

THE MOMENTUM REPORT — 2014 EDITION

An Analysis of Key Indicators of LGBT Equality in the U.S.

January 2014



movement advancement project ▶

This report was authored by:

Movement Advancement Project

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 efforts for maximum impact.

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EXECUTIVE SUMMARY

The 2014 edition of MAP's biennial Momentum Report documents and analyzes the lesbian, gay, bisexual, and transgender (LGBT) movement's success in securing political, legal, and social equality for LGBT Americans in 2012 and 2013.

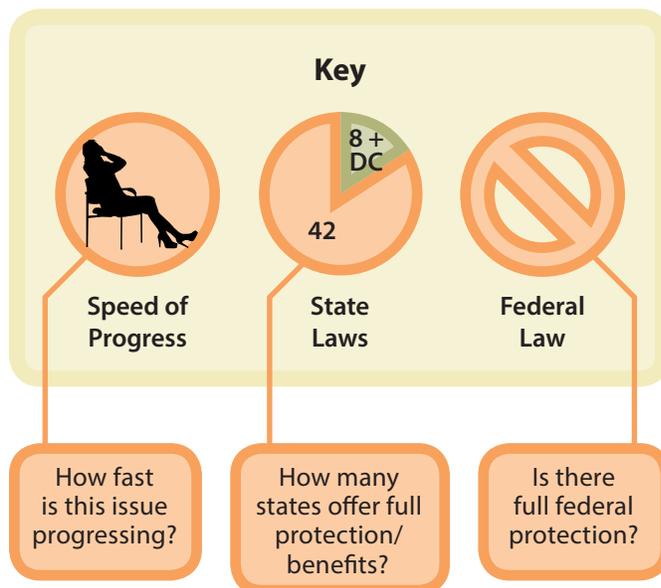
There is no doubt that the last two years marked a historic turning point. Since January 2012, the number of states allowing same-sex couples to marry almost tripled, skyrocketing from six states to 17 states, now covering 42% of the LGBT population in the U.S. Additionally, in June 2013, the U.S. Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, requiring the federal government to recognize the marriages of same-sex couples. This ruling has spurred a flurry of state lawsuits, and at time of writing, federal courts in Utah and Oklahoma have ruled that those states' bans on marriage for same-sex couples are unconstitutional (though both decisions are currently stayed).

This unprecedented progress on marriage has led to a widespread impression that nationwide equality for LGBT people is imminent. A closer look at the full range of LGBT rights at all levels of American society, however, reveals a different picture. While the past two years have shown incredible gains toward securing the freedom to marry for same-sex couples, the LGBT movement still has a long way to go to achieve full equality and broad acceptance for LGBT people across the nation.

The states that have secured marriage equality have been on a years-long journey. Before marriage became legal in these states, they had all already passed employment protections, hate crime protections, safe schools legislation (at least on the basis of sexual orientation), and engaged in the public debate and education that comes with such laws. Yet in stark contrast to the 17 states that currently allow same-sex couples to marry, the majority of states are still at the very early stages of this journey. This means further gains at the state level on other issues of importance to the LGBT movement—from prohibiting discrimination against LGBT workers to addressing bullying of LGBT students in schools—have slowed significantly. In fact, over half of U.S. states lack even the more basic laws protecting LGBT people from discrimination in housing, employment, and public accommodations.

In these states, with few exceptions, a worker can be fired simply because his employer is biased against gay people, a lesbian mother often cannot establish a legal relationship to her child, and a transgender student facing daily bullying will not be protected under anti-bullying laws. These states are home to half of the nation's LGBT population, including individuals and families who experience extreme discrimination and high rates of poverty, but who are often bound in their states by jobs, tradition, and love for their communities, friends, and extended families.

This report details the LGBT movement's pursuit of fair and equal opportunity for LGBT Americans, including the incredible recent successes in gaining legal recognition for the freedom to marry, the work left to be done, and the relatively slow progress in other areas of LGBT equality. A snapshot of progress across nine different areas impacting LGBT people is offered on the following pages. For many of the issue areas below and through the report, progress or lack thereof is summarized with an icon indicating the speed of the progress of the issue, how many states offer full protection for LGBT people, and whether there is protection at the federal level. Please use the key below to interpret the icon in each section.



Key Progress: 2012-2013

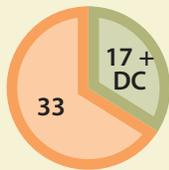
1. Marriage and Relationship Recognition

- ✓ 11 more states offer the freedom to marry, bringing the total to 17 and the District of Columbia.
- ✓ The Supreme Court restores marriage to California and invalidates Section 3 of the Defense of Marriage Act (DOMA), requiring the federal government to recognize married same-sex couples.

Marriage and Relationship Recognition



Speed of
Progress



State
Laws



Federal
Law

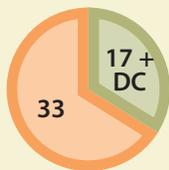
2. Employment Nondiscrimination

- ✓ The Equal Employment Opportunity Commission (EEOC) rules that transgender workers can file claims for sex discrimination.
- ✓ The U.S. Senate passes transgender-inclusive Employment Nondiscrimination Act.
- ✗ State employment nondiscrimination efforts fail in Maryland,¹ Missouri,² Nebraska,³ North Dakota,⁴ Virginia (state employees),⁵ and Wyoming.⁶

Employment Nondiscrimination



Speed of
Progress



State
Laws



Federal
Law

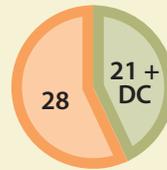
3. Parental Recognition and Adoption Laws

- ✓ Passage of marriage or comprehensive relationship recognition in Maryland (2012), Colorado (2013), Minnesota (2013), and New Mexico (2013) means legally recognized same-sex couples in 21 states plus D.C. can petition for joint adoption.
- ✗ The Kansas Court of Appeals rules that the state does not permit second-parent adoptions.

Joint Adoption



Speed of
Progress



State
Laws

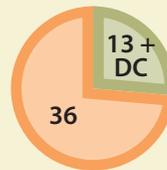


Federal
Law

Second-Parent Adoption



Speed of
Progress



State
Laws



Federal
Law

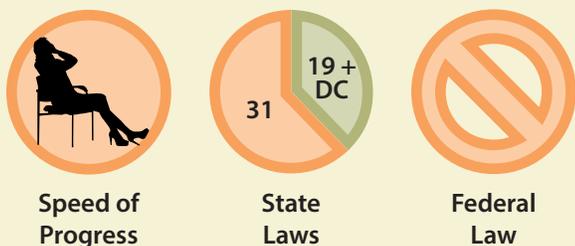
4. Immigration and Travel

- ✓ Supreme Court's striking down of Section 3 of DOMA allows same-sex married spouses to sponsor a non-citizen spouse for citizenship or permanent residence.
- ✗ Comprehensive immigration reform remains stalled in Congress.

5. Safe Schools and Anti-Bullying Laws

- ✓ GLSEN's *National School Climate Survey* shows decreased levels of biased language and victimization reported by the nation's high school students.

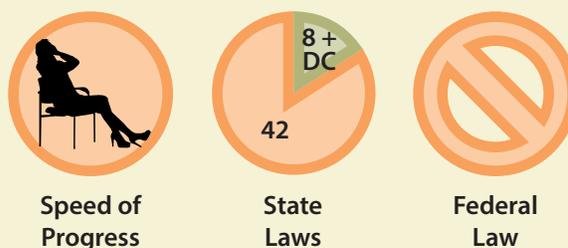
Safe School Laws



7. Health and HIV/AIDS

- ✓ The Department of Health and Human Services clarifies that the Affordable Care Act prohibits discrimination based on sex in the provision of health insurance, including on the basis of transgender status.
- ✓ California and New Jersey ban conversion therapy for minors.

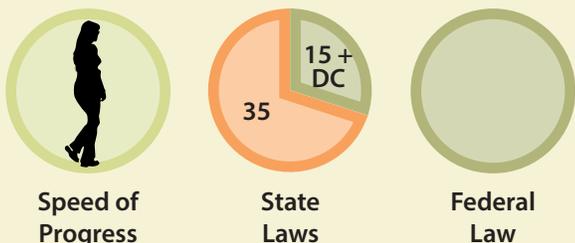
HIV Criminalization



6. Hate Crimes

- ✓ Congress passes LGBT-inclusive Violence Against Women Act.

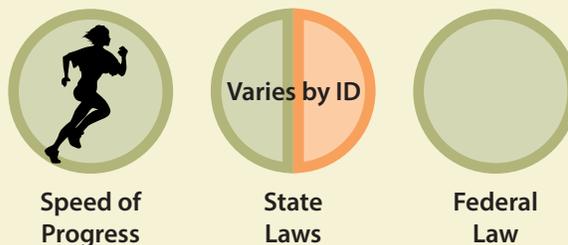
Hate Crimes Laws



8. Identity Documents

- ✓ The Veterans Health Administration and Social Security Administration ease restrictions for changing one's gender marker on documents.
- ✓ California and the District of Columbia pass laws easing the process for changing one's gender marker on birth certificates.

Identity Documents



9. Public Service & Cultural Visibility

- ✓ The nation is served by a record high number of out LGBT public officials, including the first openly lesbian U.S. Senator.



INTRODUCTION

Recent studies suggest that there are nearly 9 million LGBT adults in the United States.⁷ These LGBT Americans want the same chance as everyone else to pursue health and happiness, earn a living, be safe in their communities, and take care of the ones they love. Unfortunately, unfair laws, a lack of legal protections, and stigma stand in the way of true equality for LGBT Americans. This report provides an overview of the LGBT movement's progress in securing political, legal, and social equality for LGBT people, with a particular focus on the past two years.

A Rising Tide?

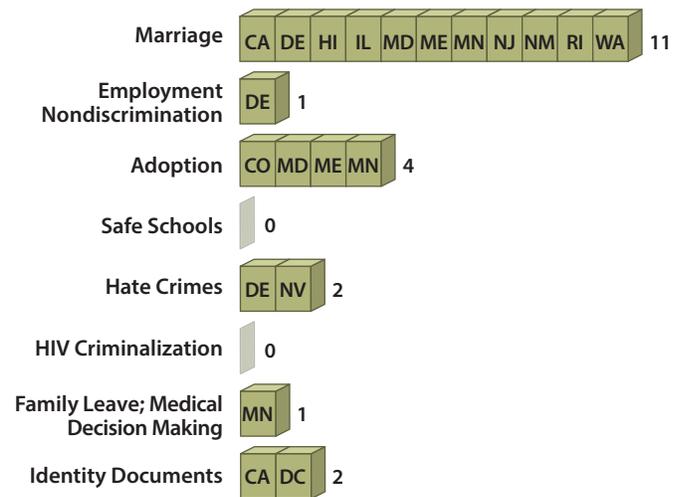
In 2003, a ruling by the Supreme Judicial Court of Massachusetts made that state the first to allow same-sex couples to marry.⁸ In the ensuing decade, advocates have worked tirelessly to make the dream of marriage a reality for committed same-sex couples across the country. After many years of slow progress, 2012 and 2013 marked an historic turning point. At the beginning of 2012, only six states and the District of Columbia allowed same-sex couples to marry; by the end of 2013, 17 states had marriage equality.^a Adding to the sense that a tide has turned, the U.S. Supreme Court ruled in June 2013 that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional, thus requiring the federal government to recognize married same-sex couples.

