



# Lesbian, Gay, Bisexual, Queer and Questioning Reproductive Justice

## LGBQQ Definitions

- Asexual: Refers to a person who does not experience sexual attraction.<sup>1</sup>
- Bisexual: Refers to a person who is sexually attracted to more than one gender.<sup>2</sup>
- Gay: Refers to someone who is sexually attracted to the same sex, or someone who is homosexual.<sup>3</sup>
- Lesbian: Refers to a woman who is sexually attracted to women.<sup>4</sup>
- LGBQQ: An acronym for Lesbian, Gay, Bisexual, Queer, and Questioning.
- Pansexual: Refers to a person who is sexually attracted to people regardless of their gender identity or biological sex.<sup>5</sup>
- Queer: Often used in reference to LGBQQ community (and can also include transgender and intersex people). Although this term was once considered derogatory and offensive, it has been “reclaimed” and is now widely used within the LGBQQ (sometimes called “queer”) community.
- Questioning: Refers to a person who is questioning their gender identity, sexual identity, or sexual orientation.

## The Road to Lawrence v. Texas (2003)

Lawrence v. Texas,<sup>6</sup> the landmark U.S. Supreme Court decision that held that a Texas anti-sodomy law was unconstitutional, emerged from Supreme Court reproductive rights precedents, such as Roe v. Wade, which established that the U.S. Constitution protects citizens’ privacy.<sup>7</sup>

- Lawrence overruled the prior precedent of Bowers v. Hardwick,<sup>8</sup> which denied the existence of a “fundamental right . . . to engage in sodomy.”<sup>9</sup>
- The decision recognized the freedom to participate in intimate sexual conduct between consenting adults as a liberty interest protected by substantive due process under the Fourteenth Amendment.<sup>10</sup>
- Lawrence suggests that moral animus toward same-sex sexual conduct does not sufficiently justify anti-LGBQQ legislation.<sup>11</sup>

## Marriage Equality After Lawrence v. Texas

Even after the U.S. Supreme Court appointments of conservative Justices Samuel Alito and John Roberts, the majority in Lawrence v. Texas included Justices Stevens, Ginsburg, Kennedy, Souter, and Breyer. Thus, the current Court probably will not overturn this important LGBQQ case. As Justice Scalia notes in his Lawrence dissent, the case calls same-sex marriage prohibitions into question.<sup>12</sup> Still, only five states legally recognize same-sex marriage.<sup>13</sup>

- Forty-one states have statutory “Defense of Marriage Acts” (DOMAs), which prohibit same-sex marriage.<sup>14</sup> Thirty states have “defense of marriage” constitutional amendments.<sup>15</sup>
- Nine states and Washington D.C. recognize same-sex civil unions or domestic partnerships.<sup>16</sup>
- Massachusetts, Iowa, Connecticut and Vermont are the only states that currently issue marriage licenses to same-sex couples.<sup>17</sup>

## LGBQQ Adoption

LGBQQ couples continue to face discriminatory obstacles, both legal and extralegal, in adopting children.

- Lesbian, gay and bisexual individuals can adopt in every state other than Florida.<sup>18</sup>
- Nine states and Washington D.C. explicitly allow second-parent adoption by the partner of a same-sex parent; four states explicitly do not allow this.<sup>19</sup>



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- Ten states and Washington D.C. explicitly allow same-sex couples to jointly petition for adoption; five states explicitly do not allow this.<sup>20</sup>

## LGBQQ Child Custody Obstacles

LGBQQ parents struggle to gain legal recognition of their parental relationships with their children.

- In the Texas case of *Ward v. Ward* the court took custody away from a lesbian mother who had been raising their child alone for years, and awarded custody to the child's father, who had been convicted of second degree murder in the death of his first wife.<sup>21</sup> The judge expressed a need for the Ward child to grow up in a "nonlesbian world."<sup>22</sup>

## LGBQQ Healthcare

LGBQQ people may face a wide variety of obstacles and fears in the realm of healthcare.

- Some LGBQQ people have barriers to accessing healthcare because they may have marriages that are not legally recognized, so they are unable to benefit from their spouse's health insurance coverage.<sup>23</sup>
- In 2007 Janice Langbehn and Lisa Pond (her wife, where legally recognized) traveled with their three children to Florida.<sup>24</sup> Pond collapsed from a brain aneurysm while in Florida with her partner. Langbehn and their three children were not allowed to visit Pond during her dying hours because Florida did not legally recognize their marriage and only immediate family members were allowed in the hospital room.<sup>25</sup>

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<sup>1</sup> Sikh Women, Human Sexuality: Common Definitions, available at [http://www.sikhwomen.com/Sexuality/Common\\_Sex\\_Definitions.htm](http://www.sikhwomen.com/Sexuality/Common_Sex_Definitions.htm) (last visited Apr. 15, 2009) [hereinafter Sikh Women].

<sup>2</sup> University College London, Sexual Orientation – Recognition and Awareness of the Discrimination Facing Lesbian Gay and Bisexual People, available at [http://www.ucl.ac.uk/hr/docs/lgb\\_discrimination.php](http://www.ucl.ac.uk/hr/docs/lgb_discrimination.php) (last visited Apr. 15, 2009).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Lesbian Worlds, Glossary of Terms: Pansexual, available at [http://www.lesbianworlds.com/glossary/def\\_pansexual.htm](http://www.lesbianworlds.com/glossary/def_pansexual.htm) (last visited Apr. 15, 2009).

<sup>6</sup> 539 U.S. 558 (2003).

<sup>7</sup> Id. at 564-65.

<sup>8</sup> 478 U.S. 186 (1986).

<sup>9</sup> Id. at 191. The Lawrence court framed the right as one concerning the autonomy and "dignity of free persons." Lawrence, 539 U.S. at 567.

<sup>10</sup> Id. at 578.

<sup>11</sup> Id. at 582 (O'Connor, J., concurring).

<sup>12</sup> Id. at 601.

<sup>13</sup> The National Conference of State Legislatures, Same Sex Marriage, Civil Unions and Domestic Partnerships, <http://www.ncsl.org/programs/cyf/samesex.htm> (last visited Apr. 14, 2009) [hereinafter National Conference].

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Christine Nelson, The National Conference of State Legislatures, Civil Unions & Domestic Partnership Statutes, Mar. 2008, <http://www.ncsl.org/programs/cyf/samesex.htm>.

<sup>17</sup> National Conference, *supra* note 13.

<sup>18</sup> Human Rights Campaign, Adoption Laws: State by State, available at <http://www.hrc.org/issues/parenting/adoptions/8464.htm> (last visited Apr. 15, 2009).

<sup>19</sup> Id.

<sup>20</sup> Id.



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<sup>21</sup> Kathryn Kendell, *Debunking Myths About Lesbian and Gay Parents and Their Children*, 20 *SUMMER FAM. ADVOCATE* 21, 25-26 (1997).

<sup>22</sup> *Id.*

<sup>23</sup> Kara S. Suffredini & Madeleine V. Findley, *Speak Now: Progressive Considerations on the Advent of Civil-Marriage for Same-Sex Couples*, 45 *B.C. L. REV.* 595, 610 (2004).

<sup>24</sup> *Why We Can't be Silent*, *The Republic of T.*, Jun. 18, 2007, available at <http://www.republicoft.com/2007/06/18/why-we-cant-be-silent/>.

<sup>25</sup> *Id.*