

June 2012

LGBT FOSTER AND ADOPTIVE FAMILIES FINDING CHILDREN FOREVER HOMES



Photo Courtesy of the Lorenz/Galdamez Family

Authors



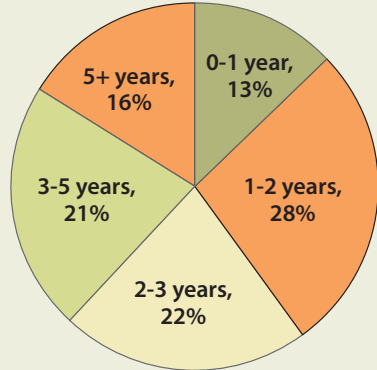
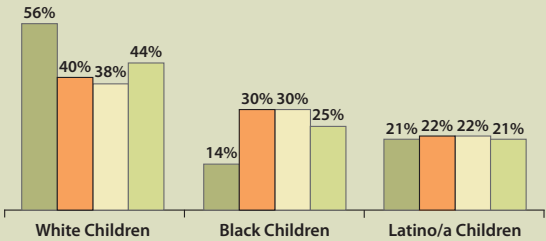
Partners



INTRODUCTION

In an ideal world, every child would be born into a loving stable family, yet the reality is that many children are not. Parents may abandon their children, or children may be removed from a 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 family member, when possible, or to find other foster and adoptive families to provide “forever” homes. Unfortunately, LGBT families who wish to foster and adopt

are often barred from doing so by archaic and discriminatory laws, policies or practices. This need not be the case. *Finding Children Forever Homes: LGBT Foster and Adoptive Families* highlights the compelling need to find adoptive families for waiting children, provides an overview of the barriers faced by LGBT families wishing to foster and adopt, and includes targeted recommendations designed to ensure that LGBT families can help fill the need for loving, stable foster and adoptive homes for children.

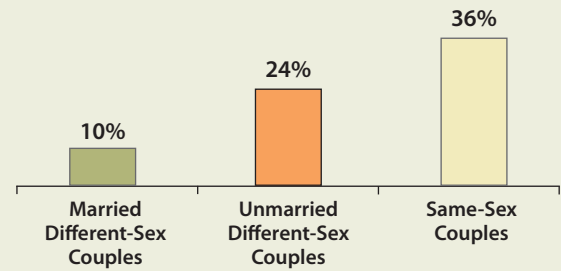
The Need for Foster and Adoptive Families	
<p>Children Waiting for Forever Homes</p>	<p>How Long Have Children Awaiting Adoption Been in Foster Care?</p>  <p>Source: U.S. Dept. of Health and Human Services, Administration for Children and Families, “Adoption and Foster Care Analysis and Reporting System (AFCARS) Report,” 2011.</p>
<p>Children of Color in Foster Care</p>	<p>Demographic Breakdown of Children in, and Adopted From, Foster Care</p>  <p>Children as a percent of:</p> <ul style="list-style-type: none"> Population Children in Foster Care Awaiting Adoption Adopted <p>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.”</p>

LGBT Foster and Adoptive Families

Providing Stable, Loving Homes

- Approximately 2 million children are being raised by LGBT parents, and that number is expected to grow in the coming years.⁶
- An estimated 14,000 foster children, or 3% of all foster children, currently live with lesbian and gay foster parents.⁷
- An estimated 105,000 gay men and lesbians are adoptive parents to a child under the age of 18.⁸
- Research suggests LGBT parents may be more willing than heterosexual parents to adopt children with special needs, who are among the most difficult to place.⁹
- Same-sex couples are significantly more likely to live in households with adopted children, stepchildren and unrelated children.¹⁰

Households with Adopted Children, Stepchildren, and/or Unrelated Children

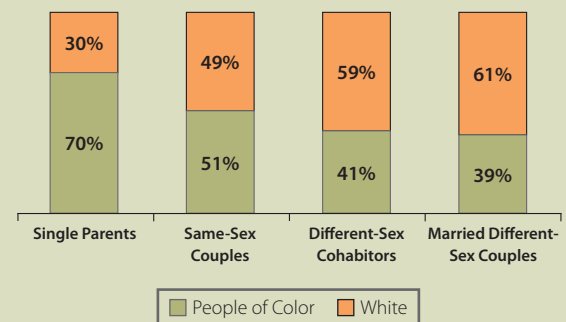


Source: Kristy M. Krivickas and Daphne Lofquist, "Demographics of Same-Sex Couple Households with Children," U.S. Census Bureau, 2011.

