. on the I-94 customs declaration (the form that must be completed upon entry)</li> </ul>			
<b>PROVIDE EQUAL ACCESS TO GOVERNMENT-BASED ECONOMIC PROTECTIONS</b>			
RECOGNIZE LGBT FAMILIES AND CHILDREN ACROSS GOVERNMENT SAFETY NET PROGRAMS			
<b>DEFINE FAMILY BROADLY ACROSS GOVERNMENT PROGRAMS</b>			
<p><b>Implement a consistent and broad definition of family across federal government programs.</b></p> <ul style="list-style-type: none"> <li>Diverse families would no longer have to navigate a maze of definitions (which results in some families being accurately included in some programs but not in others). Depending on the specifics of the safety net programs, several options exist to expand the current definition of family, including: <ul style="list-style-type: none"> <li>Creating a unique definition of “domestic partner” for federal purposes that would allow partners in same-sex couples to access safety net assistance in the same way as spouses (for those programs that recognize stepparents, one domestic partner could be eligible for assistance through the other domestic partner without the need for an adoption)<sup>416</sup></li> <li>Using the definition of <i>in loco parentis</i> to allow those who act as parents of a child to be considered parents for the purposes of these programs<sup>417</sup></li> <li>Using the definition of family currently used by the U.S. Department of Housing and Urban Development: “two or more persons who are not so related but who live together in a stable relationship and share resources”<sup>418</sup></li> <li>Using the definition of family used by the U.S. Department of Agriculture for food and nutrition assistance: “a group of people living together who buy food and make meals together”<sup>419</sup></li> <li>Using the definition of family member and immediate relative employed by the federal Office of Personnel Management for the purpose of determining eligibility for emergency leave for federal employees: “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship”<sup>420</sup></li> </ul> </li> </ul>			

<sup>414</sup>Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law,” 16-17.

<sup>415</sup>The Dept. of Justice recently decided it would no longer defend DOMA in court, a promising development with respect to the status of binational couples. See “Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act,” February 23, 2011, [www.justice.gov/opa/pr/2011/February/11-ag-223.html](http://www.justice.gov/opa/pr/2011/February/11-ag-223.html).





<sup>416</sup>This could work in two ways. First, the legal relationships of same-sex couples at the state level would be recognized as “federal domestic partners.” Second, same-sex couples who are not or cannot be legally recognized at the state level would be required to submit an affidavit stating that they qualify based on several criteria including that both individuals are of the same-sex, are unmarried but in a committed, intimate relationship with one another, and are not a domestic partner of any person except the other individual.

<sup>417</sup>Recent federal clarification for the Family and Medical Leave Act (FMLA) allows individuals who are standing *in loco parentis* for a child to access FMLA benefits.

<sup>418</sup>HUD, “Public Housing Occupancy Guidebook,” 2003.

<sup>419</sup>USDA, “FNS Pre-Screening Tool Help System.”

<sup>420</sup>U.S. Office of Personnel Management, “Definitions Related to Family Member and Immediate Relative for Purposes of Sick Leave, Funeral Leave, Voluntary Leave Transfer, Voluntary Leave Bank, and Emergency Leave Transfer,” [www.opm.gov/oca/leave/html/FamilyDefs.asp](http://www.opm.gov/oca/leave/html/FamilyDefs.asp).

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<p><b>TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)</b></p>			
<p><b>Revise requirements, definitions and priorities for TANF to reflect today's families.</b></p> <ul style="list-style-type: none"> <li>Federal and state definitions of who is considered part of the "assistance unit" for TANF should be broadened to include any adult who lives with a child and provides economic and emotional support to that child</li> <li>The government also should revise paternity and child support enforcement processes under TANF so that parents applying for assistance are asked if there is another parent responsible for the child's well-being and support (this change would ensure that TANF reflects the various ways in which children actually come into families, including adoption, intentional single parenthood and assisted reproduction)</li> </ul>			
<p><b>FOOD AND NUTRITION ASSISTANCE</b></p>			
<p><b>Ensure equal access for LGBT families to food and nutrition assistance.</b></p> <ul style="list-style-type: none"> <li>While current food and nutrition assistance eligibility rules allow diverse families to apply, the U.S. Department of Agriculture should issue clarifications to agency staff to ensure that eligible LGBT families are not turned away when applying for assistance</li> <li>The U.S. Department of Agriculture policy should be broadened to prohibit discrimination based on family status, sexual orientation and gender identity, and it should be expanded to cover food assistance programs<sup>421</sup></li> <li>The U.S. Department of Agriculture should issue a clarification indicating that those who function as parents (de facto parents) are exempted from the three-month work requirement associated with receiving SNAP<sup>422</sup></li> </ul>			
<p><b>PUBLIC HOUSING AND HOUSING ASSISTANCE</b></p>			
<p><b>Prioritize the implementation of the federal Department of Housing and Urban Development (HUD) 2011 rule clarifying that the current definition of family includes LGBT families.</b></p> <ul style="list-style-type: none"> <li>The January 2011 proposed rule clarifies that family includes LGBT families, and that adults who are standing <i>in loco parentis</i> should be considered part of a household—as should the children of domestic partners</li> <li>Also clarify that local housing agencies should make every effort to determine who is taking care of a child, ensuring that individuals who provide shelter and other basic necessities to a child can claim that child as a dependent for the purposes of housing assistance (this clarification would help not only LGBT parents who may not have legal custody of their children, but also other family members who may be taking care of children but who lack the ability to establish legal custody)</li> </ul>			


<sup>421</sup>The U.S. Dept. of Agriculture's non-discrimination policy prohibits discrimination based on sexual orientation, but it does not apply to federal assistance programs operated by the Food and Nutrition Service, including SNAP, school lunch programs and WIC. U.S. Dept. of Health and Human Services, "Food and Nutrition Service, Civil Rights," [www.fns.usda.gov/cr/justice.htm](http://www.fns.usda.gov/cr/justice.htm).

<sup>422</sup>Currently able-bodied adults without children may only receive food stamps for three months in a 36-month period unless they work at least 20 hours a week.

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<p><b>MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)</b></p>			
<p><b>Revise Medicaid and CHIP definitions and procedures to be inclusive of LGBT families.</b></p> <ul style="list-style-type: none"> <li>The definition of family should include same-sex partners and permanent partners, as well as any children for whom an adult is standing <i>in loco parentis</i> to allow adults who are providing substantially for a child to be counted for eligibility purposes</li> <li>States should expand eligibility for Medicaid and CHIP to increase the number of children served as well as take steps to treat same-sex couples as married for the purposes of determining eligibility:                             <ul style="list-style-type: none"> <li>For example, Massachusetts passed legislation in 2008 to treat married same-sex couples as married for the purposes of Medicaid eligibility</li> <li>In 2008, when the State of New York began recognizing the out-of-state marriages of same-sex couples, the state's Office of Health Insurance Programs issued a memorandum instructing agency staff to ensure that same-sex spouses were considered for the purposes of determining Medicaid eligibility</li> </ul> </li> </ul>		✓	✓
<p><b>SUPPLEMENTAL SECURITY INCOME (SSI)</b></p>			
<p><b>Broaden the definition of spouse and child to include diverse families in the SSI sections of the federal Social Security Act.</b></p> <ul style="list-style-type: none"> <li>The Social Security Administration should update SSI eligibility criteria to include same-sex spouses, domestic partners or permanent partners when an adult applies for assistance</li> <li>The eligibility criteria should be updated to ensure that de facto parents are counted when a child applies for SSI                             <ul style="list-style-type: none"> <li>Allow applicants to identify themselves as the child, stepchild or adopted child of a person <i>in loco parentis</i> as defined in the recent FMLA interpretation</li> </ul> </li> </ul>		✓	
<p><b>CHILD CARE AND EARLY CHILD EDUCATION ASSISTANCE</b></p>			
<p><b>Broaden the definition of family for Head Start and other child care assistance programs.</b></p> <ul style="list-style-type: none"> <li>The child care assistance programs' definition of parent should include de facto parents</li> </ul>		✓	
<p><b>EDUCATIONAL LOANS, GRANTS AND SCHOLARSHIPS</b></p>			
<p><b>Broaden the definitions in the Free Application for Federal Student Aid (FAFSA) to include options for diverse families.</b></p> <ul style="list-style-type: none"> <li>The FAFSA definition of parent should include non-legally recognized parents who provide at least 50% of an applicant's financial support (one example of such a definition could be the <i>in loco parentis</i> definition currently used for the FMLA</li> <li>Revise FAFSA to allow LGBT families and other diverse families to accurately report their financial situations (changing "Father/Stepfather" and "Mother/Stepmother" to "Parent 1" and "Parent 2" would allow LGBT families to include both legal parents and their economic resources in their application)</li> </ul>		✓	










RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
			
<b>CREATE FORMS AND APPLICATION PROCEDURES THAT ACCOMMODATE LGBT FAMILIES</b>			
<p><b>Revise government forms and application procedures to make them more inclusive of LGBT families.</b></p> <ul style="list-style-type: none"> <li>Federal, state and local governments should revise forms to allow diverse families to accurately report who is legally and financially responsible for a child (forms could include options such as “Parent 1/Parent 2”)</li> <li>Agencies should revise application materials to explicitly signal, in text and pictures, that diverse families are considered families                             <ul style="list-style-type: none"> <li>For example, the New York City Housing Authority mentions “domestic partners” on its application form, and the Minneapolis Public Housing Authority allows families to identify a same-sex partner or other adult using the “co-head” or “other adult” designation<sup>423</sup></li> </ul> </li> <li>Local agencies should expand the application options available to families (telephone interviews, for example, could help alleviate the fear of being “outed” that some LGBT families experience)<sup>424</sup></li> <li>Government workers responsible for reconciling sex designations with Social Security numbers or other identifying information should be authorized to seek more information before rejecting a person’s application; they should be trained to approach these situations with sensitivity and respect, based on an understanding that for some transgender people, sex designations across documents may not necessarily match                             <ul style="list-style-type: none"> <li>The National Center for Transgender Equality recommends that the Office of Management and Budget issue guidance to agencies to only collect sex-or gender-related data on government forms when entirely necessary or relevant<sup>425</sup></li> </ul> </li> </ul>		✓	
<b>REVISE THE IRS TAX CODE TO PROVIDE EQUITABLE TREATMENT FOR LGBT FAMILIES</b>			
<p><b>Revise the IRS tax code to provide equitable treatment for LGBT families.</b></p> <ul style="list-style-type: none"> <li>Advocates should press for the following changes in the IRS code:                             <ul style="list-style-type: none"> <li><u>Definition of spouse.</u> The IRS should create a designation of a “permanent partner,” who would be treated as a spouse for the purposes of the tax code. Individuals in a committed relationship—whether legally recognized as a domestic partnership, civil union or marriage, or not legally recognized—would qualify if they met certain criteria. This would allow all LGBT couples, whether they could marry or not, to file joint tax returns and be eligible for tax-related credits and deductions designed for married couples, including the dependent exemption, the Earned Income Tax Credit, and provisions related to gift and estate taxes.</li> <li><u>Definition of qualifying child.</u> The IRS should alter the definition of a “qualifying child” to include children of de facto parents or parents who stand <i>in loco parentis</i> to more accurately reflect today’s families. This would allow LGBT and other parents to access the dependent exemption, the child tax credit and the Earned Income Tax Credit.</li> <li><u>Child and Dependent Care Credit.</u> To help families with the high costs of child care and dependent care, the IRS should modify the Child and Dependent Care Credit so that any person who pays for the child care or dependent care of another person can claim the credit. This would help not only LGBT families who cannot claim this credit for their non-legally related children or partners, but also other families where a grandparent or other person assists the family with child care costs.</li> <li><u>Education (tuition and fees) deduction.</u> To encourage investment in higher education, the IRS should allow any individual who pays the tuition and fees of another person—regardless of the legal relationship to that person—to take this deduction. This would help LGBT families with the cost of college tuition for their children. In addition, it would make it easier for an LGBT person to return to college because his or her partner could use this deduction to offset the cost of tuition.</li> </ul> </li> </ul>		✓	✓

<sup>423</sup>Explicit mentions of LGBT families are important, especially in states that restrict marriage to heterosexual couples. By signaling on the application materials that all families are eligible for assistance, public housing agencies can show families that despite discriminatory state and federal laws, they are families for the purposes of housing assistance.

<sup>424</sup>Similar efforts have been made to increase participation in SNAP by mixed-immigration status families and limited English-proficient families.

<sup>425</sup>This would mean removing the non-mandatory gender field from the Social Security Number Verification System (SSNVS), which is used by employers and government agencies, and making it simpler for transgender individuals to change their gender in the system. “Transgender Equality and the Federal Government,” February 2009, [http://transequality.org/Resources/NCTE\\_Federal\\_Government\\_web.pdf](http://transequality.org/Resources/NCTE_Federal_Government_web.pdf).

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
PROVIDE EQUITABLE ECONOMIC PROTECTIONS WHEN A PARENT DIES OR IS DISABLED			
<b>SOCIAL SECURITY SURVIVORS AND DISABILITY INSURANCE (OASDI) BENEFITS</b>			
<p><b>Revise OASDI regulations to recognize a child's dependence on a non-legally recognized parent or adult.</b></p> <ul style="list-style-type: none"> <li>The Social Security Administration should allow a child to claim benefits upon the death or disability of an adult who acts as a parent in the child's life, regardless of the legal relationship between the child and the parent</li> <li>The Social Security Administration should provide parental benefits to adults who will be taking care of the children (under 16) of deceased workers, including surviving same-sex spouses, domestic partners or permanent partners of a child's legal or de facto parents</li> <li>Expanding who is eligible to receive these benefits would not only permit the surviving partner (or former partner) of the worker to access important financial resources, but would also recognize the variety of individuals who may care for a child in the event of a parent's death, as well as the financial challenges that come with providing for a child</li> </ul>			
<b>INHERITANCE</b>			
<p><b>Adopt the Uniform Probate Code's 2009 amendment on inheritance for children born through donor insemination.</b></p> <ul style="list-style-type: none"> <li>States should adopt the 2009 changes so that children born to same-sex couples through assisted reproduction can inherit from both parents, regardless of whether they are both legally recognized as parents</li> </ul>			
<p><b>Amend state intestacy laws to allow domestic partners and children of de facto parents to inherit without a will.</b></p> <ul style="list-style-type: none"> <li>States should amend their intestacy laws so that, should a person die without a will, his or her domestic or permanent partner can inherit in the same manner as a spouse, and any children for whom the deceased was acting as a de facto parent can inherit in the same manner as legal children</li> </ul>			
<b>WRONGFUL DEATH</b>			
<p><b>Alter states' wrongful death statutes to take into consideration diverse families.</b></p> <ul style="list-style-type: none"> <li>States should permit any individual who can prove economic dependence on a deceased person (including same-sex partners and non-legally recognized children) to file a wrongful death suit when a partner or parent is killed as a result of negligence or intent</li> <li>For example, the West Virginia statute indicates that "any persons who were financially dependent on the decedent at the time of his/her death" are eligible to bring a wrongful death suit</li> </ul>			









RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
PROVIDE EQUAL ACCESS TO HEALTH CARE			
ADVANCE EQUAL ACCESS TO HEALTH INSURANCE		✓	✓
<p><b>Pass federal legislation that provides for equal treatment related to the provision and taxation of health insurance benefits.</b></p> <ul style="list-style-type: none"> <li>• Lawmakers should end federal taxation of benefits provided to same-sex partners and other “non-spouse” beneficiaries under employers’ health plans by passing the Tax Equity for Domestic Partner and Health Plan Beneficiaries Act/Tax Equity for Health Plan Beneficiaries Act (DP Tax)<sup>426</sup> or similar legislation</li> <li>• Lawmakers should update the ERISA to ensure that when companies elect to extend health benefits to employees’ spouses and/or children, they must also extend such benefits to employee’s permanent partners and/or children for whom the employee is acting as a de facto parent<sup>427</sup></li> <li>• Repeal of DOMA would secure equal extension of health insurance benefits to same-sex couples in states with marriage or comprehensive relationship recognition</li> </ul>		✓	✓
<p><b>Pass federal and state legislation to extend health insurance benefits to government employees’ domestic partners and children for whom they stand <i>in loco parentis</i>.</b></p> <ul style="list-style-type: none"> <li>• Legislation such as the Domestic Partnership Benefits and Obligations Act would extend health insurance benefits to domestic partners of federal employees, providing coverage to more than 30,000 partners and children<sup>428</sup></li> <li>• States that have not already done so can pass similar legislation protecting the families of state public employees</li> </ul>		✓	✓
<p><b>Eliminate state taxes on domestic partner benefits.</b></p> <ul style="list-style-type: none"> <li>• States that mimic federal tax guidelines and impose an additional state tax on domestic partner benefits should eliminate their state’s portion of this tax (which tends to be smaller)</li> </ul>		✓	✓
<p><b>Require that insurance plans sold through state insurance exchanges offer domestic partner benefits if they offer spousal benefits—and also coverage for children for whom an adult stands <i>in loco parentis</i>.</b></p> <ul style="list-style-type: none"> <li>• Advocates should work to ensure that state health insurance exchanges created by the Affordable Care Act include regulations supporting comprehensive non-discrimination policies and generally support the goal of expanding coverage for LGBT and other non-recognized families</li> <li>• States can and should establish certification requirements for qualified health plans that prohibit discrimination on the basis of sexual orientation, gender identity or marital status</li> </ul>			✓
<p><b>Provide equal access to COBRA benefits.</b></p> <ul style="list-style-type: none"> <li>• The Equal Access to COBRA Act would extend COBRA coverage to anyone who is covered under an employer’s group health plan, including same-sex partners and spouses</li> <li>• The IRS should amend its regulations to make COBRA available to any person covered by an employee’s health plan prior to the qualifying event (thus eliminating the difference in status created by current law, which separates beneficiaries into two classes: those with an independent right to access COBRA benefits and those who must rely on permission from the covered worker)</li> </ul>			✓

<sup>426</sup> The bill would “exclude the value of employer-provided health insurance for a domestic partner or other non-spouse beneficiary from an eligible employee’s income, as it does for benefits provided for a spouse or dependent. This legislation does not mandate that employers provide coverage to non-spouse beneficiaries. Nor does it establish criteria for determining which beneficiaries qualify. . . . The bill simply eliminates the unfair taxation of benefits that employers choose to provide. The bill would also make clear that domestic partners or non-dependents can be included in pre-tax cafeteria plan elections, permit Voluntary Employees’ Beneficiary Associations (VEBAs) to provide full benefits to domestic partners and non-dependents, and extend Health Related Savings Accounts to cover domestic partners and other non-dependents. Finally, the bill would equalize the treatment of health coverage for spouses and for domestic partners and other non-dependents for payroll tax purpose.” HRC, “Tax Parity for Health Plan Beneficiaries Act,” H.R. 2088 and S. 1171, <http://www.hrc.org/laws-and-legislation/federal-legislation/tax-parity-for-health-plan-beneficiaries-act>.

