



Reproductive Justice for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Questioning (LGBTQIQ) Individuals

Definitions

- **Asexual:** Refers to a person who does not experience sexual attraction.¹
- **Bisexual:** Refers to a person who is sexually attracted to both sexes.²
- **Gay:** Refers to a man who is sexually attracted to men; also refers to a person who is homosexual.³ In this Fact Sheet, the term “gay” refers to anyone who identifies as homosexual.
- **Gender Identity:** Refers to a person’s internal sense of being male, female, or gender non-conforming (“genderqueer”⁴).⁵
- **Intersex:** Refers to a person who is born with nonstandard internal and/or external genital anatomy, such that it is often difficult to assign gender at birth or later.⁶ For more information, see the LSRJ fact sheet, [Intersex Rights and Reproductive Justice](#).⁷
- **Lesbian:** Refers to a woman who is sexually attracted to women.⁸
- **LGBTQIQ:** An acronym for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Questioning. The acronym can include fewer or other letters, and the order of the letters can vary.⁹
- **Pansexual:** Refers to a person who is sexually attracted to people regardless of their gender identity or biological sex.¹⁰
- **Queer:** An umbrella term that describes anyone who does not identify as “the norm.”¹¹ Although the term was once considered derogatory and offensive, the community reclaimed it and now uses it widely.¹²
- **Questioning:** Refers to a person is in doubt about hir¹³ gender identity, sexual identity, or sexual orientation.¹⁴
- **Sexual Orientation:** Refers to a person’s permanent emotional, romantic, or sexual feelings toward other people.¹⁵
- **Transgender:** Refers to a person whose biological sex does not match hir gender identity.¹⁶ For more information, see the LSRJ fact sheet, [Reproductive Justice in the Transgender Community](#).¹⁷

Lawrence v. Texas (2003)

In *Lawrence v. Texas*, the Supreme Court held Texas’s anti-sodomy law¹⁸ unconstitutional.¹⁹ The Court relied on precedents like *Roe v. Wade*, which established sex- and reproduction-related rights to liberty under the Due Process Clause.²⁰ The decision:

- Overruled *Bowers v. Hardwick* (1986), in which the Supreme Court denied the existence of a “fundamental right to homosexuals to engage in consensual sodomy.”²¹ *Bowers* had provided justification for other courts’ upholding an array of discriminatory practices, from biased employment policies²² to bigoted adoption laws.²³
- Built on *Romer v. Evans* (1996), in which the Supreme Court struck down a Colorado constitutional amendment that would have prohibited state actions designed to protect homosexuals.²⁴
- Recognized the freedom of consenting adults to participate in intimate sexual conduct, as a liberty interest protected by substantive due process under the Fourteenth Amendment.²⁵
- Suggested that moral animus toward homosexual conduct is not sufficient to justify anti-gay legislation.²⁶

Marriage Equality

Lawrence, as noted by Justice Scalia in his dissent, called same-sex marriage prohibitions into question.²⁷ Since *Lawrence*, popular acceptance of same-sex marriage has increased in the U.S. As of July 2011:



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- Connecticut, Iowa, Massachusetts, New Hampshire, New York, Vermont, and the District of Columbia issue marriage licenses to same-sex couples.²⁸
- Maryland, New York, and Rhode Island recognize same-sex marriages performed outside the state.²⁹
- Delaware, Hawaii, Illinois, New Jersey, and Rhode Island allow same-sex civil unions.³⁰
- California, Hawaii, Maine, Nevada, Oregon, Washington, Wisconsin, and the District of Columbia provide, to varying degrees, state spousal rights to unmarried couples.³¹

In the past few years, gay rights advocates have won high-profile court victories:

- In *Goodridge v. Dep't of Pub. Health* (2003), the Massachusetts Supreme Court held that denying same-sex couples the right to marry violated the liberty and equality protections of the state constitution.³² Following the ruling, Massachusetts became the first state to issue marriage licenses to same-sex couples.³³
- In *In re Marriage Cases* (2008), the California Supreme Court held that a statutory ban on same-sex marriage violated numerous provisions of the state constitution.³⁴ Between June 2008, when the ruling went into effect, and November 2008, approximately 18,000 gay couples got married.³⁵ In November 2008, however, voters approved Proposition 8, which amended the California Constitution to prohibit same-sex marriage.³⁶
- In *Perry v. Schwarzenegger* (2010), a federal district court ruled Proposition 8 unconstitutional.³⁷ As of July 2011, the case remains pending before the Ninth Circuit Court of Appeals. The case has garnered national attention because of the possibility that it will be heard by the Supreme Court.³⁸