LGBT Foster Families of Color

- Same-sex couples who become foster parents are more likely to be families of color than heterosexual married couples who become foster parents.¹¹

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.

Qualified, Ready and Willing

- 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.¹²
- 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.¹³ Very little data exists on gender identity and parenting, yet there is no evidence that being transgender produces different outcomes.¹⁴

Public Opinion Supports LGBT Parents

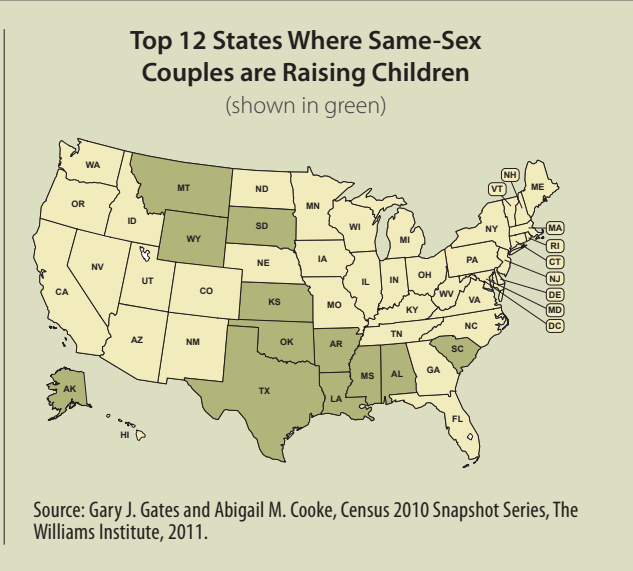
- The majority of Americans support increasing the number of foster and adoptive families by allowing LGBT-headed households to foster and adopt; 64% of Americans see a same-sex couple with children as a family, up 10% from 2003.¹⁵
- According to research done by non-partisan Public Religion Research Institute, 6-in-10 (60%) Catholics favor allowing gay and lesbian couples to adopt children.¹⁶

Racially and Ethnically Diverse

- LGBT families are more likely to be families of color than families headed by married heterosexual couples. Forty-one percent of same-sex couples with children identify as people of color compared to 34% of married different-sex couples with children.¹⁷
- Same-sex couples of color are more likely to be raising children than white same-sex couples. For example, 33% of Black male same-sex couples and 23% of Latino male same-sex couples are raising children compared to only 6% of white male same-sex couples.¹⁸ Forty-seven percent of Black female same-sex couples and 42% of Latina same-sex couples are raising children compared to only 23% of white female same-sex couples who are raising children.¹⁹
- 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.²⁰

Geographically Diverse

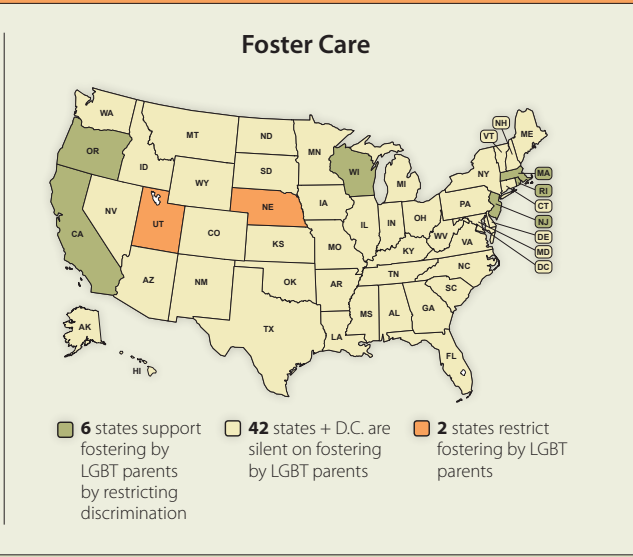
- LGBT families are geographically dispersed, living in 93% of all U.S. counties.²¹
- Although states like California and New York have high numbers of same-sex couples, same-sex couples are most likely to raise children in Mississippi, followed by Wyoming, Alaska, Arkansas, Texas, Louisiana, Oklahoma, Kansas, Alabama, Montana, South Dakota and South Carolina.²²