<sup>427</sup> ERISA allows employers operating in multiple states to follow one set of rules (rather than potentially 50 different sets of state rules). Because it is a federal law, even states that allow same-sex couples to marry cannot require employers to provide health benefits to same-sex couples since, under DOMA, ERISA does not currently recognize same-sex relationships. ERISA does not provide a clear definition of spouse; therefore, without DOMA, the meaning of spouse would be based on state law.

<sup>428</sup> Goldberg et al., *Extending Federal Benefits to Same-Sex Partners*, 2008.

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<p><b>Encourage private employers to electively offer domestic partner benefits.</b></p> <ul style="list-style-type: none"> <li>Advocates should work with governments, private employers, insurance companies, unions and others to encourage employers to electively offer domestic partner benefits, and press insurance companies to allow such coverage<sup>429</sup></li> </ul>			
<p><b>Work to ensure that the Affordable Care Act defines family broadly for the purposes of including LGBT families.</b></p> <ul style="list-style-type: none"> <li>The new federal health care reform law includes many references to “family,” “child,” “spouse” and “parent,” some of which are as yet undefined, leaving LGBT and other families vulnerable to disparities</li> <li>Federal and state regulations tied to the law should make clear that these terms are defined in ways that include LGBT and 21st century family relationships, even when state parentage laws inadequately recognize such family ties</li> </ul>			
<b>ENABLE LGBT FAMILY MEMBERS TO CARE FOR ONE ANOTHER</b>			
<p><b>Revise and expand state hospital visitation and medical decision-making laws to be inclusive of today’s families, including LGBT families and de facto parents.</b></p> <ul style="list-style-type: none"> <li>Laws that identify default visitors and decision-makers should include domestic partners, de facto parents, and other non-legally recognized family members such as “close friends”<sup>430</sup></li> <li>Several model laws at the state level make it easier to designate someone for medical decision-making, whether or not that person is part of a domestic partnership:                             <ul style="list-style-type: none"> <li>The Arizona Advance Health Care Directive Registry allows residents to store living wills and power-of-attorney documents online, which doctors and nurses can access to determine the type of care a person wants, even if that person is incapacitated<sup>431</sup></li> <li>Maryland’s Medical Decision-Making Act of 2005 allows members of same-sex couples who meet certain criteria to make medical decisions for their incapacitated partners</li> <li>The Colorado Domestic Partner Registry allows individuals to fill out and submit a form that, among other things, allows a person to designate another individual for medical decision-making and disposition of remains</li> </ul> </li> </ul>			
<p><b>Work with hospitals and other medical facilities and providers to enact LGBT-friendly policies related to visitation, advanced health care directives (AHDs) and related issues.</b></p> <ul style="list-style-type: none"> <li>Hospitals should have a specific, written policy that is broadly understood by staff to avoid conflict, liability or tragedy (best practices include the following):                             <ul style="list-style-type: none"> <li>Creating written visitation policies that incorporate a broad definition of family and are explicitly inclusive of same-sex relationships and the children of same-sex partners, and reduces the possibility that staff will interpret policies in ways that reflect bias<sup>432</sup></li> <li>Taking proactive steps to demonstrate that AHDs will be honored as valid, regardless of the state in which they were executed and regardless of who has been appointed as the designated agent</li> <li>Having AHD forms onhand at admission so partners, spouses and friends can easily and quickly attest to their relationship</li> <li>Explicitly defining parents, for the purposes of parental consent and visitation, to include those standing <i>in loco parentis</i></li> </ul> </li> </ul>			














<sup>429</sup>Some employers committed to equality have increased the salaries of LGBT employees to help pay for their additional tax burden. HRC’s Corporate Equality Index tracks and promotes the success of this effort in private industry. HRC Foundation, “Healthcare Equality Index 2010.”

<sup>430</sup>Many surrogate-selection statutes require a close friend to sign an affidavit, under penalty of perjury, attesting to their relationship, a sound mechanism for ensuring that broad decision-making policy does not incur undue risk for either patients or hospitals. Stiff, “Breaking Down Barriers,” 14.

<sup>431</sup>The Arizona Secretary of State’s office oversees the registry. Each user receives a file number and password, which can be filed with the user’s medical records. The service is free, although users still need to draft and finalize their living wills, powers of attorney, etc. The state’s website provides instructions on how to prepare these documents on one’s own or with the help of an attorney.

<sup>432</sup>For model language, see Stiff, “Breaking Down Barriers.” See also “cultural competency training,” HRC Foundation, “Healthcare Equality Index 2010.”



RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
			
<p><b>Revise the Family and Medical Leave Act (FMLA) to broaden the definition of covered caregivers.</b></p> <ul style="list-style-type: none"> <li>Federal lawmakers should expand the law to include leave to care for a domestic partner, same-sex spouse, parent-in-law, adult child, sibling or grandparent<sup>433</sup></li> <li>Broader language, such as that found in the Family and Medical Leave Inclusion Act, would also help heterosexual domestic partners, single adults, widows and widowers—anyone who gives care to, or relies on care from, non-biological family members</li> <li>For example, FMLA could adopt language similar to the National Family Caregiver Support Program, which broadly recognizes “an adult family member, or another individual, who is an informal provider of in-home and community care to an older individual”</li> </ul>			
<p><b>Broaden the definition of covered caregivers in state family and medical leave laws.</b></p> <ul style="list-style-type: none"> <li>States can and do create laws that provide broader medical leave than the federal government</li> <li>Those states with broader family leave laws that can serve as a model for others include: California, Connecticut, Hawaii, Massachusetts, New Jersey, New Mexico, Oregon, Rhode Island and Vermont, plus D.C.</li> </ul>			
<b>PROTECT LGBT FAMILIES FROM DISCRIMINATION</b>			
<b>PASS EMPLOYMENT NON-DISCRIMINATION PROTECTIONS</b>			
<p><b>Pass the federal Employment Non-Discrimination Act (ENDA).</b></p> <ul style="list-style-type: none"> <li>ENDA would prohibit discrimination against employees on the basis of sexual orientation or gender identity by civilian, non-religious employers of 15 or more employees (ENDA has been introduced in every Congress since 1994 but has yet to pass)</li> <li>Passing ENDA is critical to: <ul style="list-style-type: none"> <li>Securing the financial health of LGBT families and reducing or eliminating economic disparities between LGBT and other families</li> <li>Protecting LGBT workers who need to take care of sick family members but fear losing their jobs by revealing they are LGBT</li> </ul> </li> </ul>			
<p><b>Pass state-based employment protections for LGBT people.</b></p> <ul style="list-style-type: none"> <li>States that currently lack protections for LGBT workers should pass sexual orientation and gender identity employment protections<sup>434</sup></li> </ul>			
<p><b>Implement federal, state and local executive orders or ordinances requiring contractors to adopt non-discrimination protections.</b></p> <ul style="list-style-type: none"> <li>Executive orders can require that contractors conducting business with federal, state and local governments for a variety of services (including construction, roadwork, and military defense) do not discriminate against their LGBT employees</li> </ul>			








<sup>433</sup>The Williams Institute estimates this would affect 215,000 families, giving about 430,000 individuals the ability to provide greater care for their same-sex partners. M.V. Lee Badgett, “The Impact of Expanding Leave Rights to Care for Children of Same-Sex Partners,” The Williams Institute, June 2010, <http://wiwp.law.ucla.edu/wp-content/uploads/Badgett-FMLA-Jun-2010.pdf>.

<sup>434</sup> According to the Human Rights Campaign, 21 states plus D.C. provide protection for employees against discrimination on the basis of sexual orientation, 15 of which (along with D.C.) also ban discrimination on the basis of gender identity and expression. Some additional states have regulations banning discrimination against public employees. HRC, “Statewide Employment Laws & Policies.”