At the same time, however, there has been anti-gay backlash against marriage equality:

- Thirty-nine states have statutory **Defense of Marriage Acts (DOMAs)** that define marriage as between a man and a woman, thus effectively banning same-sex marriage.³⁹ Most of these states also have constitutional provisions to the same effect.⁴⁰ The trend began in 1998, when Alaska and Hawaii became the first states to amend their constitutions to include this definition.⁴¹ Nebraska followed in 2000 and Nevada in 2002.⁴²
- Most state DOMAs mimic the wording or intent of the **federal DOMA**, passed in 1996.⁴³ Although the federal DOMA does not affect marriage recognition at the state level, it nonetheless has far-reaching effects. For example, bi-national same-sex marriages are not considered valid for immigration purposes, regardless of their legality in the country in which they were performed.⁴⁴
- In a stunning reversal of policy, the Department of Justice (DOJ) released a memo in February 2011 calling the federal DOMA unconstitutional.⁴⁵ It announced that the DOJ would no longer defend DOMA in two current lawsuits or in any future legal challenges.⁴⁶ Between February and July 2011, the DOJ announced that it would not defend two additional lawsuits,⁴⁷ and in two other challenges, it intervened on Plaintiffs' behalf.⁴⁸

LGBTQIQ Families & Parenting

LGBTQIQ couples face discriminatory social and legal obstacles to having, adopting, and gaining custody of children⁴⁹:

- In 1999, doctors in California refused to treat Guadalupe Benitez for infertility, claiming that because she was a lesbian, their religious beliefs entitled them to withhold care.⁵⁰ Benitez sued under the state's Unruh Civil Rights Act, and in August 2008, the California Supreme Court unanimously held that a business establishment cannot violate state anti-discrimination laws because of its employees' religious beliefs.⁵¹



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- At this time, although no state statute *categorically* prohibits same-sex couples from adopting,⁵² Mississippi and Utah statutes *effectively* do so.⁵³
- Until recently, Florida was the only state with a statute⁵⁴ that categorically prohibited a gay person from adopting.⁵⁵ In 2010, Florida's Third District Court of Appeals held that the statute violated the Equal Protection Clause of the Florida Constitution.⁵⁶ Subsequently, the Florida Department of Children and Families issued a memorandum ordering personnel to stop questioning prospective adopters about their sexual orientation and to stop considering sexual orientation as an adoption factor.⁵⁷
- Courts in other states have denied same-sex couples adoption rights. For example, in Michigan, courts have ruled that unmarried couples cannot jointly petition to adopt,⁵⁸ and an Arizona court of appeals held that sexual orientation may be considered a factor in denying adoption rights.⁵⁹
- A gay person wishing to "co-adopt" his or her partner's child also faces discriminatory state jurisprudence. Courts in Kentucky, Nebraska, North Carolina, Ohio, and Wisconsin have held that state law prohibits second parent adoptions.⁶⁰
- Some judges take sexual orientation into account in custody hearings. In *Ward v. Ward*, a Florida court took custody away from a lesbian mother who had entered a new relationship, even though she had not exposed her child to inappropriate sexual content or behavior.⁶¹ The judge instead awarded custody to the child's father, who had been convicted of second-degree murder in the death of his first wife.⁶²

Nonetheless, statutes and jurisprudence offer some protections to same-sex couples wishing to adopt and gay people petitioning for custody:

- Sixteen states and Washington D.C. explicitly allow same-sex couples to jointly petition for adoption.⁶³
- Ten states and Washington D.C. explicitly allow second-parent adoption by the partner of a same-sex parent.⁶⁴ In April 2011, the Arkansas Supreme Court struck down a 2008 state law which barred same-sex and other unmarried couples from adopting or fostering children.⁶⁵
- In May 2011, the U.S. House of Representatives reintroduced the **Every Child Deserves a Family Act**, which would prohibit states from denying or delaying adoption or foster care placements because of the sexual orientation, marital status, or gender identity of the potential parents.⁶⁶
- In *Miller-Jenkins v. Miller-Jenkins*, the Vermont Supreme Court ruled that a biological mother's former same-sex partner, with whom she had a civil union, was a legal parent to their daughter and was therefore entitled to visitation rights.⁶⁷ The biological mother had moved the daughter to Virginia and had brought an action there to stop visitation, relying on Virginia's anti-gay Marriage Affirmation Act.⁶⁸