These successes are so significant that they have led some people to declare 2013 "the greatest year in gay rights history."⁹ A closer look at the full range of LGBT equality (and inequality) at all levels of American society, however, reveals a different picture: while 2013 represented a turning of the tide in the pursuit of marriage for same-sex couples, the LGBT movement still has a long way to go to achieve full equality and broad acceptance for LGBT people across the nation (see *Figure 1*).

While the pursuit of marriage equality achieved unprecedented progress over the past two years, gains at the state level on other issues important to LGBT people and their allies slowed significantly. To understand this disparity, it's important to consider the political progress in states that have achieved marriage equality and in those that have not.

All 17 states with marriage equality at the end of 2013 are states whose legislatures have demonstrated an increasing commitment to equality for LGBT people. Before extending marriage, these states had already

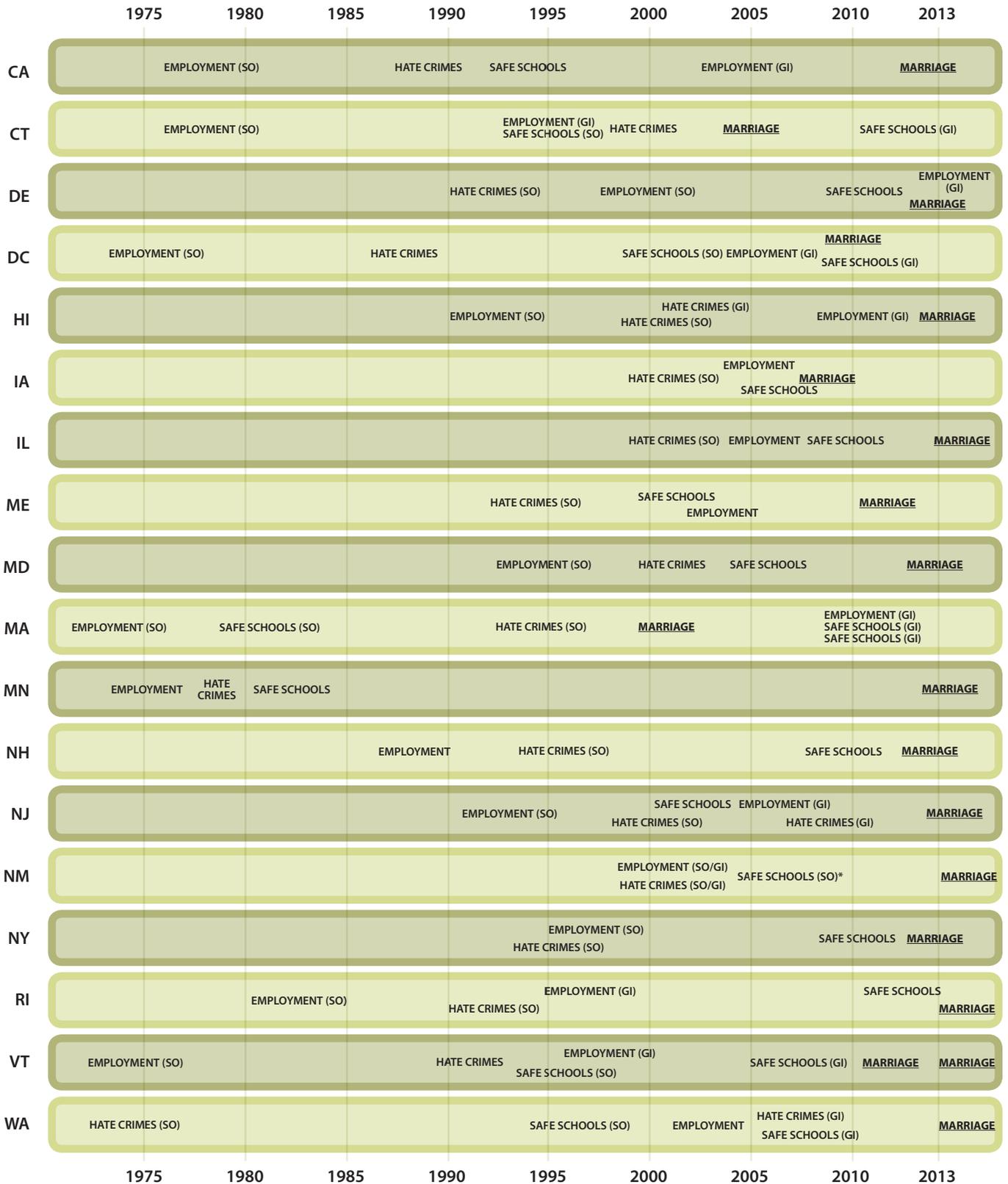
Figure 1: State Victories by Issue, 2012-2013



passed nondiscrimination protections, hate crime protections, and safe schools legislation (though some of these laws were not inclusive of transgender people, see *Figure 2*). In most of the remaining states, however, advocates have struggled to achieve even the most basic legal equality for LGBT people. The fact is, most states have passed few or no laws protecting LGBT people. In the spirit of Charles Dickens' famous line, "It was the best of times, it was the worst of times," the remarkable progress of recent years in some states has obscured the fact that in a majority of states, LGBT people still are treated under the law as second-class citizens.

^a On December 20, 2013, a U.S. District Court judge ruled that Utah's ban on the freedom to marry violated the U.S. Constitution. The state started issuing marriage licenses that day, and until January 6, when the U.S. Supreme Court issued a stay on marriages pending the state's appeal, over 1,000 couples were married. On January 14th, a U.S. District Court judge ruled that Oklahoma's ban on marriage equality also violated the U.S. Constitution. This ruling was immediately stayed pending appeal, so Oklahoma couples were not able to marry. Throughout this document we will refer to 17 states having the freedom to marry.

Figure 2: State Progress



*New Mexico only has a regulation prohibiting bullying on the basis of sexual orientation.
 SO = sexual orientation GI = gender identity
 Legislation with no parenthetical is inclusive of sexual orientation and gender identity.

Figure 3: Equality and LGBT Population by State

Figure 3a: LGBT Legal Equality by State

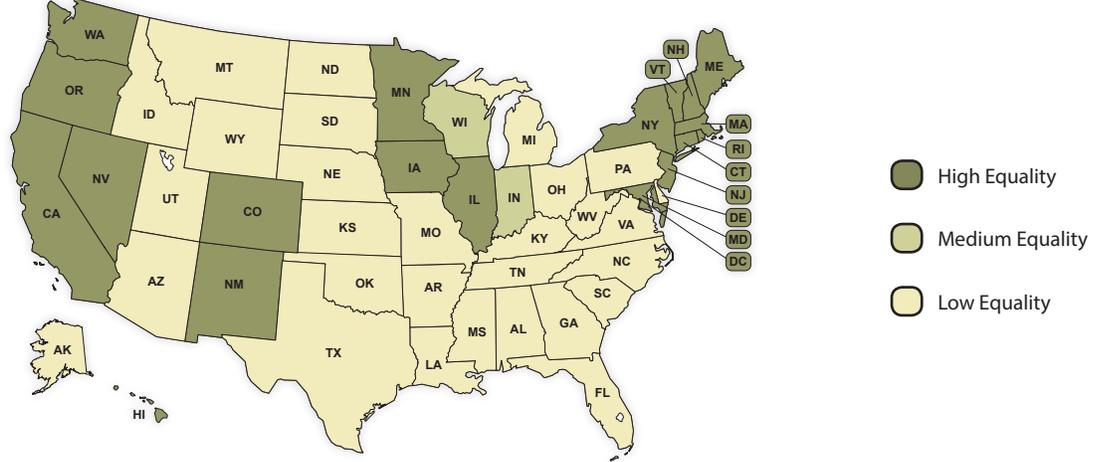
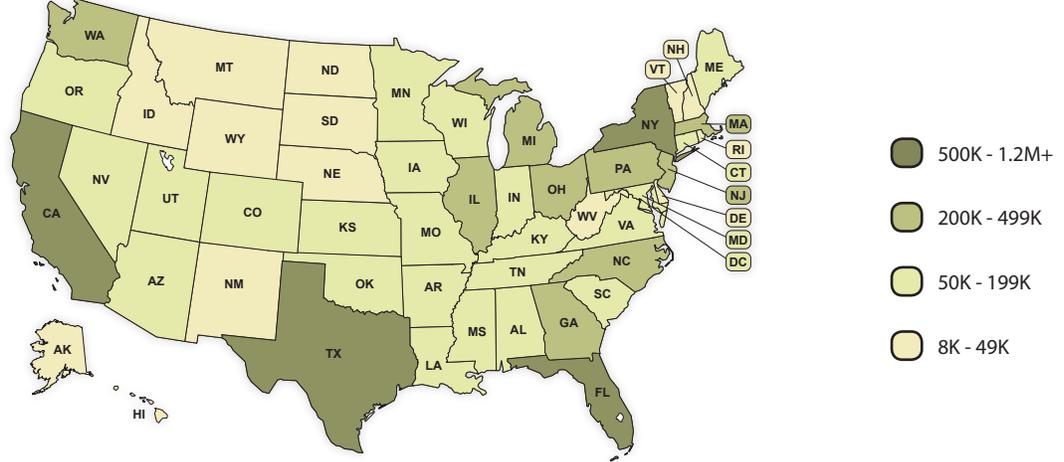


Figure 3b: LGBT Population by State



Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013.

Surviving or Thriving?

At the end of 2013, MAP rates only 20 states and the District of Columbia as having a high level of equality for LGBT people (see *Figure 3*). Two states have a medium level of equality, meaning they have passed some laws addressing issues that are critical to LGBT people, such as state hate crime laws, employment nondiscrimination laws, and safe schools laws.