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
PASS AND STRENGTHEN ADOPTION AND FOSTER CARE NON-DISCRIMINATION LAWS			
<p><b>Pass legislation that ties federal funding for adoption and foster care services to non-discrimination practices based on sexual orientation and gender identity.</b></p> <ul style="list-style-type: none"> <li>Such legislation, currently contained in the Every Child Deserves a Family Act, would strip federal funding from any state or agency that discriminates in adoption or foster care placements on the basis of sexual orientation, gender identity or marital status</li> <li>The act would also direct the Secretary of Health and Human Services to publish guidance that would: <ul style="list-style-type: none"> <li>Identify casework policies and practices that are noncompliant</li> <li>Expand recruitment of qualified prospective parents</li> <li>Provide cultural competency training to relevant agencies, caseworkers, judges, attorneys and prospective parents</li> </ul> </li> </ul>			
<p><b>Pass or revise state laws or policies barring discrimination in fostering and adoption placement on the basis of sexual orientation, gender discrimination, or marital or partnership status.</b></p> <ul style="list-style-type: none"> <li>State laws and policies should specifically affirm the rights of same-sex and unmarried couples to jointly adopt children</li> <li>California, Massachusetts, New Jersey and Oregon provide model laws</li> </ul>			
PASS CUSTODY AND VISITATION NON-DISCRIMINATION LAWS			
<p><b>Pass laws barring discrimination in awarding custody and visitation rights on the basis of sexual orientation, gender identity or marital status.</b></p> <ul style="list-style-type: none"> <li>D.C. has a law that includes sexual orientation in a list of factors that cannot be considered in custody decisions;<sup>435</sup> gender identity should be added to the list and to other state-level legislation</li> <li>A bill introduced in New York would prevent a judge from considering a parent's decision to undergo gender reassignment when making a custody determination, or from requiring the parent to refrain from proceeding as a condition of custody<sup>436</sup></li> </ul>			
PASS NON-DISCRIMINATION PROTECTIONS IN HEALTH SERVICES			
<p><b>Pass state-based, non-discrimination laws that apply to health care providers.</b></p> <ul style="list-style-type: none"> <li>These laws can provide legal recourse for LGBT families who experience discrimination in hospitals and other medical facilities</li> <li>To be effective, non-discrimination laws should cover public accommodations (not just employment) and gender identity and expression (not just sexual orientation)</li> <li>States with non-discrimination laws that do not cover public accommodations should expand or amend their laws</li> </ul>			

<sup>435</sup>"In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex, or sexual orientation of a party, in and of itself, shall not be a conclusive consideration." Child Custody and Visitation Law, 16-914. Custody of Children, (a)(1)(A), [www.divorcelawinfo.com/dc/flc.htm](http://www.divorcelawinfo.com/dc/flc.htm).

<sup>436</sup>HRC, "Equality From State to State," 2009.

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
PASS STRONGER ANTI-BULLYING LAWS			
<p><b>Pass federal and state legislation that would more strongly address and prohibit bullying and harassment in schools and universities.</b></p> <ul style="list-style-type: none"> <li>Legislation such as the Safe Schools Improvement Act would prohibit bullying and harassment in schools, ensure that schools and districts have student conduct policies making clear that bullying and harassment are prohibited, and require that schools maintain data about bullying and harassment incidents</li> <li>The Student Non-Discrimination Act which prohibits any school program or activity receiving federal assistance from discriminating against any student based on sexual orientation or gender identity would ensure that LGBT individuals can receive a quality education and protect children of LGBT parents from discrimination</li> <li>Legislation such as the Tyler Clementi Higher Education Anti-Harassment Act would require universities and colleges to ensure that students are protected from bullying and harassment</li> <li>State-level anti-bullying legislation should explicitly enumerate sexual orientation and gender identity as protected categories, and explicitly protect students from bullying and harassment based on their association with LGBT people to help ensure the safety of children with LGBT parents or friends</li> </ul>			
PASS HOUSING AND CREDIT NON-DISCRIMINATION PROTECTIONS			
<p><b>Pass the federal Housing Opportunities Made Equal (HOME) Act.</b></p> <ul style="list-style-type: none"> <li>This would amend the Fair Housing Act to prohibit discrimination based on sexual orientation, gender identity, marital status or source of income and would expand the term “familial status” to be inclusive of modern family arrangements</li> <li>Failing passage of the federal HOME Act, advocates should press for state-based housing protections for LGBT people</li> </ul>			
<p><b>Pass the Freedom from Discrimination in Credit Act.</b></p> <ul style="list-style-type: none"> <li>This legislation would assist LGBT families in obtaining educational and other loans by amending the Equal Credit Opportunity Act to prohibit discrimination on the basis of sexual orientation and gender identity in the provision of credit (the law currently prohibits discrimination on the basis of marital status, along with other factors including race and sex)</li> </ul>			
STRENGTHEN AGENCY AND SERVICE PROVIDER NON-DISCRIMINATION POLICIES			
<p><b>Encourage adoption and foster care agencies, government agencies and medical institutions to adopt non-discrimination policies that include family status, sexual orientation and gender identity.</b></p> <ul style="list-style-type: none"> <li>Agencies that work with LGBT families or children should adopt and implement non-discrimination policies that explicitly include marital status, sexual orientation and gender identity</li> <li>Policies are especially important for state and local government agencies that administer federal programs in locales that currently lack explicit sexual orientation and gender identity nondiscrimination laws</li> <li>Policies should be documented in staff manuals and supported by staff training</li> <li>Agencies and institutions should make all forms gender-neutral (for example, by listing “Parent 1/ Parent 2”)</li> </ul>			

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<p><b>Engage state agencies and departments to issue affirmative practices, statements and interpretations of adoption and fostering policy.</b></p> <ul style="list-style-type: none"> <li>State Departments of Social Services or Human Services could issue guidance to all state agencies noting that current regulations do not prohibit fostering by same-sex or unmarried couples, and affirming that these couples can make suitable foster parents</li> <li>In states where laws do not ban joint adoption, an official such as the attorney general could issue a statement saying that the state interprets existing law to allow same-sex joint adoption</li> <li>Advocates could seek a memo or statement from the head of the state child welfare or family services agency requiring adherence to non-discrimination, making clear that the agency or department takes seriously its commitment to LGBT-affirmative policies</li> </ul>	✓		
<b>EXPAND EDUCATION AND CULTURAL COMPETENCY TRAINING ON LGBT FAMILIES</b>			
<b>PROVIDE CULTURAL COMPETENCY TRAINING FOR FRONTLINE AGENCY WORKERS</b>	✓	✓	✓
<p><b>Provide cultural competency training for government agency staff.</b></p> <ul style="list-style-type: none"> <li>Educate workers, especially those in states without any recognition for same-sex couples, that some programs have broader definitions of family that include LGBT families so that LGBT families feel comfortable reaching out for help through local assistance offices<sup>437</sup></li> <li>Individual caseworkers should undergo training to ensure that they are welcoming and affirming of LGBT families who may seek safety net assistance</li> <li>Training should seek to ensure staff awareness of and compliance with agency non-discrimination policies and state and local non-discrimination laws, if applicable</li> </ul>		✓	
<p><b>Provide cultural competency training for adoption agencies and social workers.</b></p> <ul style="list-style-type: none"> <li>Training should emphasize best practices in placement with diverse families, LGBT parenting research and the support of mainstream child welfare agencies for adoption and fostering by same-sex couples</li> <li>Child welfare agencies and LGBT family groups can form a national partnership to advance cultural competency and share information on best practices around adoption by LGBT parents</li> <li>LGBT organizations should work with schools of social work to provide information and training on these issues</li> <li>Training should be based on curricula such as “Promising Practices in Adoption and Foster Care” produced by the Human Rights Campaign’s All Children–All Families initiative</li> </ul>	✓	✓	✓
<p><b>Reach out to mainstream service providers to ensure that their services are LGBT-family friendly.</b></p> <ul style="list-style-type: none"> <li>This is particularly important for families of color who may be more likely to use providers and resources in their own communities that are not LGBT-specific</li> </ul>			✓

<sup>437</sup> Among federal agencies whose staff should undergo training about diverse families are the following that deal most directly with LGBT families: Dept. of Health and Human Services, including the Administration for Children and Families and the Health Care Financing Administration; Social Security Administration; Dept. of Agriculture, including the Food and Nutrition Service; HUD, including the Office of Public Housing; IRS; Dept. of Education, including the federal Pell Grant Program; and Dept. of Homeland Security. State and local agencies that administer federal programs include Public Health Departments and Departments of Human Services.



RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
FOCUS EXPANDED EDUCATION AND TRAINING ON JUDGES AND LAW STUDENTS			
<p><b>Educate and inform adoption and family law judges and law students about LGBT parents and parenting research.</b></p> <ul style="list-style-type: none"> <li>LGBT organizations should work with judges, law clerks and law students to inform them about the research on LGBT parenting and the support of mainstream child welfare agencies for adoption and fostering by same-sex couples</li> <li>Advocates also should support and expand judicial training efforts such as those offered by The Williams Institute at UCLA School of Law, which offers judges workshops on LGBT family law</li> <li>Additional training content for these audiences should include information on state court precedents that have interpreted existing law broadly to apply to same-sex parents even when statutes may appear to apply only to married/heterosexual parents<sup>438</sup></li> </ul>			
PROVIDE CULTURAL COMPETENCY TRAINING FOR PHYSICAL AND MENTAL HEALTH SERVICES PROVIDERS			
<p><b>Educate health care providers about LGBT families and their medical issues and needs.</b></p> <ul style="list-style-type: none"> <li>Health care providers should receive training and information about unique health issues facing LGBT families, including the need for cancer screenings and preventive care, HIV/AIDS-related care and appropriate mental health services</li> <li>Training content should include medical care specific to LGBT people having children, such as fertility services, OB/GYN services and surrogacy</li> <li>Education programs receiving federal funding should be required to incorporate LGBT cultural competency in their curricula</li> <li>Hospital administrators and staff should be made fully aware of what the law says and what they can and cannot do to help LGBT families requiring medical treatment and emergency services</li> <li>Training and education for these audiences should pay special attention to challenges facing transgender patients and partners of patients in an effort to reduce hostile or unwelcoming attitudes or behaviors</li> <li>The U.S. Dept. of Health and Human Services should make sure that its proposed work to expand and improve training programs in the health care industry addresses the needs of LGBT families<sup>439</sup></li> </ul>			
<p><b>Work with organizations that accredit health service providers to develop standards for serving LGBT families.</b></p> <ul style="list-style-type: none"> <li>Advocates can work with accreditation groups that receive funds from federal sources such as Medicaid, Medicare or Area Agencies on Aging to develop policies and standards for LGBT families, for example: <ul style="list-style-type: none"> <li>The Joint Commission evaluates whether a facility is eligible for Medicare reimbursements; in 2009, it released standards stating that patients have a right to care free of discrimination based on sexual orientation and gender identity/expression</li> <li>The American Medical Association has adopted 28 policies indicating the importance of culturally competent care that addresses the needs of the LGBT community<sup>440</sup></li> <li>LGBT family care may also be guided by the National Hospital Association, the National Nurses Association and similar organizations, many of which have issued positive statements on LGBT parenting and health outcomes for LGBT people</li> </ul> </li> </ul>			

<sup>438</sup>See Susan Gluck Mezey, *Gay Families and The Courts: The Quest for Equal Rights*, Rowman & Littlefield, 2009, 27-37, for examples of judges using “best interest of the child” to interpret legislative intent broadly.

<sup>439</sup>In response to the 2010 presidential memorandum on hospital visitation, the Dept. of Health and Human Services has announced it will “encourage new and existing health profession training programs, including behavioral health (e.g. mental health, substance abuse, and HIV) programs, to include LGBT cultural competency curricula.” In conjunction with the LGBT community, the Health Resources and Services Administration will “convene professional groups that represent LGBT health providers and students to identify challenges and opportunities for training LGBT providers and to isolate strategies geared toward increasing culturally competent care for LGBT patients.” This work should include a focus on children with LGBT parents.



















<sup>440</sup>See the American Medical Association homepage: [www.ama-assn.org](http://www.ama-assn.org).

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
			
			
PROVIDE TRAINING AND INFORMATION TO SCHOOL PERSONNEL ABOUT LGBT STUDENTS AND FAMILIES			
<p><b>Expand efforts to increase supportive learning environments through teacher certification programs, school psychologist and counselor programs, and curriculum reform.</b></p> <ul style="list-style-type: none"> <li>• School personnel, including teachers, administrators and other staff, should be provided with resources about the diversity of families (including LGBT families and the challenges that they face in school settings) to help them become more welcoming of LGBT families in the classroom and school</li> <li>• Advocates should disseminate guides and other materials providing suggestions on how to produce LGBT-friendly school forms, plus curricular suggestions to ensure that children can talk openly about the diversity of their families</li> <li>• Materials can cover such topics as how to talk to other parents about LGBT families, and how to ensure that all school personnel are welcoming and supportive of all children <ul style="list-style-type: none"> <li>• For example, “The Respect for All Project” from GroundSpark has worked to develop inclusive schools and communities since 1992 in partnership with the National Education Association and the National Association of School Psychologists<sup>441</sup></li> <li>• Schools could adopt the “Welcoming Schools” curriculum as a model<sup>442</sup> or adopt the Department of Education’s model training on creating welcoming schools for diverse families</li> </ul> </li> </ul>			
EXPAND SUPPORT FOR LGBT INCLUSION IN FAITH COMMUNITIES			
<p><b>Work with faith communities to ensure that LGBT families feel welcome in places of worship.</b></p> <ul style="list-style-type: none"> <li>• Advocates should work with national and international religious representatives, as well as local places of worship, to build support for and acceptance of LGBT families and to provide ideas and roadmaps for creating welcoming congregations</li> <li>• Advocates should reach out to the broader LGBT community to ensure understanding of and support for LGBT families of faith</li> </ul>			
<b>PROVIDE EDUCATION AND SERVICES SUPPORT TO HELP LGBT FAMILIES</b>			
EDUCATE LGBT FAMILIES ABOUT CURRENT LAWS AND HOW TO PROTECT THEMSELVES			
<p><b>Educate LGBT families about the need to establish parentage ties and other legal protections where possible, and provide assistance in doing so.</b></p> <ul style="list-style-type: none"> <li>• Advocates should support the creation of a clearinghouse of data about LGBT families, their needs, rights and disparities. This could be modeled after the National Resource Center on LGBT Aging<sup>443</sup></li> <li>• Advocates should consider a targeted community and public education campaign aimed at LGBT families to increase understanding among LGBT families about steps they can take to protect their families, and provide support for putting any needed legal documents in place, including: <ul style="list-style-type: none"> <li>• Documents to establish legal parenting ties and related protections such as a parenting agreement, co-guardianship designations or appointment of guardianship</li> <li>• Economic documents such as a will and tax planning</li> <li>• Health care documents such as advance health directives and medical powers of attorney</li> </ul> </li> <li>• LGBT parents also should be educated about the rights of their children in schools and local communities and how to address school bullying</li> </ul>			

<sup>441</sup> Among the resources used by GroundSpark is the film “That’s A Family,” which showcases elementary school-aged children talking about their families, which include children being raised by grandparents, foster parents, a lesbian-headed family, and a single parent-headed household, among others.














<sup>442</sup> “Welcoming Schools” is a partnership between the National Education Association and the Human Rights Campaign that takes an LGBT-inclusive approach to addressing family diversity, gender stereotyping and bullying in K-5 learning environments. It provides administrators, educators and parents and guardians with resources to create positive, inclusive and welcoming learning environments for all students. See Welcoming Schools homepage: [www.welcomingschools.org](http://www.welcomingschools.org).

<sup>443</sup> The National Resource Center on LGBT Aging is a project of SAGE (Services and Advocacy for Gay, Lesbian, Bisexual & Transgender Elders), the American Society on Aging and several other aging and LGBT organizations. It was established in 2010 through a grant from the U.S. Dept. of Health and Human Services as the nation’s first technical assistance resource center aimed at improving the quality of services and supports offered to LGBT older adults. See National Resource on LGBT Aging homepage: [www.lgbtagingcenter.org](http://www.lgbtagingcenter.org).

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
			
CREATE STRONGER SUPPORT SERVICES AND OUTREACH FOR LGBT FAMILIES			
<p><b>Target LGBT families for focused outreach and support services.</b></p> <ul style="list-style-type: none"> <li>Conduct outreach to prospective and existing LGBT adoptive and foster parents <ul style="list-style-type: none"> <li>Agencies and publicly-supported “family resource centers” (which serve as community hubs) should be encouraged to conduct direct outreach to the LGBT community when seeking prospective homes for waiting children</li> <li>Communities should establish non-profit adoption exchanges such as “Families Like Ours,” which focus on bringing together and supporting LGBT pre- and post-adoptive families</li> <li>Communities should replicate partnerships such as the one between the Human Rights Campaign’s All Children – All Families initiative and the Los Angeles County Dept. of Children and Family Services to engage LGBT families as prospective parents for waiting children (the program is federally funded)</li> </ul> </li> <li>Conduct outreach to low-income LGBT families <ul style="list-style-type: none"> <li>Advocates should conduct targeted outreach to broaden access to needed government protections (for example, low-income LGBT families may not know that they are eligible for food assistance programs and housing assistance)<sup>444</sup></li> <li>Advocates also can encourage and facilitate partnerships between local agencies and LGBT community centers to provide one-on-one assistance in filling out applications for families, as well as providing eligibility information to LGBT families<sup>445</sup></li> </ul> </li> </ul>			
<p><b>Create opportunities for LGBT families to participate in social, advocacy and support groups.</b></p> <ul style="list-style-type: none"> <li>The LGBT community should be more supportive of families by creating new and expanded opportunities for them to come together to share their successes and challenges <ul style="list-style-type: none"> <li>Parenting support groups should prioritize combating the “pressure to be perfect” that is often felt by children in LGBT families, and should give parents and children the space to speak openly about these challenges</li> <li>Organizations should provide opportunities for children with LGBT parents to interact, find support and socialize</li> </ul> </li> </ul>			
CREATE INCLUSIVE ENVIRONMENTS FOR ALL LGBT FAMILIES, PARTICULARLY TRANSGENDER PARENTS AND FAMILIES OF COLOR			
<b>INCREASE INCLUSION OF LGBT FAMILIES IN PUBLIC AND COMMUNITY OUTREACH</b>			
<p><b>Expand public education efforts that are supportive of LGBT families.</b></p> <ul style="list-style-type: none"> <li>Advocates should work to increase positive representations of LGBT families in the media and popular culture <ul style="list-style-type: none"> <li>Media coverage of LGBT families should include low-income families, rural families and families of color, as well as blended LGBT families where one parent is an acting or legal stepparent</li> <li>Efforts to teach the public about the diversity of today’s families should address children raised in single-parent households and/or by caregivers other than biological parents to help challenge the notion that children raised in diverse families are “missing” a parent</li> </ul> </li> </ul>			