LGBTQIQ Issues in the Schools

- A 2009 survey questioned 7,261 LGBT students about their experiences in middle and high school in that past year. 84.6% were verbally harassed, 40.1% were physically harassed, and 18.8% were physically assaulted because of their sexual orientations or gender identities.⁶⁹
- LGBTQIQ students can face discrimination from the larger community as well. For example, in Mississippi, Constance McMillen's school opted to cancel prom rather than allow her to wear a tuxedo and attend with her girlfriend.⁷⁰ After a court held that the school could not prevent McMillen from attending, a group of parents offered to host another prom. Constance was not invited. Both proms took place with the school's knowledge, on the same night, but Constance and six other students were the only attendees at the school-sponsored "fake" prom.⁷¹



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Some states and the federal government have responded with anti-bullying laws and regulations:

- As of January 2011, three states have laws that protect students specifically on the basis of sexual orientation.⁷² Another fourteen states have statutes that protect students both on the basis of sexual orientation or gender identity.⁷³ Most recently, in January 2011, New Jersey passed a comprehensive LGBT-related anti-bullying statute that closes some of the loopholes in other states' laws.⁷⁴
- Two pieces of 2011 federal legislation address the problem: The **Student Nondiscrimination Act** would prohibit public schools that receive federal funds from discriminating on the basis of sexual orientation or gender identity.⁷⁵ The **Safe Schools Improvement Act** would require public schools through grade twelve that receive federal funding to implement policies to prevent bullying on the basis of sexual orientation or gender identity.⁷⁶

LGBTQIQ Health Care

Most states condone discriminatory regulations that impede gay peoples' access to health insurance:

- If a gay couple lives in a state that prohibits gay marriage, employers often do not have to insure one partner under the other's health care plan.⁷⁷ The result is that partnered homosexual couples are twice as likely as married heterosexual couples to be uninsured.⁷⁸
- Overall, nearly one in four people in a same-sex relationship do not have health insurance.⁷⁹

In states that do not recognize same-sex marriages, gay couples also face discrimination in health care settings:

- In 2007, longtime partners Janice Langbehn and Lisa Pond traveled with their three children to Florida. During their trip, Pond collapsed from a brain aneurysm. Unfortunately, Florida did not legally recognize their marriage, and the hospital only allowed immediate family members in the hospital room. Therefore, Langbehn and their adopted children were not allowed to visit Pond during her dying hours.⁸⁰

However:

- Some courts have held these barriers unconstitutional. For example, in 2005, the Alaska Supreme Court held that since gay people could not marry, the state's conditioning government employee benefits on marital status violated the Equal Protection Clause of the state constitution.⁸¹
- Some states have closed the gay/straight health care gap. For example, AB 205, California's comprehensive domestic partnership legislation, mandates that domestic partners receive the same set of state benefits as married couples.⁸²
- In 2011, United States Senators and Representatives reintroduced the **Tax Parity for Health Plan Beneficiaries Act**, which would equalize tax treatment of employer-based health coverage for domestic partners.⁸³
- In April 2010, President Obama directed the Department of Health and Human Services to promulgate regulations "respect[ing] the rights of patients to designate visitors" and to recommend actions "to address hospital visitation, medical decision-making, or other health care issues that affect LGBT patients and their families."⁸⁴



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LGBTQIQ Employment

LGBTQIQ people face employment discrimination:

- Twenty-nine states do not prohibit employment discrimination on the basis of sexual orientation, and thirty-five states do not prohibit employment discrimination on the basis of gender identity.⁸⁵
- In *Boy Scouts of America v. Dale* (2000), the Supreme Court held that a New Jersey anti-discrimination law could not be interpreted to require Boy Scouts of America to accept openly gay troop leaders, as this violated the group's First Amendment rights to free expression and association.⁸⁶ Although the holding has limited scope, it does allow discrimination against homosexuals by groups that exist for the purpose of expressing views or ideas.⁸⁷

Nonetheless, there has also been positive federal legislation and jurisprudence:

- A Brief History of the “**Don’t Ask, Don’t Tell**” Policy:
 - In 1993, President Clinton signed the “Don’t Ask Don’t Tell” (DADT) policy. The policy authorized the military to fire a soldier who participated in homosexual acts, admitted to being gay, or married or attempted to marry a person of the same sex.⁸⁸
 - In March 2010, however, Secretary Robert Gates announced the military would ease enforcement of the DADT policy.⁸⁹
 - In December 2010, President Obama signed the **Don’t Ask Don’t Tell Repeal Act of 2010**,⁹⁰ repealing DADT if a government inquiry determined it would not negatively affect national security.⁹¹ On July 22nd 2011, after completion of this inquiry, President Obama formally certified that repeal of DADT would be enacted on September 20th.⁹²
- Meanwhile, in September 2010, a district judge in California ruled the DADT policy unconstitutional, and issued a “worldwide injunction” against further military discharges on the basis of sexual orientation.⁹³ In July 2011, the Ninth Circuit Court of Appeals lifted a stay against the injunction, effectively upholding the ruling.⁹⁴
- In 2011, Senators reintroduced the **Federal Employment Non-Discrimination Act (ENDA)**, which would prohibit workplace discrimination based on sexual orientation or gender identity.⁹⁵ The law would apply to government and private employers with more than fifteen employees,⁹⁶ but would exempt the military⁹⁷ and certain religious organizations.⁹⁸