Current Law: LGBT Fostering and Adoption

LGBT Foster Parents

- Six states have nondiscrimination policies that bar or restrict discrimination in foster care on the basis of sexual orientation: California (includes gender identity), Massachusetts, New Jersey, Oregon, Rhode Island (includes gender identity) and Wisconsin.²³
- Two states, Nebraska and Utah, restrict or ban fostering by lesbian and gay adults.²⁴
- Most state laws are silent about fostering by LGBT families, creating uncertainties about whether LGBT families will be able to foster.²⁵



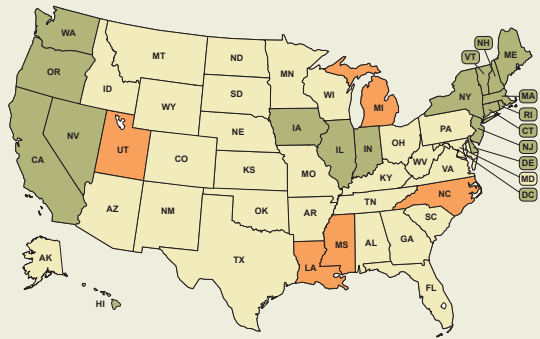
Adoption by Single LGBT Parents

- Seven states have non-discrimination policies that bar or restrict discrimination in adoption on the basis of sexual orientation (California, Maryland, Massachusetts, Nevada, New Jersey, New York and Rhode Island), and no state has an outright ban on adoption by LGBT individuals.²⁶
- Some states bar individuals from adopting if they are unmarried and living with a partner (“cohabitating”).
- Other states give priority to married couples, penalizing single and LGBT applicants.
- Many state laws are silent about adoption by LGBT families.

Joint Adoption by Same-Sex Couples

- Joint adoption by same-sex couples is allowed in 17 states and D. C., effectively banned in 5 states, and the law is silent in 28 states, creating uncertainty for families.²⁷

Joint Adoption by Couples



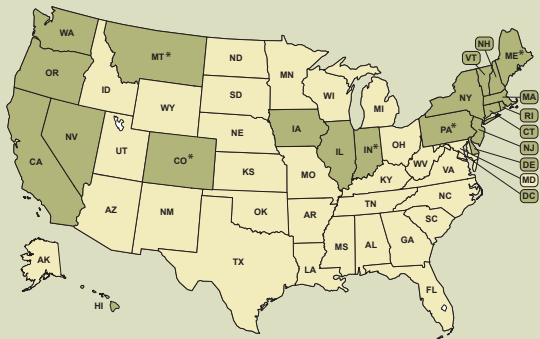
■ 17 states + D.C. with joint adoption
 □ 28 states where same-sex couples face uncertainty
 ■ 5 states where same-sex couples effectively prohibited

NOTE: In some cases, access to joint adoption may require being in a marriage, civil union or domestic partnership.

Securing Legal Ties When Joint Adoption Is Not An Option

- Some LGBT parents may adopt as individuals, and then seek to create legal ties for another parent.
- 20 states and D.C. allow stepparent or second-parent adoption.²⁸
- In the 15 states and D.C. that offer marriage or comprehensive relationship recognition, a same-sex partner can seek a stepparent adoption.
- Although it has limited availability²⁹ and can be onerous and costly, second-parent adoption (modeled on stepparent adoption) is also a way for same-sex couples to secure legal ties to children.
- In 6 states, second-parent adoptions are precluded by statute or case law (Kentucky, Nebraska, North Carolina, Ohio, Utah, Wisconsin).
- In some states, the availability of second-parent adoption varies from court to court.
- In the remaining states, same-sex couples may find that only one parent can adopt, leaving the second parent as a legal stranger to his or her child.