<sup>444</sup>A 2003 study by the Urban Institute found that some state agencies engage in media campaigns to increase awareness to particular communities, such as limited English-proficiency communities, about the availability of public assistance. U.S. Dept. of Health and Human Services, “The Application Process for TANF, Food Stamps, Medicaid and SCHIP,” January 2003.

<sup>445</sup>Anyu Fang, Recommendations for Food Stamp Outreach for Sacramento County, Sacramento Hunger Coalition, 2007.

RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
			
<b>CREATE SUPPORTIVE ENVIRONMENTS FOR TRANSGENDER PARENTS AND THEIR FAMILIES</b>			
<p><b>Include transgender parents and their families within LGBT community spaces.</b></p> <ul style="list-style-type: none"> <li>Efforts such as the newly launched “I AM: Trans People Speak” provide an important platform for bringing visibility to transgender parents<sup>446</sup></li> </ul>			
<b>CREATE SUPPORTIVE ENVIRONMENTS FOR LGBT FAMILIES OF COLOR</b>			
<p><b>Provide greater support for LGBT families of color and multiracial LGBT families within LGBT organizations.</b></p> <ul style="list-style-type: none"> <li>Given that LGBT families are more likely than heterosexual families to complete a transracial adoption,<sup>447</sup> advocates should support programs that aim to help trans-racial LGBT families address underlying issues of race, culture and class such as Our Family Coalition in Northern California, which provides opportunities for trans-racial LGBT families to discuss their experiences<sup>448</sup></li> </ul>			
<p><b>Work with organizations of color to support multiracial LGBT families and LGBT families of color.</b></p> <ul style="list-style-type: none"> <li>Advocates should work with people of color organizations to expand understanding of and resources for children of color in LGBT families</li> <li>This is important since people of color are sometimes more comfortable turning to these community organizations for assistance instead of relying primarily on LGBT organizations that may predominantly serve white families</li> </ul>			
<p><b>Ensure that images of LGBT families reflect the diversity of all families.</b></p> <ul style="list-style-type: none"> <li>LGBT organizations should take steps to ensure that people of color can see themselves in portrayals of LGBT families on organization websites and in publications and other materials</li> </ul>			
<b>EXPAND RESEARCH ON LGBT FAMILIES</b>			
<b>SUPPORT EXPANDED RESEARCH ON LGBT FAMILIES AND PARENTING</b>			
<p><b>Lobby for and fund expanded private and government research on LGBT families and parenting.</b></p> <ul style="list-style-type: none"> <li>Research is critical to communicating to stakeholders and policymakers the nature and extent of the needs of LGBT families; however, there is gravely insufficient data about LGBT families</li> <li>Governments and agencies should collect LGBT data in all federal, state and local studies including demographic studies, studies on physical and mental health, economic studies and more</li> <li>In addition, parenting studies should focus on diverse LGBT families, including transgender parents, gay men and racially and economically diverse families<sup>449</sup></li> </ul>			


<sup>446</sup> See homepage: [www.transpeoplespeak.org](http://www.transpeoplespeak.org).

<sup>447</sup> A 2009 study of 106 adoptive families (56 same-sex couples and 50 different-sex couples) found that same-sex couples were more likely to complete a transracial adoption (54% versus 30%). This was due, in part, to the fact that the same-sex couples were more likely to be interracial themselves. But even excluding those couples, 42% of same-race, same-sex couples adopted transracially, compared to 24% of same-race, different-sex couples. Rachel Farr and Charlotte Patterson, “Transracial Adoption by Lesbian, Gay, and Heterosexual Couples,” *Adoption Quarterly*, 12:187-204, 2009, <http://people.virginia.edu/~cjp/articles/fp09.pdf>.

<sup>448</sup> Our Family Coalition, “Colors of Our Families 7 Week Series.”

<sup>449</sup> The majority of research conducted thus far focuses on white, middle- and upper-income lesbian-headed households.



RECOMMENDATION	Goals Accomplished by Recommendation		
	Goal # 1: Securing Stable, Loving Homes	Goal #2: Ensuring Economic Security	Goal #3: Ensuring Health and Well-Being
<p><b>Expand research and data collection on LGBT family health disparities and needs.</b></p> <ul style="list-style-type: none"> <li>• Advocates should push for all government public health surveys to include questions about sexual orientation and gender identity</li> <li>• The U.S. Department of Health and Human Services has announced it will draw on a report by the prestigious Institute of Medicine (IOM) calling for increased research and data collection on LGBT health needs <ul style="list-style-type: none"> <li>• The report found that “to advance understanding of the health needs of all LGBT individuals, researchers need more data about the demographics of these populations, improved methods for collecting and analyzing data, and an increased participation of sexual and gender minorities in research”<sup>450</sup></li> <li>• An IOM committee will help expand research on the health of LGBT people, and specifically include reducing the proportion of LGBT people suffering from depression, obesity and substance abuse<sup>451</sup></li> </ul> </li> <li>• Advocates should press the Secretary of Health and Human Services to include sexual orientation and gender identity for the purposes of data collection in order to take advantage of the 2010 Affordable Care Act, which allows the Department to designate specific populations that would benefit from additional data collection to combat health disparities</li> <li>• States should investigate family health disparities related to sexual orientation and gender identity in their Behavioral Risk Factor Surveillance Systems<sup>452</sup></li> </ul>			

<sup>450</sup>Institute of Medicine, “The Health of Lesbian, Gay, Bisexual, and Transgender People.”

<sup>451</sup>U.S. Dept. of Health and Human Services, Recommended Actions, [www.hhs.gov/secretary/about/lgbthealth.html](http://www.hhs.gov/secretary/about/lgbthealth.html).

<sup>452</sup>Many states, including California, Massachusetts, New Mexico, North Carolina, North Dakota and Wisconsin, have already added such questions to their Behavioral Risk Factor Surveillance Systems. Baker and Krehely, “Changing the Game.”

## APPENDICES

### Glossary of Acronyms Used in this Report

ACLU	American Civil Liberties Union (see Acknowledgements)
ACS	American Community Survey (see page 119)
AHD	Advanced Health Care Directive (see page 85)
BEST	Basic Economic Security Table (see page 55)
CHIP	Children's Health Insurance Program (see page 62)
COBRA	Consolidated Omnibus Budget Reconciliation Act (see page 81)
DOMA	Defense of Marriage Act (see page 49)
EFC	Expected Family Contribution (see page 65)
EITC	Earned Income Tax Credit (see page 70)
FAFSA	Free Application for Federal Student AID (see page 64)
FMLA	Family and Medical Leave Act (see page 88)
GLAD	Gay and Lesbian Advocates and Defenders (see page 122)
HUD	U.S. Department of Housing and Urban Development (see page 60)
IRS	Internal Revenue Service (see page 4)
LGBT	Lesbian, gay, bisexual and transgender (see page 1)
MAP	Movement Advancement Project (see inside cover)
OASDI	Old-Age, Survivors and Disability Insurance (see page 73)
PTA	Parent-Teacher Association (see page 16)
SNAP	Supplementary Nutrition Assistance Program (see page 59)
SSI	Supplemental Security Income (see page 63)
TANF	Temporary Aid for Needy Families (see page 57)
WIC	Special Supplemental Nutrition Program for Women, Infants and Children (see page 59)

### Estimating the Number of Children with LGBT Parents

Estimating the number of children being raised by LGBT parents is difficult. Researchers face a lack of data, particularly with respect to transgender parents. Very few surveys ask about sexual orientation, and there are no representative surveys that ask about gender identity. Even when surveys do ask about sexual orientation, stigma causes under-identification and under-counting. An explanation of how MAP derived the estimate of two million children being raised by LGBT parents follows.