However, 28 states still lack almost any kind of basic protections for LGBT people. In these states, with few exceptions, a worker can be fired simply because his employer is biased against gay people, a lesbian mother often cannot establish a legal relationship

to her child, and a transgender student facing daily bullying will not be protected under anti-bullying laws. As shown in *Figure 3b*, many of the states with low levels of equality have high numbers of LGBT residents (for example, Florida, Georgia, North Carolina, and Texas).

The last two years have brought many landmark advances, driving a media narrative and public perception that LGBT advocates have succeeded and their work is nearly done. But for an LGBT person living in Alabama, nothing could be further from the truth.

Timeline of Events

Table 1: 2012 Timeline of Events

	Marriage	Nondiscrimination	Parenting	Safe Schools	Hate Crimes	Health/HIV	Other	
January	<ul style="list-style-type: none"> ✗ Feb: NJ governor vetoes marriage equality legislation ✓ Feb: U.S. District Court finds DOMA unconstitutional ✓ Feb: WA passes marriage equality (opponents organize referendum on November ballot) ✓ March: NH legislature defeats effort to repeal marriage equality ✓ March: MD passes marriage equality (opponents organize referendum on November ballot) ✗ May: Voters in NC approve constitutional amendment banning marriage for same-sex couples ✓ May: President Obama and Vice President Biden express support for marriage for same-sex couples ✓ May: First Circuit Court of Appeals finds DOMA unconstitutional ✓ May: RI governor signs executive order recognizing out-of-state marriages ✓ Oct: Second Circuit Court of Appeals finds DOMA unconstitutional ✓ Nov: Voters in ME, MD, and WA approve marriage for same-sex couples via the ballot ✓ Nov: Voters in MN reject a constitutional amendment banning marriage for same-sex couples ✓ Dec: U.S. Supreme Court agrees to hear two marriage-related cases 	<ul style="list-style-type: none"> ✓ Feb: Department of Housing and Urban Development issues regulations prohibiting housing discrimination based on sexual orientation and gender identity/ expression and defining family broadly to include LGBT families ✓ April: Equal Employment Opportunity Commission rules in <i>Macy v. Holder</i> that Title VII covers gender identity discrimination 	<ul style="list-style-type: none"> ✗ Nov: KS Court of Appeals rules that the state does not permit second-parent adoptions 				<ul style="list-style-type: none"> ✓ March: Department of Veterans Affairs issues guidance for caring for transgender veterans ✓ July: Department of Health and Human Services issues guidance prohibiting discrimination based on gender identity/expression and sexual orientation under the Affordable Care Act ✓ Oct: CA passes ban on conversion therapy for minors (ban is challenged in court, see August 2013) 	<ul style="list-style-type: none"> ✓ July: Office of Personnel Management includes same-sex partners of federal employees under insurable interest annuity ✓ Oct: Department of Homeland Security issues guidance that same-sex couples should be treated as family in deportation proceedings ✓ Nov: Tammy Baldwin (WI) elected first openly LGBT Senator
December								

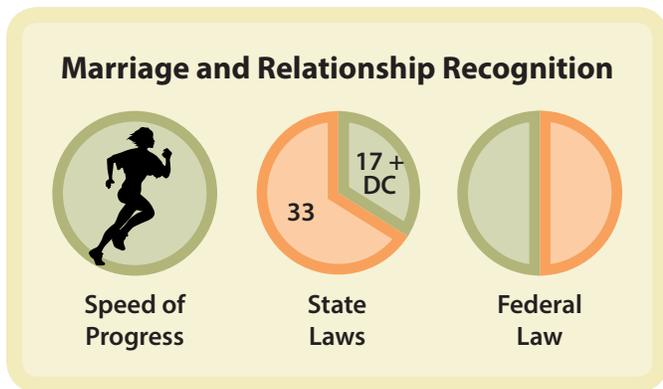
Table 2: 2013 Timeline of Events

	Marriage	Nondiscrimination	Parenting	Safe Schools	Hate Crimes	Health/HIV	Other
January	<ul style="list-style-type: none"> ✗ Jan: Marriage equality and domestic partnership legislation fail to advance in WY 						
	<ul style="list-style-type: none"> ✓ Feb: Department of Defense extends limited benefits to the same-sex partners of military servicemembers ✓ April: Civil union legislation passes in CO ✓ May: Marriage equality legislation passes in RI, DE, and MN ✓ June: Supreme Court rules that Section 3 of the Defense of Marriage Act is unconstitutional and overturns Proposition 8 in California ✓ July: U.S. agencies and departments begin issuing regulations on benefits and responsibilities for married same-sex couples ✓ July: DE passes marriage equality legislation ✓ Oct: NJ court rules that marriages must be allowed to start immediately ✓ Oct: OR recognizes out-of-state marriages ✓ Nov: IL and HI pass marriage equality legislation ✓ Dec: NM Supreme Court rules that marriages must be allowed to start immediately ✓ Dec: Federal judge says that OH must recognize same-sex marriage on death certificate. 	<ul style="list-style-type: none"> ✗ Feb: Efforts to pass non-discrimination legislation in WY and VA fail ✓ April: Federal Employment Non-Discrimination Act (ENDA) introduced in House and Senate ✓ May: Puerto Rico passes nondiscrimination and domestic violence legislation ✓ June: DE adds gender identity to state nondiscrimination law ✓ Nov: U.S. Senate passes first fully LGBT-inclusive Employment Non-Discrimination Act 		<ul style="list-style-type: none"> ✓ Feb: MA Department of Education releases guidance on transgender students ✓ July: CA passes legislation protecting transgender students in school 	<ul style="list-style-type: none"> ✓ May: NV adds gender identity and expression to state hate crimes protections ✓ June: DE adds gender identity to state hate crimes laws 	<ul style="list-style-type: none"> ✓ Aug: CA ban on conversion therapy is upheld in federal court ✓ Aug: NJ passes legislation banning conversion therapy for LGBT youth ✓ Nov: Passage of H.O.P.E Act to open doors for organ donations between HIV-positive people 	<ul style="list-style-type: none"> ✓ March: Passage of federal LGBT-inclusive Violence Against Women Act (VAWA)
December			<ul style="list-style-type: none"> ✓ Oct: CA passes legislation to legally recognize more than two parents 				

PROGRESS ON KEY ISSUES

This report takes an issue-by-issue look at what has happened—and what has not—to advance political, legal, and social equality for LGBT Americans since the start of 2012. The Timeline of Events on pages 4 and 5 provides an overview of progress and setbacks in 2012 and 2013. As shown in the timeline, marriage has been at the forefront of the LGBT movement's progress toward equality. Looking at other issues of importance to the LGBT movement—from discrimination against LGBT workers to bullying of LGBT students in schools—there has been notably less progress.

Marriage and Relationship Recognition



2012 was an historic turning point in the pursuit of marriage equality in the United States. Voters in Maine, Maryland, and Washington State approved ballot initiatives in November 2012 clearing the way for same-sex couples in those states to marry. This was the first time marriage equality prevailed at the ballot. In the same election, the LGBT movement led a successful fight to stop a constitutional ban on marriage in Minnesota. It was four ballot efforts, four victories for the movement and its allies.

The victories for marriage equality in 2012 set the stage for even more relationship recognition progress in 2013. The governor of Colorado signed a comprehensive civil unions bill in March; and, in the span of just a few weeks that spring, Rhode Island, Delaware, and Minnesota all passed marriage equality legislation. States, it seemed, were lining up to offer the freedom to marry.

Then in June 2013 came the U.S. Supreme Court's eagerly anticipated rulings in two important marriage cases. In *Hollingsworth v. Perry*, the justices held that the proponents of Proposition 8 in California (the 2008 ballot measure that amended that state's constitution

to prohibit same-sex couples from marrying) had no standing to challenge a lower court ruling that held Proposition 8 unconstitutional. In denying standing, the Supreme Court upheld the lower court's ruling, and same-sex couples in California, who were briefly able to marry during several months prior to the Proposition 8 vote, could be legally married once again.

On the day of the *Perry* decision, the Supreme Court also handed down its decision in *U.S. v. Windsor*. The *Windsor* ruling put the Court on the side of Edie Windsor, who had been forced to pay federal taxes on an inheritance from her wife, while opposite-sex spouses are exempt from such taxes. The unequal taxation was the result of the federal Defense of Marriage Act (DOMA), which prohibited federal recognition of same-sex married couples. In its ruling, the Supreme Court found that Section 3 of DOMA was unconstitutional. The *Windsor* decision came into immediate effect, and federal agencies began to sift through their regulations to identify changes that would be needed to open the legal responsibilities and benefits of marriage to same-sex couples in areas from taxation to Social Security to military benefits (see the sidebar on page 9 for discussion of federal agencies' implementation of the Supreme Court's DOMA decision).

The Supreme Court rulings in *Perry* and *Windsor* led to widespread celebration among the LGBT movement and its allies and supporters. It was now legal to marry in the nation's most populous state (California), and the federal government could no longer treat married same-sex couples differently than married opposite-sex couples.

The Supreme Court rulings (and the questions they raised about the constitutionality of laws barring same-sex couples from marriage) led to a wave of lawsuits in states with such laws on the books. In October, for example, a New Jersey Superior Court ruled that the state's ban on marriages was unconstitutional, and marriages started in that state. In November, the governors of Hawaii and Illinois signed laws making their states the 15th and 16th states to extend the freedom to marry. Finally, in December 2013, the New Mexico Supreme Court ruled it unconstitutional to deny marriage to same-sex couples, making it the 17th state to extend the freedom to marry.^b

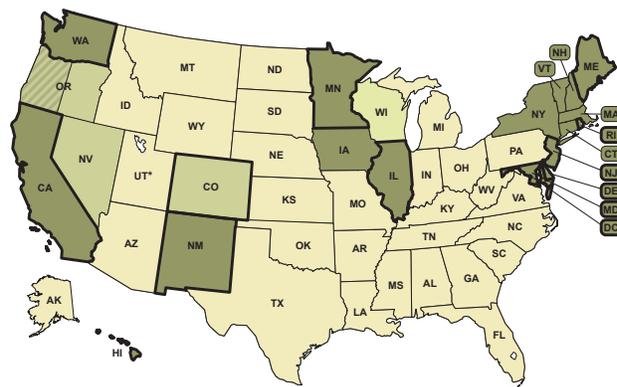
^b On December 20, 2013, a U.S. District judge ruled that Utah's ban on the freedom to marry violated the U.S. Constitution. The state started issuing marriage licenses that day, and until January 6, when the Supreme Court issued a stay on marriages pending the state's appeal, over 1,000 couples were married. On January 14th, a U.S. District Court judge ruled that Oklahoma's ban on marriage equality also violated the U.S. Constitution. This ruling is on hold pending appeal, so Oklahoma couples are not getting married.