Stepparent or Second-Parent Adoption



■ 20 states + D.C. recognize same-sex second parents or stepparents
 □ 30 states do not recognize same-sex second parents or stepparents

* States designated with an asterisk permit second-parent adoption but do not recognize same-sex stepparents.

Bans, Bias and Erosion of Protections

Attempted Bans on LGBT Fostering or Adoption

- Although few states formally restrict LGBT adoption and fostering, efforts to create such restrictions have increased.
- Voters and legislatures have sought—and failed—to create bans on adoption and fostering by lesbian and gay people (sometimes by targeting all unmarried cohabiters) in Alabama, Kentucky, Indiana, Tennessee, Texas, and Virginia.³⁰ Such a ban passed in Arkansas but was later found unconstitutional.

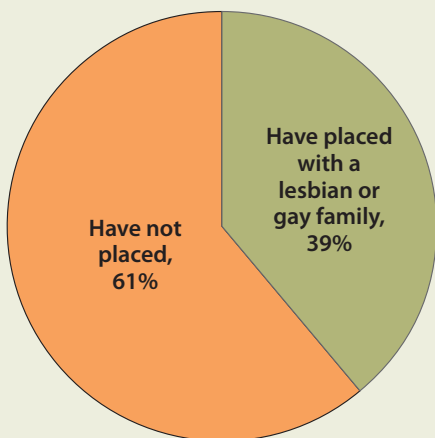
Existing Anti-Family Laws

- Five states explicitly prohibit same-sex couples from jointly adopting (Louisiana, Mississippi, Michigan, North Carolina, Utah).³¹
- Six states explicitly restrict same-sex couples from accessing second-parent adoption (Kentucky, North Carolina, Nebraska, Ohio, Wisconsin, and Utah).³²
- Two states restrict fostering by LGBT parents (Utah, Nebraska).³³
- Restrictions on adoption and fostering by LGBT adults mean parents cannot designate LGBT relatives or close friends as legal guardians if the current parents die or are no longer able to care for their children.
- According to a report by The Williams Institute and Urban Institute, a national ban on fostering for LGB adults would result in removal of between 9,300 and 14,000 children from their foster homes, adding between \$87 million and \$130 million in fostering expenditures.³⁴

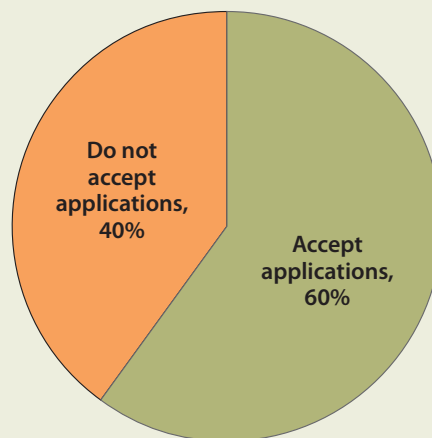
Bias + Discrimination

- Even where no bans exist, LGBT individuals or couples may be disqualified from fostering due to bias or discrimination by agencies and frontline workers.
- North Dakota and Virginia allow private agencies receiving state funds to refuse to serve families or children on religious or “moral” grounds.
- Transgender parents can face particular difficulties. Although laws are often silent, 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 fostering or 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.³⁵

Percent of Agencies That Have Placed a Child with a Lesbian or Gay Family



Percent of Agencies That Accept Applications for LGBT People



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.

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-affirming 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-affirming.
10. Fail to reach out to LGBT communities to seek permanent homes for waiting children.