#### Key Data Forming the Basis of MAP's Analysis for LGBT Parents

Several types of data (with varying sources, dates and data sets) were used as the basis for MAP's estimates of the number of children with LGBT parents:

- Percentages of lesbian and bisexual women who reported that they had given birth to a child, had lived with a non-biological child that was under their care and responsibility, or that they were currently raising children.<sup>453</sup>
- Percentages of gay and bisexual men who reported they have had either a biological or adopted child, or that they were currently raising children.<sup>454</sup>
- Percentages of transgender adults who reported that they were currently raising children.<sup>455</sup>
- Recent estimates of the total population of LGBT people.<sup>456</sup>

<sup>453</sup>Gates et al., "Adoption and Foster Care"; 2009 California Health Interview Survey.

<sup>454</sup>*ibid.*

<sup>455</sup>Grant et al., "Injustice at Every Turn"; Equality South Carolina, "A Survey of South Carolina's Lesbian, Gay, Bisexual and Transgender Community," 2010, [www.scequality.org/public/files/docs/SurveyFinal.pdf](http://www.scequality.org/public/files/docs/SurveyFinal.pdf).

<sup>456</sup>Gates, "How Many People are Lesbian, Gay, Bisexual and Transgender?"

- U.S. population estimates for adults of child-rearing age (18-44) and cohabitation rates.<sup>457</sup>
- Child-rearing rates and average number of children per household of same-sex couples.<sup>458</sup>

MAP applied population estimates to each of the major data sets (three for LGB parents and one for transgender parents), which resulted in estimates of between 2.0 and 2.8 million children being raised by LGBT parents. To be conservative, MAP used the lowest estimate of two million children currently being raised by LGBT parents or same-sex couples.

### Methodology for LGB Parents

First, analysis of the 2002 National Survey of Family Growth by The Williams Institute found that 35% of lesbian-identified women and 65% of bisexual-identified women between the ages of 18 and 44 had given birth to a child, while 23% of lesbians and bisexual women reported that they had lived with a child they did not give birth to but was under their “care and responsibility.”<sup>459</sup> Of gay-identified men, 16% reported having had a biological or adopted child, while 48% of bisexual men reported having had a biological or adopted child. Applying these rates of child rearing to the most recent estimates of the LGB population provided by The Williams Institute and the percent of the population between the ages of 18 and 44; the number of children in a household; and current U.S. cohabitation rates, MAP analysis estimates there are approximately 2.6 million children currently being raised by at least one LGB parent.

The California Health Interview Survey, conducted every two years, is the largest state-based health survey in the U.S. and includes questions about sexual orientation. In the 2009 survey, 19% of lesbian women and 29% of bisexual women reported that they were currently raising children, compared to 4% of gay men and 7% of bisexual men.<sup>460</sup> This data set also includes information about cohabitation status. Applying these rates of child rearing and cohabitation rates to the LGB population estimate, MAP analysis suggests that up to 1.9 million children are currently being raised by at least one LGB parent.

The U.S. Census, which is conducted every ten years, and its annual counterpart survey, the American Community Survey (ACS), provide information about the number of individuals in same-sex couples who are raising children. The census and the ACS count

the number of same-sex couples who use the term “husband/wife” or “unmarried partner,” but do not include questions about sexual orientation. Of these “same-sex couple” households identified in the 2009 ACS, The Williams Institute found that 21% were raising, on average, two children.<sup>461</sup> Applying this statistic to the LGB population estimates and taking into consideration cohabitation rates, MAP analysis suggests that up to 2.3 million children are being raised by an LGB parent or same-sex couple.

### Methodology for Transgender Parents

Because no large surveys ask questions about gender identity, estimates of parenting by transgender people are difficult to obtain. A 2011 meta-analysis conducted by The Williams Institute estimates that 0.3% of American adults, or 700,000 Americans, are transgender.<sup>462</sup> The recent National Transgender Discrimination Survey (2009) found that 38% of transgender respondents identified as parents and 18% were currently raising a child.<sup>463</sup> A 2010 survey of transgender people living in South Carolina found a similar rate of parenting—31% of transgender respondents were parents.<sup>464</sup> Given the lack of data about transgender parents and their children, more research and questions about gender identity are needed on more surveys. For MAP’s analysis, we used estimates of between 100,000 and 200,000 children who are being raised by a transgender parent.

<sup>457</sup>U.S. Census Bureau, “Selected Social Characteristics in the United States” and “ACS Demographic and Housing Estimates,” *2006-2008 American Community Survey 3-Year Estimates*.

<sup>458</sup>Gary J. Gates, “Same-Sex Spouses and Unmarried Partners in the American Community Survey,” The Williams Institute, September 2009.

<sup>459</sup>Gates et al., “Adoption and Foster Care.”

<sup>460</sup>2009 California Health Interview Survey.

<sup>461</sup>Gates, “Same-Sex Spouses and Unmarried Partners in the American Community Survey.”

<sup>462</sup>Gates, “How Many People are Lesbian, Gay, Bisexual and Transgender?”

<sup>463</sup>Grant et al., “Injustice at Every Turn.”

<sup>464</sup>Equality South Carolina, “A Survey of South Carolina’s Lesbian, Gay, Bisexual and Transgender Community.”

## Creating and Protecting a Family is Costly for LGBT Parents

Table 8: Creating and Protecting A Family Is Costly for LGBT Parents		
CREATING A FAMILY: COSTLY PROCESSES OFTEN REQUIRED TO CREATE LGBT FAMILIES		
The process	Description	How much it can cost
<b>Adoption—through a public, child welfare agency</b>	Adoption costs vary widely depending on the unique circumstances of each family. In general, adopting through a child welfare agency is less costly than other adoption options. Adoptions conducted through child welfare agencies often require many steps, including a home study, attorney’s fees and travel expenses.	Less than \$2,500 <sup>465</sup>
<b>Adoption—private or international</b>	Private and international adoptions are much more costly than are adoptions through child welfare agencies, as are adoptions of newborn children. Private adoptions often require many steps, including a home study, legal fees and court costs.	International adoptions— \$7,000-\$30,000  Domestic private or independent adoptions within the U.S.— \$5,000-\$40,000 <sup>466</sup>
<b>Second-Parent Adoption</b>	A second-parent adoption is often more expensive than stepparent adoption and may include a home study	\$1,200-\$4,000 <sup>467</sup>
<b>Donor Insemination</b>	The costs associated with donor insemination can vary depending on whether a woman becomes pregnant during the first insemination cycle. Included in these costs are doctor’s visits—which are often required by law in order to take advantage of donor insemination statutes regarding parentage—and the genetic material.	\$500-\$1,000 for first insemination cycle  \$300-\$700 for each additional cycle, if needed <sup>468</sup>
<b>Egg Donation &amp; Surrogacy</b>	Surrogacy arrangements require complicated medical and legal services. As such the costs range widely depending on the exact circumstances.	\$115,000-\$150,000 <sup>469</sup>
PROTECTING A FAMILY: GENERAL DOCUMENTS RECOMMENDED FOR MOST PEOPLE		
Document	What it does	How much it can cost
<b>Will</b>	A will is an important document for establishing what happens to a person’s assets upon death, including how they are allocated and to whom. For LGBT families, this is particularly important because surviving partners and children may not be able to receive assets without a will. A will can also designate a guardian for a person’s surviving minor children. While it would not be legally binding, it can be a good starting place for a judge who will make the final custody decision.	\$500-\$3,000 depending on the complexities of a family’s financial and personal situation
<b>Power of Attorney: Financial</b>	In the case of physical or mental incapacitation, a financial power of attorney grants another person the ability to make financial decisions, such as paying bills or selling property. Given that LGBT families may not be legally recognized, this is an important document to ensure that a partner can make necessary financial decisions in a given situation.	
<b>Power of Attorney: Health</b>	Similar to a financial power of attorney, this document allows a person to make medical decisions in the event of the incapacitation of another person.	
<b>Living Will (AHD)</b>	Also known as an “Advanced Health Care Directive,” a living will makes an individual’s wishes known if that individual is unable to speak for themselves. A living will usually refers to a person’s desire to receive or avoid life-sustaining medical procedures.	

<sup>465</sup>U.S. Dept. of Health and Human Services, “Funding Adoption.”

<sup>466</sup>*Ibid.*

<sup>467</sup>Haynes, “Palmer answers questions about same-sex adoptions.”; Allen, “Second Parent Adoption: An Outline.”

<sup>468</sup>Amy Agigian, *Baby Steps: How Lesbian Alternative Insemination Is Changing the World*, Wesleyan University Press, 2004; cited in Goldberg, *Research on the Family Life Cycle*.

<sup>469</sup>According to one surrogacy agency specializing in LGBT families, cited in Goldberg, *Research on the Family Life Cycle*.