Of course, the celebration among the LGBT movement and its supporters about the 2013 Supreme Court rulings and the growing list of states joining the ranks of marriage states was tempered by the understanding that the majority of same-sex couples in the U.S. still live in states in which they cannot legally be married. As of publication, marriage was legal in 17 states and Washington, DC, but twice as many states (33) still had marriage bans in place.

But momentum in support of marriage continues. In late 2013, pro-marriage legislation was still pending in many states, and advocates had filed lawsuits challenging marriage bans in Idaho, Nevada, North Carolina, Pennsylvania, Tennessee, Virginia, and West Virginia.¹⁰

In a sign that the momentum will continue to favor progress for same-sex couples and their freedom to marry, public support for marriage equality continues to rise. An analysis of state polling data and other measures of public opinion by Nate Silver, formerly of *The New York Times*, suggests that by 2016 the majority of states in the United States (32 in total) will have majority support for marriage equality.¹¹

Figure 4: State Marriage and Relationship Recognition Laws



- Marriage equality for same-sex couples (17 states + D.C.)
- Comprehensive civil union or domestic partnership law (6 states)
- Limited relationship recognition law (1 state)
- No legal recognition for same-sex couples (29 states)
- Outlined - 12 states advancing on this issue in 2012-2013

*Note: Marriage was extended to same-sex couples in Utah from December 20, 2013 to January 6, 2014. Over 1,000 same-sex couples were married.

Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/marriage_relationship_laws.

Marriage and Relationship Recognition: Recent Progress & Setbacks

At the federal level.

- ✓ June 2013. Supreme Court strikes down Section 3 of DOMA, rules Prop. 8 unconstitutional.
- ✓ July 2013. U.S. agencies and departments begin issuing regulations on benefits and responsibilities for married same-sex couples

In the states.

- ✗ May 2012. North Carolina voters approve a constitutional amendment banning same-sex couples from marriage.
- ✓ November 2012. Voters in Maine, Maryland and Washington State approve marriage for same-sex couples.
- ✓ November 2012. Voters in Minnesota vote against a constitutional amendment that would banned same-sex couples from marriage.
- ✓ March 2013. Colorado passes comprehensive civil union legislation.
- ✓ April 2013. The Nevada Senate votes to overturn a state constitutional amendment that bans marriage for same-sex couples. The legislation was not approved by the House.
- ✗ April 2013. The Texas Attorney General issues an opinion that the state's broad constitutional amendment prohibiting recognition of same-sex couples means that cities, counties, and public school districts cannot provide domestic partner benefits to the same-sex partners of employees.
- ✓ May 2013. Rhode Island, Delaware, and Minnesota all pass marriage equality legislation.
- ✗ June 2013. A federal judge in Michigan temporarily stops a Michigan law from taking effect that would have prohibited cities, counties, school districts, and community colleges from offering domestic partner benefits to the same-sex partners of employees.
- ✓ October 2013. A New Jersey Superior Court judge rules the state's ban on marriages unconstitutional.
- ✓ November 2013. Hawaii and Illinois become the 15th and 16th states to extend the freedom to marry.
- ✓ December 2013. The New Mexico Supreme Court rules that barring marriage for same-sex couples is unconstitutional.
- ✓ December 2013. Federal judge rules that Ohio must recognize same-sex couple's marriage on death certificate.

Among cities and counties.

- ✓ December 2013. The Family Equality Council reports that the number of cities and counties with domestic partner registries grew to more than 100¹² and many cities and counties now offer domestic partner benefits to their employees.
- ✗ December 2013. A Texas judge issues an order blocking the city of Houston from providing domestic partner benefits to the same-sex partners of city employees.

Federal Regulatory Impacts of the Supreme Court's DOMA Decision

The Supreme Court's June 2013 decision striking down Section 3 of the Defense of Marriage Act (DOMA) has led the federal government to deal with two challenges when it comes to administering federal laws and benefits affecting same-sex couples: (1) marriage equality still is a reality in only a minority of states; and (2) recognizing same-sex spouses for the purposes of administering federal benefits is a daunting task, involving the review of thousands of rules and regulations. For example, what happens when a same-sex couple is married in one state and then moves to another where their marriage is not recognized?

As of now, the Obama administration has not arrived at a clear-cut answer to these questions. Some federal laws recognize a legally married same-sex couple only if they live in a marriage equality state ("state of domicile"), while other federal laws and regulations recognize that marriage no matter where they live (based on their "state of celebration"). Guidance and interpretation from some federal agencies is still forthcoming. Here is a rundown of where things stood at the end of 2013:

Federal Laws/Benefits Recognizing "State of Celebration"

- **Federal Employees Compensation Act (FECA)**
- **Federal Insurance Contributions Act (FICA)**
- **Federal Retirement Thrift Investment Board:** *pending*
- **Immigration** (for purposes of spousal visas)
- **Employee Retirement Income Security Act (ERISA)**
- **Federal taxes**
- **Free Application for Federal Student Aid (FAFSA)**
- **Medicare Advantage**
- **Military benefits**
- **National Guard benefits**
- **Retirement benefits for civilian federal employees and their spouses**

Federal Laws/Benefits Recognizing "State of Domicile"

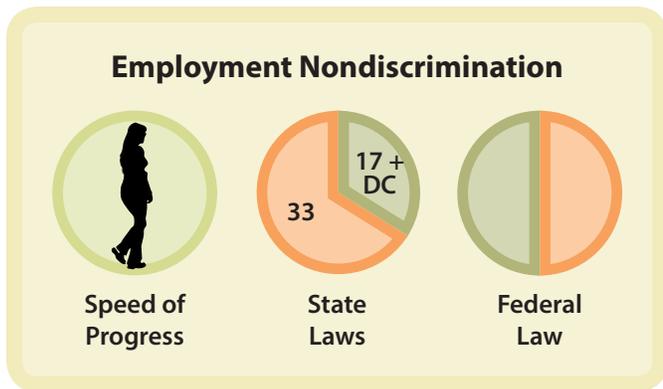
- **Family Medical Leave Act (FMLA)** except for federal employees for whom the state-of-celebration standard applies
- **Temporary Assistance for Needy Families (TANF)**
- **Supplemental Security Income (SSI)**

Federal Laws/Benefits Where Impact Is Unclear

- **Bankruptcy**
- **Family health insurance benefits** (see page 18 for more information on the impact of the Supreme Court decision on health benefits for same-sex couples).
- **Medicare**
- **Medicaid**
- **Social Security**

For more information about the ability of same-sex couples to access these services, visit "LGBT Organizations Fact Sheet Series: After DOMA – What It Means for You." www.lambdalegal.org/publications/after-doma.

Employment Nondiscrimination



When Americans talk about work, they don't just talk about having "a job." They talk about opportunity, about meeting their responsibilities, and having a chance at a good life. They talk about wanting to be treated fairly and equally, and to be judged based on their qualifications and job performance. And, they talk about wanting a job that lets them work hard, contribute to society, and provide for themselves and their families.

Americans' belief in opportunity for all workers has led to the adoption of many laws protecting U.S. workers from unjust treatment. But LGBT Americans have historically been excluded from these laws—and the majority of Americans believe it's time for that to change. In April 2011, a poll found that 73% of Americans supported laws protecting LGBT people from workplace discrimination.¹³ A recent survey of small business owners by Small Business Majority show that more than two-thirds support federal and state laws that would protect LGBT workers from employment discrimination.¹⁴

In fact, a significant number of Americans incorrectly believe that LGBT workers *already* are explicitly protected by nondiscrimination laws. But the fact is, federal law provides no explicit protections for LGBT workers, and neither does the law in 29 states.

By far the most significant advance in employment protections for LGBT workers in the last two years came not through legislation or employer action, but through the courts. In April 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued an opinion in *Macy v. Holder*, a sex discrimination case, finding that a transgender worker facing discrimination can file a claim for sex-based discrimination without having first to prove that the discrimination was based on sex stereotypes.¹⁵ Although no federal appellate courts have yet used it

State Nondiscrimination Provisions

Statewide nondiscrimination laws typically address discrimination not only in employment, but also in housing and what are known as public accommodations—places that provide goods and services to the general public (for example: restaurants, retail stores, public restrooms, public transit, etc.).

All 17 states that prohibit employment discrimination based on sexual orientation and gender identity also prohibit housing discrimination; 16 of those states also cover public accommodations—the exception being Massachusetts, which does not extend public accommodations protections based on gender identity.

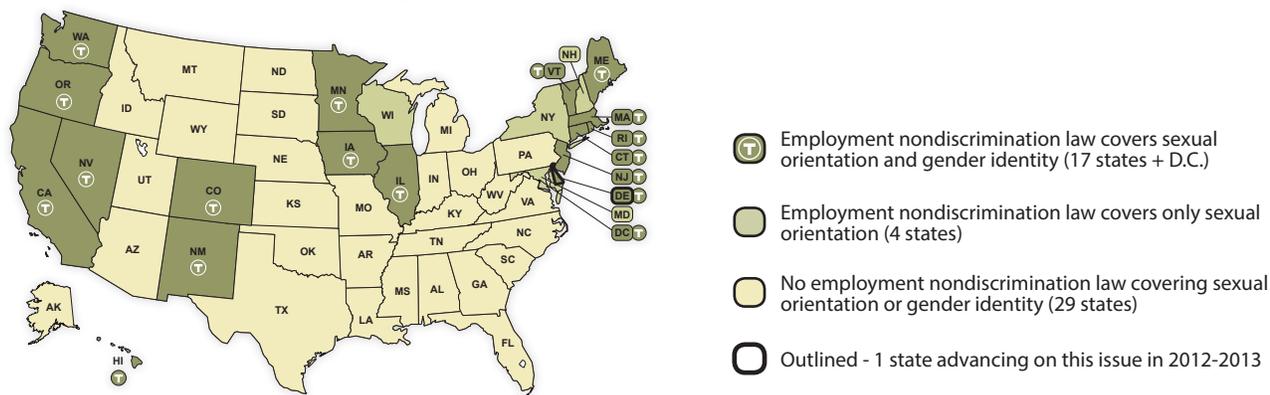
Four additional states have sexual orientation protections (but no gender identity protections) covering discrimination in employment, housing, and public accommodations. For additional information, visit MAP's Equality Maps at <http://lgbtmap.org/equality-maps>.

as a basis for their own decisions, the EEOC opinion in *Macy* sets binding precedent for federal government employees and provides legal reasoning that may in turn guide both state and federal courts.