A 2006 case brought these issues together: In *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, an association of law schools and faculties relied on *Boy Scouts of America* to challenge the Solomon Amendment (a policy that makes federal funds contingent on a school's permitting military recruitment on campus).⁹⁹ Plaintiffs argued they had a First Amendment right to prevent military recruitment on campus, in light of the military's discriminatory DADT policy.¹⁰⁰ The Supreme Court, however, held that the Solomon Amendment did not force the schools to associate with the military, and thus did not violate the schools' First Amendment rights. Therefore, schools could not bar military recruitment on ideological grounds.¹⁰¹

LGBTQIQ Racial & Economic Disparities

LGBTQIQ people experience greater racial and economic disparities than similarly-situated heterosexuals. For example:

- Children raised in same-sex households are twice as likely to live in poverty as those raised in heterosexual married households.¹⁰²
- Lesbian couples age 65 and older are twice as likely to be poor as heterosexual married couples.¹⁰³



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- Black female same-sex couples have a median income of \$21,000 less than white female same-sex couples.¹⁰⁴ Black male same-sex couples have a median income of \$23,000 less than white male same-sex couples.¹⁰⁵
- Same-sex couples living in rural areas are poorer than their married counterparts.¹⁰⁶ They also experience poverty rates twice as high as same-sex couples living in large metropolitan areas.¹⁰⁷
- In New York, 17% of all Asian same-sex households, and 26% of Asian female same-sex households, earned less than \$25,000.¹⁰⁸
- Between 20% and 40% of all homeless youth identify as LGBT.¹⁰⁹ One survey found that majority of the homeless LGBT adults in New York are people of color.¹¹⁰

¹ *Overview*, AVEN: THE ASEXUAL VISIBILITY AND EDUC. NETWORK, <http://www.asexuality.org/home/overview.html> (last visited June 27, 2011).

² *Stylebook Supplement on LGBT Terminology*, NAT'L LESBIAN & GAY JOURNALISTS ASS'N (NLGJA), http://nljja.org/resources/stylebook_english.html (last visited June 27, 2011).

³ *Id.* Some people, however, consider the term “homosexual” inappropriate, because it has a “history of being used to suggest that gays and lesbians are somehow diseased or psychologically/emotionally disordered.” *LGBT Terms, Concepts, and Acronyms*, FLYING THROUGH LIFE, <http://flyingthroughlife.com/Terms.html> (last visited June 27, 2011).

⁴ *What is Genderqueer?* GENDERQUEER IDENTITIES, <http://genderqueerid.com/what-is-gq> (last visited July 10, 2011).

⁵ *Glossary of Terms*, PARENTS, FAMILIES & FRIENDS OF LESBIANS & GAYS (PFLAG), <http://community.pflag.org/Page.aspx?pid=1148> (last visited June 27, 2011).

⁶ *Id.* For more information on “intersex” as part of the acronym, see Gina, *[Op/Ed] Stop Erasing Intersex with Yet More Acronyms like GLB(SGD)Q*, INTERSEX IN AUSTRALIA (Mar. 9, 2010), <http://oiaustralia.com/7053/oped-stop-erasing-intersex-acronyms>.

⁷ LAW STUDENTS FOR REPROD. JUSTICE, FACT SHEET, INTERSEX RIGHTS AND REPRODUCTIVE JUSTICE (2010), available at http://lsrj.org/documents/10_Intersex%20Rights%20and%20RJ.pdf.

⁸ NLGJA, *supra* note 2.

⁹ For a discussion of the evolution and significance of queer acronyms, see Amanda Hess, *Ladies First: Does D.C. Have a GLBT Community or an LGBT One?*, WASH. CITY PAPER, May 19, 2010, available at <http://www.washingtoncitypaper.com/blogs/sexist/2010/05/19/ladies-first-does-dc-have-a-glbt-community-or-an-lgbt-one>.