PROTECTING A FAMILY: DOCUMENTS PARTICULARLY IMPORTANT FOR SAME-SEX COUPLES		
Document	What it does	How much it can cost
Re-title Assets to be "Joint Tenants"	<p>By re-titling assets to be "Joint Tenants in Common" or "Joint With Rights of Survivorship," two or more people can be listed as owners of property. Some LGBT families may undertake this process to ensure that both partners are listed on the deed. This sort of re-titling, however, can have both state and federal tax implications for couples who are not recognized as married on the state or federal level.</p> <p>When one person dies under a "Joint Tenants in Common" arrangement, the surviving person continues to own half of the property, while the other half is placed in the deceased's estate and is administered according to a will or through the probate process. In a "Joint With Rights of Survivorship" arrangement, when one person dies, the surviving person assumes all ownership of the property.</p> <p>Because of the privilege given to married heterosexual couples in most states, when one spouse dies, half or more of the deceased's assets automatically transfer to the surviving spouse.</p>	\$100 or more depending on the situation and complexities
Living Trust	Establishing a trust is a way to ensure that certain assets—physical or financial—can be passed to another person without going through the probate process.	\$750-\$2,000 depending on the complexities
Domestic Partnership Agreement	In states that lack legal recognition for same-sex couples, such couples are advised to create a domestic partnership agreement, which is a written document (usually prepared by a lawyer) that states when the relationship started, what assets belonged to each member of the partnership when the relationship began, and how the assets will be distributed if the couple splits. While such an agreement is neither legally binding nor recognized by most states, it can help give structure to a separation or provide evidence of a relationship if a will is contested.	\$300-\$350
PROTECTING A FAMILY: DOCUMENTS PARTICULARLY IMPORTANT FOR LGBT PARENTS		
Document	What it does	How much it can cost
Co-Parenting Agreement	This agreement, which is particularly important in situations where establishing clear legal parentage is not an option, allows a couple to set up rights and responsibilities around parenting—particularly if the couple were to separate at a later date. For example, the agreement may state that the couple intentionally created a family together and that parents agreed to jointly and equally share in parental responsibilities. This agreement would also set terms for parenting time and financial support in the case of separation. While not legally binding, it does provide some framework for a couple and could be referred to by a judge to establish the intentions of the couple.	\$350-\$500
Appointment of Guardian	A couple could set up an appointment of guardian, which would designate a person, often the non-legally related partner, to serve as the guardian of a child in the case of incapacitation or death of the legal parent. While this appointment is not necessarily legally binding, it does give the appointed person more standing to petition for permanent guardianship or adoption.	\$325-\$500
Donor Insemination Agreement	When a woman becomes pregnant using a known or unknown donor, the donor will often surrender any parental rights, either at the sperm bank (for an unknown donor) or through a donor insemination agreement (for a known donor). While these agreements may not be honored by a judge (in some cases depending on state statute), they can serve as important evidence of the intention of the woman being inseminated to parent without the parental involvement of the donor, and the intention of the donor to relinquish parenting rights.	\$325-\$500
Power of Attorney for Parental Authority	Depending on the state, a parent may be able to grant a power of attorney for parental authority for a child to another person, such as a same-sex partner. This document would allow the partner to make decisions about the care, custody and control of the child.	\$100-\$300
PROTECTING A FAMILY: DOCUMENTS PARTICULARLY IMPORTANT FOR LGBT PARENTS		
Document	What it does	How much it can cost
Divorce Proceedings for Transgender Parents	A divorce can be difficult to obtain without adequate legal representation, particularly in situations where a parent comes out as transgender and then separates from a partner. Transgender parents may face a difficult ex-spouse who tries to use the person's transgender status as a reason to withhold custody or to receive more alimony or child support, so it is often recommended that transgender parents obtain a lawyer.	\$5,000-\$15,000

## Interviewees

For this report, MAP interviewed more than 60 researchers, scholars, economists, attorneys and organization leaders who provided thought leadership, issue perspectives, strategic input and directional counsel. We gratefully recognize their willingness to share their time and expertise.

- **Clinton Anderson**, Director, Office of LGBT Concerns, American Psychological Association
- **Judy Appel**, Executive Director, Our Family Coalition
- **Jessica Arons**, Director, Women's Health and Rights Program, Center for American Progress
- **Katie Belanger**, Executive Director, Fair Wisconsin
- **Flor Bermudez**, Staff Attorney, Youth in Out-of-Home Care Project, Lambda Legal
- **Terry Boggis**, Director, Center Kids, Center Families, The LGBT Community Center (New York City)
- **Mary Bonauto**, Civil Rights Project Director, GLAD
- **Heather Boushey**, Senior Economist, Center for American Progress
- **Moira Bowman**, EMERJ Movement Building Director, Asian Communities for Reproductive Justice
- **Kristina Burrows**, Staff Attorney, California Rural Legal Assistance
- **Alexandra Cawthorne**, Research Associate, Poverty & Prosperity and Women's Health & Rights Programs, Center for American Progress
- **Cristy Chung**, Community Programs Director, GroundSpark
- **Cathy J. Cohen**, Professor of Political Science, University of Chicago
- **Matt Coles**, Director, Center for Equality, ACLU
- **Marta Cook**, Research Assistant, Faith & Progressive Policy Initiative, Center for American Progress
- **Donna Cooper**, Senior Fellow, Economic Policy, Center for American Progress
- **Joan Entmacher**, Vice President and Director, Family Economic Security, National Women's Law Center
- **James Esseks**, Director, LGBT & AIDS Project, ACLU
- **Pooja Gehi**, Director of Litigation and Advocacy, Sylvia Rivera Law Project
- **Mark Glaze**, Principal, The Raben Group
- **Ruben Gonzales**, Deputy Vice President, Resource Development, National Council of La Raza
- **Marissa Guerrero**, Doctoral Candidate, University of Chicago
- **Paulina Hernandez**, Co-Director, Southerners on New Ground (SONG)
- **Daryl Herrschaft**, Director, Workplace Project, Human Rights Campaign
- **Christine James-Brown**, President and CEO, Child Welfare League of America
- **Waldo E. Johnson, Jr.**, Associate Professor, School of Social Service Administration, University of Chicago
- **Ellen Kahn**, Family Project Director, Human Rights Campaign
- **Mary Kator**, Chief Counsel, Rainbow Law Center
- **Jessica Lee**, Racial Justice and Alliance Building Program Manager, Basic Rights Oregon
- **NTanya Lee**, Executive Director, Coleman Advocates for Children and Youth
- **Sharon J. Lettman-Hicks**, Executive Director and CEO, National Black Justice Coalition
- **Jodie Levin-Epstein**, Deputy Director, CLASP
- **Beth Littrell**, Staff Attorney, Lambda Legal
- **Eileen Lopez**, Family Recruitment Program Director, New York Council on Adoptable Children
- **Gerald P. Mallon**, Professor and Executive Director, National Resource Center for Permanency and Family Connections, Hunter College
- **Vivienne Ming**, Board of Directors, Our Family Coalition
- **Mignon Moore**, Associate Professor of Sociology, UCLA
- **Joy Moses**, Senior Policy Analyst, Poverty & Prosperity Program, Center for American Progress

- **Jeffrey T. Parsons**, Chair, Psychology Department, and Co-Director, Center for HIV Educational Studies & Training, Hunter College
- **Julia Po**, Program Coordinator, Our Family Coalition
- **Francine Ramsey**, Executive Director, Zuna Institute
- **Lisbeth Melendez Rivera**, Executive Director, UNID@S
- **Chad Ruppel**, Program Analyst, U.S. Department of Housing and Urban Development
- **Liz Schott**, Senior Fellow, Welfare Reform and Income Support Division, Center on Budget and Policy Priorities
- **Julie Shapiro**, Professor of Law, Seattle University School of Law
- **Arloc Sherman**, Senior Researcher, Center on Budget and Policy Priorities
- **Anna Marie Smith**, Professor of Government, Cornell University
- **Nadine Smith**, Executive Director, Equality Florida
- **Lavi S. Soloway**, Attorney, Masliah & Soloway
- **Tom Sullivan**, Deputy Director, Family Project, and Editor, Health Care Equality Index, Human Rights Campaign
- **Camilla Taylor**, Marriage Project Director, Lambda Legal
- **Harper Jean Tobin**, Policy Counsel, National Center for Transgender Equality
- **Michael Jose Torra**, Principal, The Raben Group
- **Dan Torres**, Project Manager, Proyecto Poderoso, National Center for Lesbian Rights and California Rural Legal Assistance
- **Kenneth D. Upton, Jr.**, Supervising Senior Staff Attorney, Lambda Legal
- **Luz Vega-Marquis**, President and CEO, Marguerite Casey Foundation
- **Barbara Warren**, Director, Center for LGBT Social Science & Public Policy, Hunter College
- **Bridget J. Wilson**, Attorney, Rosenstein, Wilson & Dean
- **Alan Wolberg**, Morgan Stanley Smith Barney
- **Portia Wu**, Vice President, National Partnership for Women and Families
- **Sylvia Yee**, Vice President of Programs, Evelyn & Walter Haas, Jr. Fund

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