Though private employers are not bound by EEOC rulings, the EEOC also acts as a mediator between employees and private employers. In recent months, the EEOC has successfully mediated and settled new cases of transgender workers facing discrimination, relying on the *Macy* decision to provide precedent.¹⁶ The EEOC now recommends that transgender people who experience employment discrimination because of their gender identity/expression file a sex discrimination complaint with the EEOC.¹⁷

Outside of the courts, there was significantly less progress in efforts to protect LGBT workers. At the federal level, in November 2013, the U.S. Senate passed the Employment Non-Discrimination Act (ENDA), a bill providing employment protections based on both sexual orientation and gender identity. This was the first time either chamber of Congress passed a nondiscrimination law inclusive of transgender people. But the prospect of passage in the House of

Figure 5: State-Level Nondiscrimination Laws



Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/employment_non_discrimination_laws.

Representatives is poor, with House Speaker John Boehner speaking publicly against the bill and saying he will not let it come up for a vote.

Additionally, the Obama administration has yet to issue an executive order extending nondiscrimination protections to employees of federal contractors. The administration also has not issued any guidance stating that the *Macy* decision applies to federal contractors.

Within the states, the only significant advance in the last two years was Delaware's addition of gender identity protections to an existing nondiscrimination law that previously only covered sexual orientation. Meanwhile, nondiscrimination legislation stalled in many states (see *Figure 5* above).

Two areas where the movement is making real progress in reducing discrimination are at the local government level and among leading employers. In December 2012, the Movement Advancement Project and the Equality Federation began tracking city and county nondiscrimination ordinances in states lacking statewide protections. The number of cities and counties with such ordinances reached 188 as of December 2013.

In addition, an overwhelming majority of Fortune 500 companies (91%)¹⁸ and the top 50 federal government contractors (81%) include sexual orientation in their nondiscrimination policies.¹⁹ The percentages of Fortune 500 companies and federal contractors including gender identity/expression are 61%²⁰ and 44%,²¹ respectively. Also, four out of 10 small businesses prohibit discrimination based on sexual orientation and gender identity.²²

The main result of the inadequate legal protections for LGBT workers is that LGBT people continue to report high levels of employment discrimination. Researchers have suggested that this discrimination plays in a role in higher rates of poverty and economic insecurity among LGBT people.²³

Making Inroads through Local Advocacy

Despite the relative stagnation of state-level advances in the past two years on non-marriage work, some states have seen significant progress on these issues at the local level.

Utah has passed employment and housing nondiscrimination ordinances in 15 municipalities, including Salt Lake City and Salt Lake County. Of these 15, 10 municipalities prohibit employment discrimination on the basis of both sexual orientation and gender identity.

In **Florida**, 55% of state residents are protected against employment discrimination based on their sexual orientation or gender identity. Also, 32 cities and counties in Florida provide domestic partnership benefits or public employee benefits for same-sex partners of employees. Finally, local initiatives mean nearly two-thirds of Florida students are protected from bullying based on sexual orientation or gender identity.³¹

Missouri has six municipalities, including the city of St. Louis, that offer domestic partnership registries. And 14 municipalities offer protection from discrimination in employment, housing, and public accommodations on the basis of sexual orientation and gender identity.³²

Employment Nondiscrimination: Recent Progress & Setbacks

At the federal level.

- ✓ April 2012. EEOC rules in *Macy v. Holder* that transgender workers can file claims for sex discrimination.
- ✓ October 2013. U.S. Coast Guard adds sexual orientation to its equal opportunity and anti-discrimination/anti-harassment policy statements.
- ✓ November 2013. Senate passes fully LGBT-inclusive nondiscrimination legislation, the Employment Nondiscrimination Act.

In the states.

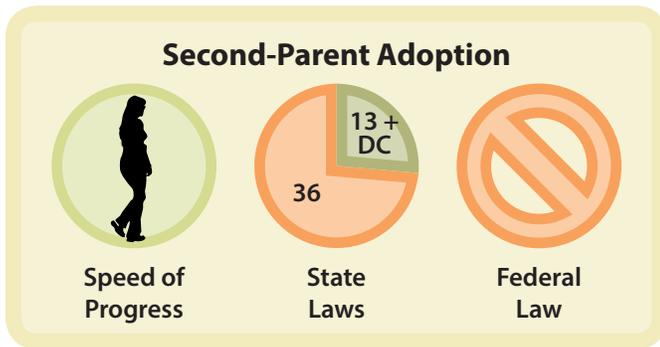
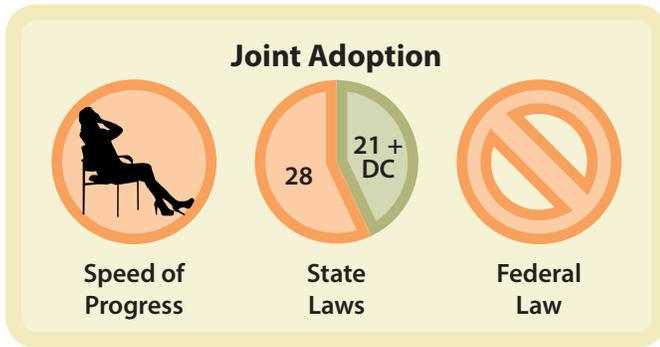
- ✗ April 2013. Anti-LGBT employment legislation is proposed in Louisiana.²⁴
- ✓ June 2013. Delaware includes gender identity protections in state's nondiscrimination law.
- ✗ 2012-2013. State employment nondiscrimination efforts stall in Maryland,²⁵ Missouri,²⁶ Nebraska,²⁷ North Dakota,²⁸ Virginia (state employees),²⁹ and Wyoming.³⁰

Among cities and counties.

- ✓ December 2013. The number of cities and counties with nondiscrimination ordinances in states lacking LGBT-inclusive nondiscrimination protections reaches 188.^c

^c As reported in the 2011 edition of *The Momentum Report*, in May 2011, Tennessee passed legislation prohibiting local cities from passing ordinances protecting LGBT people from discrimination.

Parental Recognition and Adoption Laws

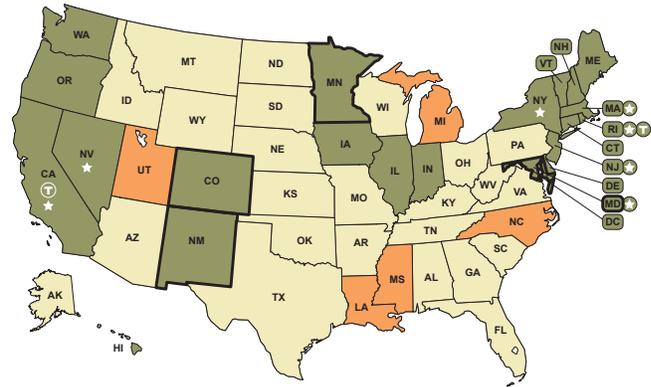


Most Americans agree that the law should protect the best interests of children. For children with LGBT parents, however, the laws in many states do just the opposite. Children in these states can be separated from loving parents just because those parents are LGBT.

Today there are more than 400,000 children in foster care across the United States.³³ Americans understand that these children need loving homes, and the increased visibility of LGBT families in the media and in American communities has convinced a majority of the population that LGBT people are more than capable of providing those homes. As of November 2012, 61% of Americans surveyed by Gallup said that gay and lesbian people should be able to adopt, up from 54% just three years before.³⁴

Nevertheless, only 21 states and the District of Columbia have unambiguous laws allowing same-sex couples to adopt. Adding to the challenges for LGBT parents, only 24 states allow both parents in a same-sex couple to be legal parents through a stepparent or second-parent adoption. When LGBT people are barred in this way from creating legal ties to children they are raising, they may also be denied the legal and financial protections of programs and services designed to help their children and stepchildren. In addition, in the event that one parent dies, a child can then be separated from the other parent if she/he is not legally recognized as a parent.

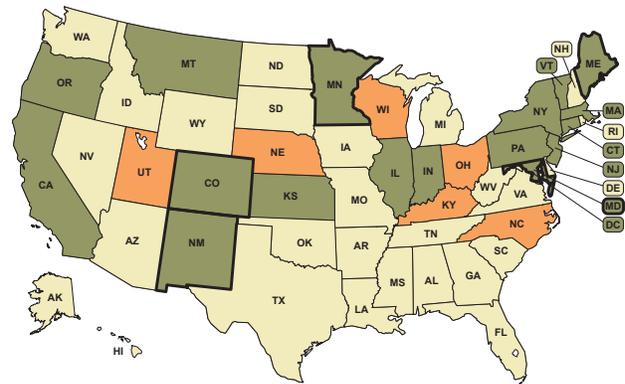
Figure 6: State Joint Adoption Laws



- LGBT parents can petition for joint adoption statewide (21 states + D.C.)
- Law prohibits discrimination in adoption based on sexual orientation (10 states)
- Law also prohibits discrimination in adoption based on gender identity (2 states)
- Same-sex couples face legal restrictions when petitioning for joint adoption (5 states)
- Availability is uncertain (24 states)
- Outlined - 4 states advancing on this issue in 2012-2013

Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/foster_and_adoption_laws.

Figure 7: State Second-Parent Adoption Laws



- LGBT parents can petition for second-parent adoption statewide (13 states + D.C.)
- Same-sex couples face legal restrictions when petitioning for second-parent adoption (7 states)
- Availability is uncertain (30 states)
- Outlined - 5 states advancing on this issue in 2012-2013

Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/foster_and_adoption_laws.

Family law is usually the purview of state law and family courts. But this hasn't stopped members of Congress from trying to spur progress on this issue. The Every Child Deserves a Family Act, introduced in the House and Senate in 2013, would prohibit

any public child welfare agency that receives federal financial assistance from discriminating against potential adoptive or foster parents on the basis of sexual orientation, gender identity/expression, or marital status. The bill has yet to attract enough support to come up for a vote in either chamber.

In fact, the only real progress on these issues in the last two years happened when four states advanced parenting rights for same-sex couples as a corollary of advancing broader marriage or comprehensive relationship recognition laws. With the extension of marriage or comprehensive relationship recognition in Maryland (2012), Colorado (2013), Minnesota (2013), and New Mexico (2013), legally recognized same-sex couples in those states can now petition for joint

adoption statewide. In addition, a law passed in October 2013 in California allows courts to recognize more than two legal parents for purposes of custody and financial responsibility. For example, if a lesbian couple parents a child who has a biological father who is still involved in the child's life, the law would allow all three adults who have acted as a parent to be recognized as parents.