Attacks on Court-Issued Judgments

- Adoption results in a court-issued adoption judgment, and the “Full Faith and Credit Clause” of the U.S. Constitution should protect these judgments, making parental ties secure nationwide.
- This once-firm legal principle has come under increasing attack. For example, 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 gay parents from New York.³⁶

Foster Care and Adoption - Policy Recommendations³⁷

Pass the federal Every Child Deserves a Family Act (ECDF) or similar legislation to prohibit any adoption or foster care agency that receives federal money from discriminating against potential adoptive or foster parents on the basis of sexual orientation, gender identity or marital status.

- This legislation, modeled on existing federal laws that prohibit racial and ethnic discrimination in placement decisions, would allow thousands of potential new foster and adoptive parents to provide stable, loving homes to children in need of permanency.
- ECDF also prohibits discrimination against foster children and youth based on actual or perceived sexual orientation and gender identity.
- The Act also mandates technical assistance to covered agencies by the Department of Health and Human Services to comply with the provisions of the act.
- Researchers estimate that adoption can create governmental cost savings of \$21,000-\$68,000 per child when compared to the cost of long-term foster care.³⁸

Pass or amend state adoption laws or regulations to allow unmarried and same-sex couples to jointly adopt and foster children.

- 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)
- Possible models for legislative/regulatory action include: New York’s 2010 statute allowing unmarried partners to adopt jointly; and regulations in Oregon stating that unmarried couples may petition to adopt jointly.

Repeal or overturn discriminatory state law restricting adoption and fostering by same-sex or unmarried couples.

- Nebraska and Utah currently restrict fostering. Louisiana, Mississippi, Nebraska, North Carolina, and Utah prohibit joint adoption. Kentucky, Nebraska, North Carolina, Ohio, and Utah deny access to second-parent adoption. Arizona gives preference to married heterosexual couples who are jointly adopting.
- 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 and Virginia, for example, allow agencies to deny placement based on religious or moral beliefs).

Educate and inform adoption and family law judges and law students about LGBT parents and parenting research.

- LGBT and allied 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.
- Advocates also should support and expand judicial training efforts such as those offered by The Williams Institute at UCLA School of Law.
- 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.

Provide cultural competency training for frontline agency workers.

- 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.
- 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.
- LGBT organizations should work with schools of social work to provide information and training on these issues.
- 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.

REFERENCES AND ENDNOTES

Unless otherwise noted, the references and full citations to the information in this brief can be found in the full report: Movement Advancement Project, Family Equality Council and Center for American Progress, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families," October 2011, available online at www.lgbtmap.org/lgbt-families.