¹⁰ *Pansexual*, LESBIAN WORLDS, http://www.lesbianworlds.com/glossary/def_pansexual.htm (last visited June 27, 2011).

¹¹ OFFICE OF BISEXUAL, GAY, LESBIAN, AND TRANSGENDER CONCERNS, UNITARIAN UNIVERSALIST ASS'N, QUEER 102 1 (Oct. 1, 2001), available at <http://archive.uua.org/obgltc/resource/queer102.pdf>.

¹² *Id.* at 1.

¹³ “Hir” is a common gender-neutral pronoun used by the queer community. See *Gender Neutral Pronoun Usage*, TRANS AT MIT, <http://web.mit.edu/trans/GenderNeutralPronouns.pdf> (last visited June 27, 2011).

¹⁴ FLYING THROUGH LIFE, *supra* note 3.

¹⁵ PFLAG, *supra* note 4.

¹⁶ NLGJA, *supra* note 2.

¹⁷ LAW STUDENTS FOR REPROD. JUSTICE, FACT SHEET, REPRODUCTIVE JUSTICE IN THE TRANSGENDER COMMUNITY (2010), available at http://lsrj.org/documents/10_RJ%20in%20the%20Transgender%20Community.pdf.

¹⁸ TEX. PENAL CODE ANN. § 21.06(a) (2003) states that, “[a] person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.” “Deviate sexual intercourse” is defined as, “any contact between any part of the genitals of one person and the mouth or anus of another person; or the penetration of the genitals or the anus of another person with an object.” *Id.* at § 21.01(1).

¹⁹ *Lawrence v. Texas* 539 U.S. 558, 578 (2003).

²⁰ *Id.* at 564-68. The Court framed the right as one concerning the autonomy and “dignity of free persons.” *Id.* at 567.

²¹ *Bowers v. Hardwick*, 478 U.S. 186, 192 (1986).

²² See *Padula v. Webster*, 822 F.2d 97, 103 (D.C. Cir. 1987) (reasoning that if there is no fundamental right to engage in sodomy, and if states can criminalize the behavior, then the court could not treat homosexuals as a suspect or quasi-suspect class).

²³ See Appeal in Pima County Juvenile Action B-10489, 727 P.2d 830, 835 (1986) (reasoning that “[i]t would be anomalous for the state on the one hand to declare homosexual conduct unlawful and on the other create a parent



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after that proscribed model").

²⁴ *Romer v. Evans*, 517 U.S. 620, 623 (1996).

²⁵ *Lawrence*, 539 U.S. at 578.

²⁶ *Id.* at 582 (O'Connor, J., concurring). See also *Gonzales v. Carhart*, 550 U.S. 124, 182-83 (2007) (Ginsburg, J., dissenting) (citing *Lawrence* as supporting precedent for the view that the state cannot force a moral code onto society).

²⁷ *Lawrence*, 539 U.S. at 604.

²⁸ *Same-Sex Marriage, Civil Unions, and Domestic Partnerships*, NAT'L CONF. OF STATE LEGS., <http://www.ncsl.org/default.aspx?tabid=16430> (last updated June 27, 2011).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968-69 (Mass. 2003).

³³ *Same-sex couples ready to make history in Massachusetts*, CNN JUSTICE, http://articles.cnn.com/2004-05-17/justice/mass.gay.marriage_1_lesbian-couples-marriage-law-federal-constitutional-amendment?_s=PM:LAW (last updated May 17, 2004).

³⁴ *In re Marriage Cases*, 183 P.3d 384, 446 (2008).

³⁵ Jonathon Lloyd, *California Supreme Court Upholds Prop 8*, NBC LA, Jan. 7, 2010, available at <http://www.nbclosangeles.com/news/local/California-Supreme-Court-to-Reveal-Prop-8-Decision-Tuesday.html>.

³⁶ See CALIF. CONST. art 1 § 7.5; CALIF. SEC'Y OF STATE, STATEMENT OF VOTE: NOVEMBER 4, 2008, GENERAL ELECTION 6 (2008), available at http://www.sos.ca.gov/elections/sov/2008_general/sov_complete.pdf.

³⁷ *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 1003 (N.D. Cal. 2010), stay granted pending appeal, No. 10-16696, 2010 WL 3212786 (9th Cir. 2010).

³⁸ Margaret Talbot, *A Risky Proposal: Is it Too Soon to Petition the Supreme Court on Gay Marriage?*, NEW YORKER, Jan 8, 2010, available at http://www.newyorker.com/reporting/2010/01/18/100118fa_fact_talbot.