In his annual Adoption Month proclamation in 2013, President Obama noted that potential adoptive parents should be considered regardless of a number of characteristics, including sexual orientation. This was an important statement that reflected recent changes in public opinion. But most states and the federal government still have not changed their policies to catch up with public acceptance of LGBT parents and their children.

Parental Recognition and Adoption: Recent Progress & Setbacks

At the federal level.

- May 2013. U.S. House and Senate introduce Every Child Deserves a Family Act (which does not advance).

In the states.

- ✘ November 2012. Kansas Court of Appeals rules that the state does not permit second-parent adoptions.
- ✓ 2012-2013. Extension of marriage or comprehensive relationship recognition to same-sex couples in Maryland (2012), Colorado (2013), Minnesota (2013), and New Mexico (2013) means legally recognized same-sex couples can petition for joint adoption.
- ✓ October 2013. The California legislature passes a law permitting the legal recognition of more than two parents for the purposes of custody and financial responsibility.

Immigration and Travel

As of 2013, there were an estimated 267,000 LGBT people living in the United States who lacked the authorization to live and work legally in this country.³⁵ These undocumented LGBT immigrants are part of a larger undocumented population of more than 11 million people who are living and working in the shadows of the U.S. economy.

Members of opposite-sex couples traditionally have been able to sponsor a spouse or fiancé/ee who is a resident of another country for immigration purposes. However, same-sex couples were not able to do this, even if they were legally married in a state or a country with marriage equality. This changed with the Supreme Court's June 2013 decision striking down Section 3 of the Defense of Marriage Act (DOMA).

With the federal government now required to recognize legally married same-sex couples, U.S. citizens who are married to someone from another country have a greater ability to sponsor their spouse for immigration. These rights are available even if the individual or the couple lives in a state that does not allow same-sex couples to marry, as long as they were legally married in a state or country that does. When it comes to immigration law, the federal government recognizes a marriage if it was valid in the state or country where it took place (the "place of celebration" rule). The consequence of this rule is that a binational, same-sex couple living in a state without marriage equality can travel to a different state to marry, return to their "home" state to live, and still benefit from the rule allowing U.S. citizens to sponsor a spouse for immigration. In addition, same-sex couples living in exile in other countries that offer the freedom to marry can return to live in the U.S. if they wish.

This is good news for the 28,500 binational, same-sex couples living in the United States.³⁶ However, not all same-sex couples can afford to travel out-of-state to get married, and there have been instances when one member of a binational couple has been too ill to travel for this reason. The result is that there are still gay, lesbian, and bisexual Americans who are not able to sponsor a partner for immigration.

Of course, many single LGBT immigrants do not have a spouse to sponsor them for immigration. With comprehensive immigration reform stalled in Washington, this means that these undocumented immigrants, along with millions of others, will continue

to live their lives in uncertainty, always facing the threat of deportation. An exception: younger LGBT immigrants who were brought to the United States by their parents. Many of these young people can now file for temporary work permits and relief from deportation under President Obama's Deferred Action for Childhood Arrivals (DACA) policy adopted in 2012.

Without passage of comprehensive immigration reform, LGBT immigrants will continue to live in limbo. In fact, there were no LGBT-specific provisions in the immigration bill passed by the Senate in June 2013. In a positive development, the U.S. Department of Homeland Security issued guidance in October 2012 stating that when considering an immigrant's "family relationships" during deportation proceedings, officials should include long-term, same-sex partners. The guidance also noted that individuals with a long-term, same-sex partner or spouse who is a U.S. citizen should be given "low priority" in terms of deportation proceedings. But this guidance does not halt deportation proceedings and does not give a family relief when a loved one is sent into proceedings.

While there is limited data about the sexual orientation or gender identity of people in Department of Homeland Security custody, recent reports and investigations find that LGBT immigrants in detention facilities face an increased risk of abuse, including sexual assault, verbal and physical abuse, use of solitary confinement, inadequate medical care, and other mistreatment.³⁷

Approximately 80 countries have laws that criminalize LGBT people based on their sexual orientation and gender identity. Data is not available about the number of LGBT people who seek asylum each year in the U.S. because of persecution based on their sexual orientation or gender identity. These cases can be difficult to prove, however, because LGBT asylum seekers may have been closeted out of fear of violence.

Immigration and Travel: Recent Progress & Setbacks

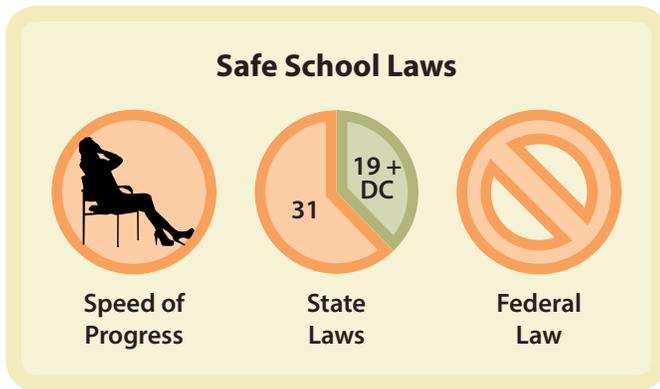
At the federal level.

- ✓ June 2012. Obama administration announces that undocumented young people can apply for “deferred action.”
- ✓ October 2012. U.S. Department of Homeland Security issues guidance on “family relationships” during deportation proceedings.
- ✓ June 2013. The Supreme Court’s striking down of Section 3 of DOMA allows spouses in same-sex married couples to sponsor a non-citizen spouse for citizenship or permanent residence.
- ✓ December 2013. U.S. Customs and Border Protection publishes final regulations for families (including same-sex partners and families with children) re-entering the U.S. and filling out a single customs declaration.³⁸
- ✗ 2012-2013. Comprehensive immigration reform remains stalled in Congress.

Emerging Focus: Disaster Preparedness

In 2012, Hurricane Sandy underscored the importance of disaster relief for underserved populations, including LGBT people. The storm destroyed the Ali Forney Center for Homeless LGBT Youth in New York City. Youth relying on the center’s services were forced to look elsewhere for medical care and emergency housing, critical needs during a hurricane.⁵⁹ As the impacts of climate change increase—flooding, drought, extreme weather—lower-income people and people with less secure housing, including some LGBT people, will feel the impacts first and strongest. Some agencies and organizations are working on culturally competent disaster relief services for LGBT people: the Federal Emergency Management Agency’s Individuals and Households Program offers support for those who lived in a household, regardless of their legal or biological relationships to one another;⁶⁰ and the National Disaster Interfaiths Network has an LGBT fact sheet for religious leaders providing disaster relief.⁶¹ In 2013, the Human Rights Campaign released a cultural competency guide for emergency responders⁶² and the Family Equality Council published a guide to help LGBT families prepare for disaster.⁶³

Safe Schools and Anti-Bullying Laws



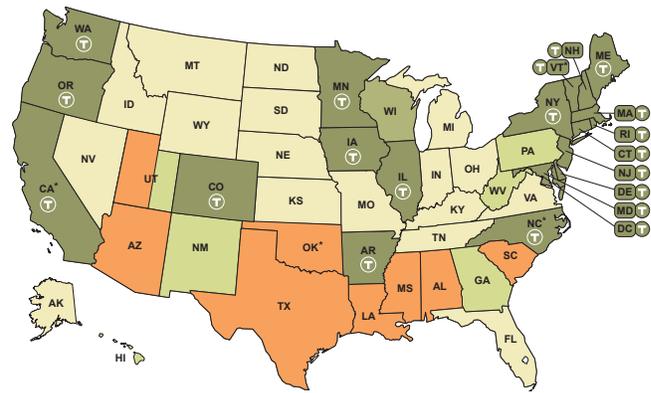
The past few years have seen unprecedented discussion of the challenges facing LGBT youth in America's schools because of bullying, harassment and violence. The topic has received extensive media attention since 2010, when several suicide deaths of youth known or believed to be LGBT sparked national discussions that often oversimplified, misrepresented, and sensationalized links between bullying and suicide. More recently, the 2011 National School Climate Survey conducted by the Gay, Lesbian & Straight Education Network (GLSEN) provided evidence that LGBT students are at risk. The survey found that 64% of LGBT students felt unsafe at school because of their sexual orientation, as did 44% of students because of their gender identity or expression.³⁹

State-level advances were slow in 2012-2013. Massachusetts passed guidance on respecting transgender students, including recommendations on using preferred names and pronouns, ensuring students can use facilities corresponding with their gender identity, and developing transgender-inclusive training curricula.⁴⁰ In August 2013, the California legislature passed a bill protecting transgender students in accessing school resources, facilities, and programs.^d

The national focus on bullying and other challenges facing LGBT youth appears to be yielding results in the last two years. For the first time, GLSEN's 2012 National School Climate Survey found that LGBT students reported decreased levels of biased language and victimization, as well as increased access to support services for LGBT youth.⁴¹

In 2013, members of Congress introduced the Student Non-Discrimination Act (SNDA), which would prohibit schools from discriminating against students based on sexual orientation or gender identity. In 2012,

Figure 7: State Safe Schools Laws



- 19 states + DC: Law covers sexual orientation and gender identity (19 states + D.C.)
- 1 state: Law covers only sexual orientation (1 state)
- 5 states: School regulation or teacher code prohibits discrimination based on sexual orientation (5 states)
- 8 states: Anti-LGB schools law or regulation (8 states)
- 18 states: No law protecting LGBT students (18 states)
- 0 states: Outlined - 0 states advancing on this issue in 2012-2013

Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/safe_school_laws.

President Obama endorsed SNDA and the Safe Schools Improvement Act (SSIA), which would require schools to adopt codes of conduct against bullying and report data to the Department of Education.

In March 2011, President Obama hosted the first-ever White House Conference on Bullying Prevention, followed by the White House LGBT Conference on Safe Schools & Communities in Texas a year later. These conferences provided opportunities for LGBT advocates to share innovative ways to improve school climate for LGBT students. They also were a forum for Obama administration officials to discuss steps that the Department of Education and other agencies have taken to address bullying.

Despite all the attention, there remains no federal law aimed at reducing bullying of LGBT students, and more than half the states (26) lack any kind of protections for these students. Of these states, eight have laws on the books that effectively make the school climate worse for LGBT students (for example, by banning discussion of LGBT issues in school).