- ¹ U.S. Dept. of Health and Human Services, Administration for Children and Families, "Adoption and Foster Care Analysis and Reporting System (AFCARS) Report," 2011, www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm.
- ² *Ibid.*
- ³ U.S. Dept. of Health and Human Services (HHS), 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."
- ⁴ U.S. Government Accountability Office (GAO), Report to the Chairman, Committee on Ways and Means, House of Representatives, "AFRICAN AMERICAN CHILDREN IN FOSTER CARE: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care," July 2007, <http://www.gao.gov/new.items/d07816.pdf>.
- ⁵ HHS, "AFCARS, 2011."
- ⁶ See Full Report, pp. 118-119.
- ⁷ 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.
- ⁸ This estimate is based on findings from the 2008-2010 American Community Survey that 2.7% of same-sex couples are raising an adoptive child. This figure was then applied to the roughly 4 million lesbians and gay men in the U.S. See Footnote 1 in Gary J. Gates, "Children and Families Impacted and Fiscal Impact of Virginia HB 189/SB 349," The Williams Institute, February 2012. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-VA-Adoption-Feb-2012.pdf>.
- ⁹ Gary P. Mallon, "Assessing Lesbian and Gay Prospective Foster and Adoptive Families: A Focus on the Home Study Process," *Child Welfare* 86, 2007.
- ¹⁰ "Non-related children" or "unrelated children" are reported by householders as part of the census process. This category generally excludes all blood relations, adoptive children, and children described by the householder as "stepchildren." For same-sex couples, this likely includes foster children as well as non-legally recognized children. Kristy M. Krivickas and Daphne Lofquist, "Demographics of Same-Sex Couple Households with Children," U.S. Census Bureau, 2011. <http://www.census.gov/population/www/socdemo/Krivickas-Lofquist%20PAA%202011.pdf>.
- ¹¹ Gates et al., "Adoption and Foster Care." Calculations revised April 2011.
- ¹² See Full Report, pp. 11-13.
- ¹³ *Ibid.*
- ¹⁴ 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.
- ¹⁵ 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.
- ¹⁶ Brian Powell, Catherine Bolzendahl. Claudia Geist, Lala Carr Steelman, "Counted Out, Same-Sex Relations and Americans' Definitions of Family," Russell Sage Foundation, September, 2010. Robert P. Jones, Ph.D. and Daniel Cox, "Catholic Attitudes on Gay and Lesbian Issues: Comprehensive Portrait from Recent Research," Public Religion Research Institute, March 2011, <http://publicreligion.org/site/wp-content/uploads/2011/06/Catholics-and-LGBT-Issues-Survey-Report.pdf>.
- ¹⁷ Special tabulation of the 2010 American Community Survey by Gary J. Gates.
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*
- ²⁰ Gary J. Gates, "Binational Same-Sex Unmarried Partners in Census 2000: A Demographic Portrait," The Williams Institute, 2005. <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Binational-Report-Oct-2005.pdf>.
- ²¹ Gary J. Gates, "Can Homophobia Reduce Your Home Equity?," November 9, 2011, http://www.huffingtonpost.com/gary-j-gates/can-homophobia-reduce-you_b_1082729.html.
- ²² Gary J. Gates and Abigail M. Cooke, Census 2010 Snapshot Series, The Williams Institute, 2011, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot-US-v2.pdf>.
- ²³ *Ibid.*
- ²⁴ *Ibid.*
- ²⁵ See Full Report, pp. 28-32.
- ²⁶ See Full Report, pp. 25-26.
- ²⁷ See Full Report, pp. 26-28.
- ²⁸ See Full Report, pp. 33-34 and pp. 40-41.
- ²⁹ In 2010, the Supreme Court of North Carolina ruled that second-parent adoption was no longer valid in the state although it had routinely been available in several counties. The decision in *Boseman v. Jarrell* (704 SE 2d 494, 2010) was far-reaching and also may have invalidated all second-parent adoptions previously conducted in the state.
- ³⁰ Leslie Cooper and Paul Cates, "Too High a Price: The Case Against Restricting Gay Parenting," American Civil Liberties Union (ACLU), 2006, page 6, http://www.aclu.org/files/images/asset_upload_file480_27496.pdf.
- ³¹ See Full Report, page 27.
- ³² See Full Report, page 41.
- ³³ See Full Report, page 28.
- ³⁴ Gates et al., "Adoption and Foster Care."
- ³⁵ 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.
- ³⁶ See Lambda Legal, "Adar v. Smith," <http://www.lambdalegal.org/in-court/cases/adar-v-smith>, last accessed 4/19/2012.
- ³⁷ These recommendations are part of the detailed policy recommendations made in the Full Report, pp. 98-117.
- ³⁸ Richard P. Barth, Chung Kwon Lee, Judith Wildfire, and Shenyang Guo, *Social Service Review*, Vol. 80, No. 1 (March 2006), pp. 127-158.

ABOUT THIS BRIEF

This brief is based on content from *All Children Matter: How Legal and Social Inequalities Hurt LGBT Families*, a report which provides one of the most comprehensive portraits to date of the wide range of obstacles facing LGBT families in America. It also offers detailed recommendations for eliminating or reducing inequities and improving the lives of children with LGBT parents. For more information, visit www.lgbtmap.org/lgbt-families, www.familyequality.org or www.americanprogress.org.



2215 Market St. • Denver, CO 80205
www.lgbtmap.org



PO Box 206 • Boston, MA 02133
www.familyequality.org



1333 H Street NW, 10th Floor • Washington DC, 20005
www.americanprogress.org