³⁹ NAT'L CONF. OF STATE LEGS., *supra* note 28.

⁴⁰ *Id.* A federal district court, however, invalidated the California constitutional provision in August, 2010. See *Perry*, *supra* note 37.

⁴¹ ALASKA CONST. art 1 § 1.25; HAW. CONST. art 1 § 23. For a timeline of anti-gay constitutional amendments, see *Gay Marriage Timeline*, PEW FORUM, <http://pewforum.org/Gay-Marriage-and-Homosexuality/Gay-Marriage-Timeline.aspx> (last updated Apr. 1, 2008).

⁴² NEB. CONST. art 1 § 29; NEV. CONST. art 1, § 21.

⁴³ Defense of Marriage Act, 28 U.S.C. § 1738C and 1 U.S.C. § 7(3) (1996).

⁴⁴ CHARLES GORDON, ET. AL, IMMIGRATION LAW AND PROCEDURE 36.02 (2011). The federal DOMA affects the roughly 35,820 same-sex couples that, according to the last census, are bi-national. GARY GATES, BI-NATIONAL SAME-SEX UNMARRIED PARTNERS IN CENSUS 2000: A DEMOGRAPHIC PORTRAIT 1 (2005), available at http://www.law.ucla.edu/williamsinstitute/publications/Binational_Report.pdf.

⁴⁵ Press Release, U.S. Attorney General Eric Holder, Statement of the Att'y Gen. on Litig. Involving the Defense of Marriage Act (Feb. 23, 2011), <http://www.justice.gov/opa/pr/2011/February/11-ag-222.html>.

⁴⁶ *Id.*

⁴⁷ Letter from Tony West, Assistant Att'y Gen., to U.S. Ct. of App. for the 1st Cir., (Feb. 24, 2011).

⁴⁸ See Defendants' Brief in Opposition of Motion to Dismiss, Case3:10-cv-00257-JSW (Jul 1, 2011); Response in Support of Petition for Initial Hearing En Banc., Case Nos.: 10-2204, 10-2207, and 10-2214 (July 7, 2011).

⁴⁹ For articles about current LGBT parenting issues, see *Families & Parenting, Publications & Downloads*, NAT'L CTR. LESBIAN RIGHTS, http://www.nclrights.org/site/PageServer?pagename=issue_families_docsDownloads (last visited July 7, 2011).

⁵⁰ Jason Howe, *California Supreme Court Rules in Favor of Lambda Legal Lesbian Client Denied Infertility Treatment by Christian Fundamentalist Doctors*, LAMBDALEGAL.ORG (Aug. 18, 2008), http://www.lambdalegal.org/news/pr/ca_20080818_ca-supreme-court-rules-in-favor-lesbian-infertility-treatment.html.

⁵¹ *N. Coast Women's Care Med. Group, Inc. v. San Diego Cty. Super. Ct.*, 189 P.3d 959, 966, 968 (Cal. 2008) (also holding that there is "no federal constitutional right to an exemption from a neutral and valid law of general applicability on the ground that compliance with that law is contrary to the objector's religious beliefs").

⁵² NAT'L CTR. FOR LESBIAN RIGHTS, ADOPTION BY GAY, LESBIAN, AND BISEXUAL PARENTS: AN OVERVIEW OF CURRENT LAW 2-3 (June 2011), available at <http://www.nclrights.org/site/DocServer/adptn0204.pdf?docID=1221> [hereinafter HCLR GLB].

⁵³ Mississippi law prohibits couples of the same gender from adopting. MISS CODE ANN. §93-17-3(2).

Utah law prohibits couples that are not legally married from adopting. UTAH CODE ANN. §78B-6-117(3)(b).