Finally, while the national focus on bullying has been crucial in spurring action, at times it has led to the

^d As of publication, opponents of this law are certifying signatures collected in support of a ballot measure to repeal this legislation.

adoption of overly rigid solutions such as zero-tolerance policies for students involved in fighting and other offenses. These policies can create a school-to-prison pipeline that disproportionately impacts LGBT youth and youth of color. A 2012 survey of LGBT people conducted

by Lambda Legal found that 79% of LGBT youth of color reported that they had interactions with security or law enforcement in their middle or high school years, compared to 63% of white LGBT youth.⁴²

Safe Schools and Anti-Bullying Laws: Recent Progress & Setbacks

At the federal level.

- March 2012. White House hosts Safe Schools conference in Texas.
- February/March 2013. Safe Schools Improvement Act introduced in U.S. Senate and House.
- April/June 2013. Student Non-Discrimination Act introduced in U.S. Senate.

In the states.

- ✓ 2012. GLSEN's *National School Climate Survey* shows decreased levels of biased language and victimization reported by the nation's high school students.⁴³
- ✓ February 2013. Massachusetts issues guidance on supporting transgender students.
- ✓ June 2013. California passes law protecting transgender students' ability to access school programs.

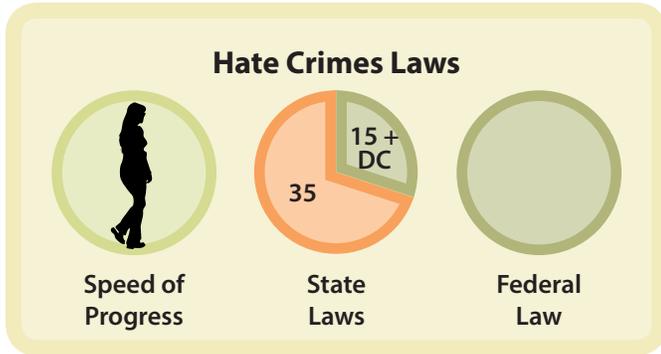
Among cities and counties.

- ✓ April 2012. Bowie State University in Maryland becomes the first historically black college or university to open a dedicated LGBT student space.⁴⁴ Several colleges have followed suit.⁴⁵

Emerging Focus: Bisexuality

The White House held the first ever closed-door roundtable for bisexual leaders in September 2013.⁶⁴ With mounting statistics confirming that bisexuals are at higher risk for poverty, adverse health outcomes,⁶⁵ and intimate partner and sexual violence than gay men and lesbians,⁶⁶ and with controversy swirling around recent public declarations by British swimmer Tom Daley and U.S. actress Maria Bello that they have had relationships with men and women, bisexuality captured national attention toward the end of 2013.⁶⁷

Hate Crimes



Virtually all Americans agree that people should not experience violence or persecution based on who they are. Hate crimes are not intended solely to hurt a particular individual, but to intimidate or express hostility against an entire group of people.

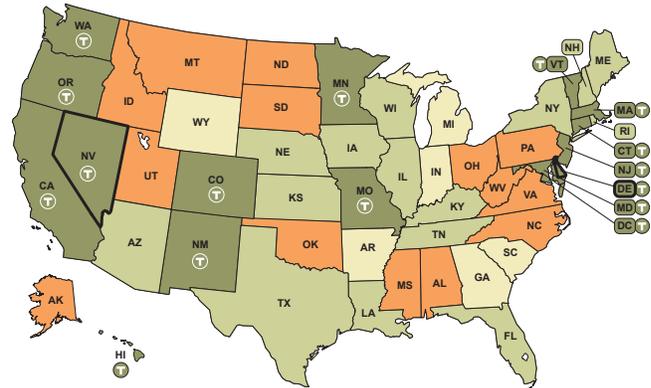
Historically, hate crime measures tended to focus on protecting people based on their race, religion, or national origin. In the past few years, however, state and federal lawmakers have adopted legislation including gender, sexual orientation, and gender identity/expression in the definition of hate crimes.

The biggest advance for LGBT hate crime protections was the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act adopted in 2009. This law gives the U.S. Justice Department the ability to investigate and prosecute crimes when an individual is targeted because of actual or perceived gender, sexual orientation, or gender identity, along with a number of other categories.

In 2013, LGBT people were included in the Violence Against Women Act as an “underserved community.” Not only will specific grants be available to organizations working on anti-violence efforts within the LGBT community, but any program or activity funded by the legislation is prohibited from discriminating on the basis of actual or perceived sexual orientation or gender identity. This is the first time that such nondiscrimination protections have been included in federal legislation.

In 2013, Delaware and Nevada expanded laws that focused solely on sexual orientation to add gender identity and expression. Now, 30 states and the District of Columbia have state hate crimes laws that cover individuals who are targeted because of their sexual orientation, while 15 states and D.C. have laws addressing both sexual orientation and gender identity.

Figure 8: State Hate Crime Laws



- Ⓜ Law covers sexual orientation and gender identity (15 states + D.C.)
- Ⓛ Law covers only sexual orientation (15 states)
- Ⓞ Law does not cover sexual orientation and gender identity (14 states)
- Ⓜ No hate crimes law in state (6 states)
- Ⓜ Outlined - 2 states advancing on this issue in 2012-2013

Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/hate_crime_laws.

Unfortunately, despite these legal advances, recent statistics from the Federal Bureau of Investigation (FBI) show that hate crimes against LGBT people remain a serious problem. According to the FBI, 20% of hate crimes reported by law enforcement agencies to the FBI in 2012 were based on some form of sexual orientation bias.⁴⁶ FBI hate crime statistics do not currently include gender identity/expression-related hate crimes. Nationally, reports of hate violence targeting LGBT people and individuals with HIV in 2013 stayed relatively constant in comparison to 2012.⁴⁷

The challenge going forward will be not only to ensure that the remaining 20 states have inclusive hate crime laws, but also to help change the culture so LGBT people do not have to live in fear that they will be targeted based on who they are.

Hate Crimes: Recent Progress & Setbacks

At the federal level.

- ✓ March 2013. Congress passes LGBT-inclusive Violence Against Women Act.

In the states.

- ✓ May 2013. Delaware passes law adding gender identity to existing hate crimes law.
- ✓ June 2013. Nevada passes law adding gender identity to existing hate crimes law.

Health and HIV/AIDS

LGBT people in the United States continue to face unique challenges when it comes to staying healthy and getting the medical care they need. While the past two years have seen some significant strides in improving access to health insurance coverage and affordable healthcare for LGBT people, health disparities remain a problem, and rates of HIV/AIDS are once again on the rise.

Health Insurance

LGBT people are less likely than the broader U.S. population to have health insurance coverage.⁴⁸ That said, there have been some positive developments in the past two years that promise to increase the percentage of insured LGBT individuals and families.

Expanded access to spousal benefits. In general, married same-sex couples receive equal access to family health insurance benefits when they live in a marriage equality state and work for a fully insured employer (see sidebar on Insurance Benefits for Married Couples). Couples living in non-marriage states, and those working for self-insured employers, have no guaranteed access to coverage.

While it is unclear if the Supreme Court ruling on DOMA is leading more employers to offer health insurance to same-sex couples, it is making these benefits more affordable. While Section 3 of DOMA was in effect, same-sex couples (and their employers) were taxed on the value of spousal healthcare benefits; opposite-sex couples received these benefits tax-free. This unequal taxation had the effect of punishing businesses that voluntarily extended health benefits to same-sex spouses of their workers, while often making those benefits unaffordable for many LGBT families. Now this unequal taxation has stopped for married same-sex couples nationwide (though unmarried same-sex couples receiving domestic partner benefits still must pay such taxes).

The Affordable Care Act. In the past, when LGBT people could not get health coverage at work, finding affordable insurance was difficult or impossible. This was especially true for transgender people, who often face denials of coverage, higher premiums, and exclusions for both basic and transition-related care (such as hormone therapy or certain surgical procedures).⁴⁹

A 2012 letter from the U.S. Department of Health and Human Services clarified that the Affordable Care Act (ACA) prohibits discrimination based on sex in the provision of health insurance. This means that employers and insurers cannot discriminate against transgender people. While this letter does not mean insurers must cover care related to gender transition, it does mean that an individual cannot be denied health insurance coverage or benefits because of their gender identity.

Another benefit of the Affordable Care Act for LGBT people seeking insurance is that the federal government's website allows users to search for health plans that specifically offer domestic partner benefits. The ACA also established two important provisions for people with HIV or other serious diseases: first, the ACA prohibits insurers from excluding anyone based on a preexisting condition; and second, the ACA prohibits insurers from placing lifetime caps on the dollar amount of care someone can receive.

Expanded Access to Transition-Related Care. In December 2013, Connecticut became the fifth state (along with California, Colorado, Oregon, and Vermont) to require that health insurance providers cover transition-related care. These mandates ensure that transgender people can access necessary care without paying exorbitant out-of-pocket costs or being forced to choose between necessary care and other necessary life expenses.

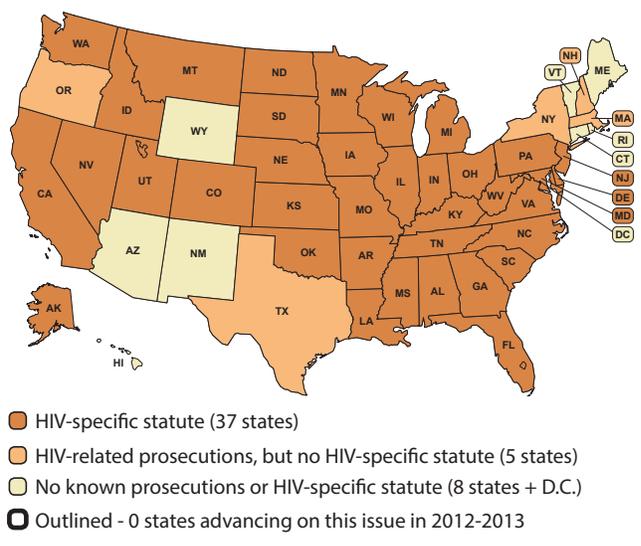
Insurance Benefits for Married Same-Sex Couples

In discussing health insurance for workers in the United States, it is important to distinguish between two types of employers: those that are fully insured and those that are self-insured. Fully insured employers buy insurance from health insurance companies and are subject to state health insurance laws. Self-insured employers forgo buying health insurance through insurance companies and instead pay claims directly.

For LGBT workers employed by fully insured employers in marriage equality states, access to health insurance for a same-sex spouse is required under state law. And, with more states approving marriage for same-sex couples, the number of same-sex spouses covered under these laws has risen dramatically.