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- ⁵⁴ Fla. Stat. § 63.042(3) (2009), which stated, “[n]o person eligible to adopt under this statute may adopt if that person is a homosexual.”
- ⁵⁵ HCLR GLB, *supra* note 52, at 2-3.
- ⁵⁶ Fla. Dep’t of Children & Families v. X.X.G., 45 So.3d 79, 92 (Fla. Ct. App. 2010).
- ⁵⁷ *Id.*
- ⁵⁸ HUMAN RIGHTS CAMPAIGN, PARENTING LAWS: JOINT ADOPTION 1 (2011), available at http://www.hrc.org/documents/parenting_laws_maps.pdf.
- ⁵⁹ *Appeal in Pima County Juvenile Action B-10489*, 727 P.2d at 834.
- ⁶⁰ EREZ ALONI, UNIV. OF PA., CLONING AND THE LGBTI FAMILY 13 (Jan. 2011), available at http://works.bepress.com/erez_aloni/2.
- ⁶¹ Ward v. Ward, 742 So. 2d 250, 252-53 (1996).
- ⁶² *Id.* at 254-55.
- ⁶³ HUMAN RIGHTS CAMPAIGN, *supra* note 58, at 1. These states are: AK, CA, CO, CT, IL, IN, IA, ME, MA, NV, NH, NJ, NY, OR, VT, WA. *Id.* Same-sex couples have also successfully petitioned for adoption in some jurisdictions in Minnesota. *Id.* In addition, after January 1, 2012, Hawaii and Delaware will begin recognizing civil unions and will allow both joint and second parent adoptions by gay couples. NAT’L CTR. FOR LESBIAN RIGHTS, ADOPTION BY LGBT PARENTS 1 (2011), available at http://www.nclrights.org/site/DocServer/2PA_state_list.pdf?docID=3201.
- ⁶⁴ HUMAN RIGHTS CAMPAIGN, *supra* note 58, at 3. These states are: AK, CA, CO, CT, IL, MA, NJ, NY, PA, VT. An additional sixteen states allow second parent adoption in some jurisdictions. *Id.*
- ⁶⁵ Ark. Dep’t of Human Servs. v. Cole, 2011 Ark. LEXIS 131, 2 (2011) (pagination subject to change upon publication of final opinion).
- ⁶⁶ Every Child Deserves a Family Act, H.R. 1681, 112th Cong. § (3)(a)(1) (2011).
- ⁶⁷ Miller-Jenkins v. Miller-Jenkins, 12 A.3d 768, 778 (Vt. 2010).
- ⁶⁸ *Miller-Jenkins v. Miller-Jenkins*, GLAD, <http://www.glad.org/work/cases/miller-jenkins-v-miller-jenkins> (last updated Apr. 22, 2010). Virginia’s Marriage Affirmation Act states that “[a] civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.” VA. CODE ANN. § 20-45.3 (2011).
- ⁶⁹ Joseph G. Kosciw, et al., GAY, LESBIAN, AND STRAIGHT EDUC. NETWORK, 2009 NATIONAL SCHOOL CLIMATE SURVEY xvi (2009), available at <http://www.glsen.org/cgi-bin/iowa/all/news/record/2624.html>.
- ⁷⁰ Candace Gingrich-Jones, *Prom Shocker: Constance McMillan Invited to Fake Prom*, HUFFINGTON POST (Apr. 6, 2010, 2:40 PM), http://www.huffingtonpost.com/candace-gingrich/prom-shocker-constance-mc_b_527280.html.
- ⁷¹ *Id.*
- ⁷² JEROME HUNT, CTR. FOR AM. PROGRESS, BULLYING SHOULD NOT BE A TEENAGE RIGHT OF PASSAGE 4 (Feb. 2011), available at http://www.americanprogress.org/issues/2011/02/pdf/antigay_bullying.pdf.
- ⁷³ *Id.*
- ⁷⁴ *Id.* at 5.
- ⁷⁵ Student Non-Discrimination Act of 2011, H.R. 998, S. 555, 112th Cong. § 4 (2011).
- ⁷⁶ Safe Schools Improvement Act, H.R. 1648, S. 506, 112th Cong. § 3 (2011).
- ⁷⁷ See Celeste Lavin, *Study: Gay marriage bans lead to lack of health insurance*, 365 GAY (June 24, 2010, 3:05 PM EDT), <http://www.365gay.com/news/study-gay-marriage-bans-lead-to-lack-of-health-insurance> (reporting on the findings of a 2010 Department of Health Services at UCLA/Lambda Legal study).
- ⁷⁸ *Id.*
- ⁷⁹ QUEERS FOR ECONOMIC JUSTICE, TIDAL WAVE: LGBT POVERTY AND HARDSHIP IN A TIME OF ECONOMIC CRISIS 7 (2009), available at <http://www.q4ej.org/Documents/qejtidalwave.pdf>.
- ⁸⁰ Tara Parker-Pope, *Kept from a Dying Partner’s Bedside*, N.Y. TIMES, May 18, 2009, available at <http://www.nytimes.com/2009/05/19/health/19well.html>.
- ⁸¹ Alaska Civil Liberties Union v. State of Alaska, 122 P.3d 781,794 (Alaska 2005).
- ⁸² Calif. Fam. Code § 297.5(a)(b) (2009). For more information on AB 205, see JON W. DAVIDSON, AB 205 (THE DOMESTIC PARTNERS RIGHTS AND RESPONSIBILITIES ACT OF 2003 AND ITS IMPACT ON CITIES (2004), available at <http://data.lambdalegal.org/pdf/465.pdf>.
- ⁸³ Tax Parity for Health Plan Beneficiaries Act, H.R. 2088, S. 1171, 112th Cong. (2011).
- ⁸⁴ Memorandum from Barack Obama, President of the U.S., to the Sec’y of Health and Human Servs. (Apr. 15, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation>.
- ⁸⁵ WILLIAMS INST., DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT 15-2 (2009), available at http://www.law.ucla.edu/williamsinstitute/programs/EmploymentReports_ENDA.html (click on hyperlink “15. Analysis of State Laws and Executive Orders Prohibiting Employment Discrimination on the Basis of Sexual Orientation and Gender Identity”).



Reproductive Justice for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Questioning (LGBTQIQ) Individuals

⁸⁶ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 661 (2000). For a discussion of *Dale*'s impact, see Charles Bierbauer & Reuters, *Supreme Court Says Boy Scouts Can Bar Gay Troop Leaders*, CNN.com, June 28, 2000, <http://archives.cnn.com/2000/LAW/06/28/scotus.gay.boyscouts>.

⁸⁷ *U.S. Supreme Court Ruling that Boy Scouts can Discriminate is 'Damaging but Limited'*, ACLU Says, AM. CIVIL LIBERTIES UNION, <http://www.aclu.org/content/us-supreme-court-ruling-boy-scouts-can-discriminate-damaging-limited-aclu-says> (last updated June 28, 2000).

⁸⁸ Policy Concerning Homosexuals in the Armed Forces, 10 U.S.C. § 654(b) (1993). Since 1994, over 13,500 lesbian and gay members of the armed forces have been fired under the policy. Op-Ed, *For Love of Country; Gays, Lesbians Should be Able to Serve Openly in the Military*, WASH. POST, Dec. 28, 2009, at A14.

⁸⁹ Devin Dwyer, et. al, *A 'More Humane' Don't Ask, Don't Tell? Military Adjusts Approach to Outing Gays*, ABC NEWS/POLITICS (March 25, 2010), <http://abcnews.go.com/Politics/gays-military-pentagon-announce-humane-approach/story?id=10194160>.

⁹⁰ Don't Ask Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3516 (Dec. 22, 2010).

⁹¹ § 2(b). As of July 2011, the government has not finished this inquiry.

⁹² Certification (July 22, 2011). To read the Certification, visit

<http://miamiherald.typepad.com/.a/6a00d83451b26169e2015433ed6f6b970c-pi>.

⁹³ *Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 969 (C.D. Cal., 2010).

⁹⁴ *Log Cabin Republicans v. United States*, Nos. 10-56634, 10-5681 (9th Cir. July 6, 2011). As of July 15th, 2011, the injunction has been temporarily reinstated until the government can complete the process of repealing Don't Ask Don't Tell, which could be done by fall 2011. Tim Hull, *9th Circuit Reinstates Ban on Gays in the Military*, COURTHOUSE NEWS SERVICES (July 18, 2011 7:42 AM). For updates on the legal status of Don't Ask, Don't Tell, visit *Log Cabin Republicans v. USA*, U.S. CTS. FOR THE 9TH CIRC.,

http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000492 (last visited July 19, 2011).

⁹⁵ Employment Non-Discrimination Act of 2011, S. 811, 112th Cong. § 2 (2011).

⁹⁶ § 3(a)(4).

⁹⁷ § 6.

⁹⁸ § 7.

⁹⁹ Solomon Amendment, 10 U.S.C. § 983 (2000).

¹⁰⁰ *Rumsfeld v. Forum*, 547 U.S. 47, 68 (2006).

¹⁰¹ *Id.* at 69-70.

¹⁰² WILLIAMS INST., POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY I (2009), available at <http://www3.law.ucla.edu/williamsinstitute/pdf/LGBPoverlyReport.pdf>.

¹⁰³ *Id.* at ii.

¹⁰⁴ QUEERS FOR ECONOMIC JUSTICE, supra note 79, at 4.

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.* at 4.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 5.

¹⁰⁹ *Id.* at 8.

¹¹⁰ *Id.* For more information on homelessness in the LGBTQ community, see QUEERS FOR ECONOMIC JUSTICE, A FABULOUS ATTITUDE: LOW-INCOME LGBTGNC PEOPLE SURVIVING & THRIVING ON LOVE, SHELTER & KNOWLEDGE (2010), available at <http://www.q4ej.org/Documents/afabulousattitudedefinalreport.pdf>.