Self-insured employers, however, are subject to the federal Employee Retirement Income Security Act (ERISA). ERISA does not require these employers to offer spousal benefits, nor does it require them (even under the Supreme Court’s ruling striking down Section 3 of DOMA) to treat married same-sex couples in the way they treat married opposite-sex spouses for the purposes of health insurance benefits. Nevertheless, refusing to offer equal benefits would likely open an employer to a legal challenge under Title VII of the Civil Rights Act.

Figure 9: State HIV Criminalization Laws



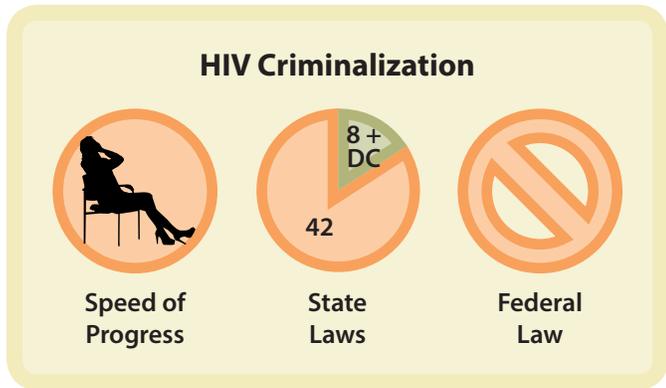
Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/hiv_criminalization_laws.

care, in part because of a fear of discrimination or lack of understanding by healthcare providers. This may explain why lesbian, gay, and bisexual adults are more likely to have serious health conditions, including cancer.⁵⁰

An increased incidence of HIV/AIDS is another major threat to the health of LGBT Americans today. Unfortunately, HIV/AIDS continues to be a significant and growing problem in the U.S., with incidence of infection rising among gay men, and in particular, gay men of color. Male-to-male sexual contact accounted for 62% of new infections in 2011. Of those new diagnoses, Black and Latino men accounted for 61%,⁵¹ despite these groups only making up approximately 25% of the population of men who have sex with men.⁵² Among transgender women, the racial disparities are shocking: approximately 27% of transgender women are HIV positive, and of those, 90% are Black or Latina.⁵³

The response to the ongoing HIV/AIDS crisis has been mixed. Despite the alarming continued rise in transmission among young men of color, organizations working on HIV and AIDS services have seen a decline in support for HIV-prevention services. In addition, HIV criminalization statutes, state laws that criminalize the transmission of HIV, and prosecutions continue to punish HIV-positive people disproportionately for potential exposure to the virus. Sentences for possible exposure are often disproportionately harsh and rooted in fear more than scientific fact.⁵⁴ Additionally, research suggests that these statutes discourage people from being tested

Health Disparities and HIV/AIDS



It is well documented that LGBT people face significant health disparities when compared to the broader U.S. population. Lesbian, gay, and bisexual adults indicate that they are more likely to delay medical

for HIV and may actually serve to reduce disclosure and discourage testing.⁵⁵ Currently, 37 states have statutes criminalizing HIV exposure or transmission (see *Figure 9*).

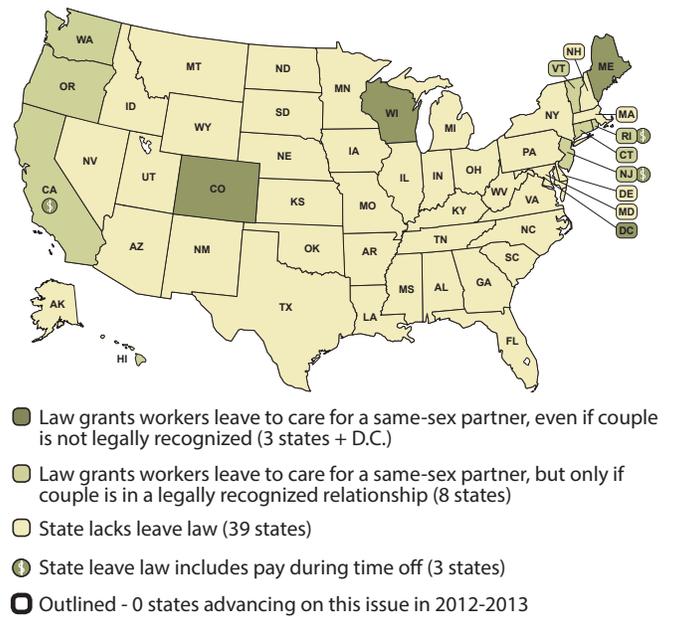
On the positive side, in December 2013, President Obama signed into law the 2014 National Defense Authorization Act, which for the first time contained language from the Repeal HIV Discrimination Action, requiring the Secretary of Defense to prepare a report for Congress concerning members of the armed forces who are HIV or Hepatitis B-positive. The law requires an assessment of whether policies on the retention or discharge of service members reflect evidenced-based understanding of how HIV and hepatitis are contracted and transmitted.⁵⁶ Also, in December 2013, President Obama pledged \$100 million for a National Institutes of Health program to seek a cure for HIV. One month earlier, the President signed the HOPE Act into law, replacing the HIV-positive organ donation ban with a directive to develop standards for organ donation between HIV-positive patients.

Quality and Standards of Care

Even when LGBT people and their families can obtain health insurance, they may still face inhospitable healthcare environments. This is especially true for transgender people, 27% of whom report that a healthcare professional has refused to provide them with care.⁵⁷ One significant milestone that will help ensure that transgender people can receive culturally sensitive and appropriate care is the 2012 announcement by the American Psychiatric Association that “gender identity disorder” will be replaced in the association’s Diagnostic and Statistical Manual of Mental Disorders with *gender dysphoria*. This distinction removes the stigma around the term “disorder,” but retains the utility of a medical diagnosis, which can help some transgender people access necessary care.

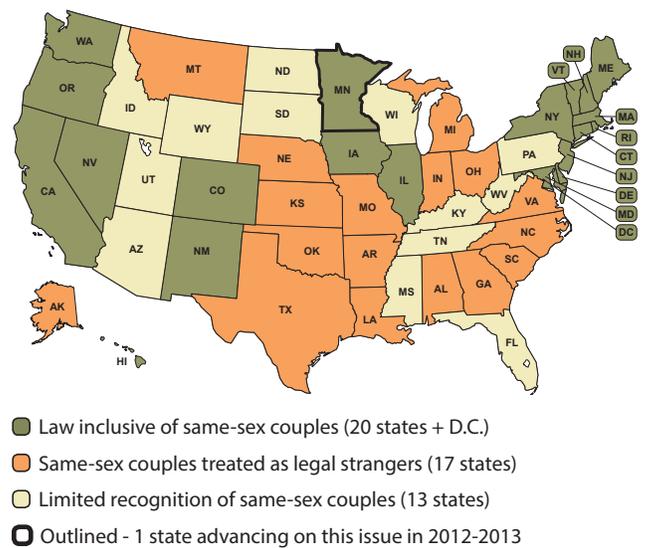
Another important advance for better healthcare treatment for LGBT people came when California passed a 2012 law prohibiting the ineffective and emotionally damaging practice of conversion therapy for LGBT youth. New Jersey passed a similar law in 2013, which survived a court challenge.

Figure 10: State Family and Medical Leave Laws



Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/fmla_laws.

Figure 11: State Medical Decision-Making Policies



Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/medical_decision_making.

Caring for a Sick Partner or Child

Federal and state laws make it possible for many employees to take time off work to care for a sick spouse, child, or parent. Thanks to the Supreme Court ruling overturning Section 3 of DOMA, employers in marriage equality states are now required under the Family and Medical Leave Act (FMLA) to make job-protected leave available to workers who need to care for a same-sex spouse. However, in states without marriage equality, employers face no such requirement. Beyond Rhode Island expanding its leave laws to offer paid leave to same-sex partners/spouses, there have been no recent advances in state law requiring equal family and medical leave (see *Figure 10* on the previous page).

Additionally, sometimes people need to make medical decisions for spouses or partners who are unable to make such decisions themselves. Married same-sex couples can make medical decisions for one another in all marriage equality states and states that offer comprehensive relationship recognition. But in the remaining 30 states, same-sex couples are not guaranteed the ability to make medical decisions for one another, and in the last two years, only Minnesota (through its extension of marriage to same-sex couples) has newly granted medical decision-making rights to same-sex spouses. (see *Figure 11* on the previous page).

Health and HIV/AIDS: Recent Progress & Setbacks

At the federal level.

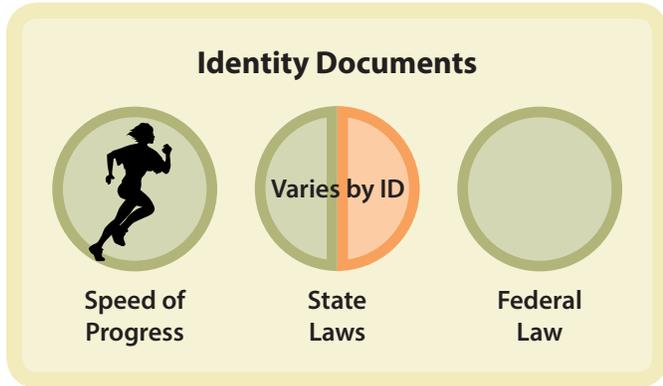
- ✓ March 2012. Veterans Administration creates policy ensuring transgender veterans receive respectful and competent care.
- ✓ September 2012. Department of Health and Human Services clarifies that the Affordable Care Act prohibits discrimination based on sex in the provision of health insurance, including on the basis of transgender status.
- ✓ November 2013. President signs the HOPE Act into law, replacing the HIV-positive organ donation ban with a directive to develop standards for organ donation between HIV-positive patients.
- ✓ December 2013. President pledges \$100 million toward finding a cure for HIV.
- ✓ 2013. President's budget for 2014 includes funding to extend domestic partner benefits to the same-sex partners of federal employees.^e
- ✓ 2013. As part of the Affordable Care Act, the federal government's website includes a feature for users to search for plans that specifically offer domestic partner benefits.

In the states.

- ✓ September 2012. California becomes first state to ban conversion therapy for minors.⁵⁸
- ✓ May 2013. In passing marriage equality, Minnesota allows same-sex spouses to make medical decisions for one another.
- ✓ June 2013. Rhode Island passes LGBT-inclusive paid family leave law.
- ✓ August 2013. New Jersey becomes second state to ban conversion therapy for minors, a ban later upheld in state court.
- ✓ September 2013. California passes law requiring residential care facilities to hold trainings on cultural competence and sensitivity when caring for LGBT elders.
- ✓ October 2013. California passes law ensuring equal fertility treatment insurance benefits for all couples, including unmarried and same-sex couples.
- ✓ December 2013. Connecticut bans insurance providers from excluding transition-related care for transgender people.

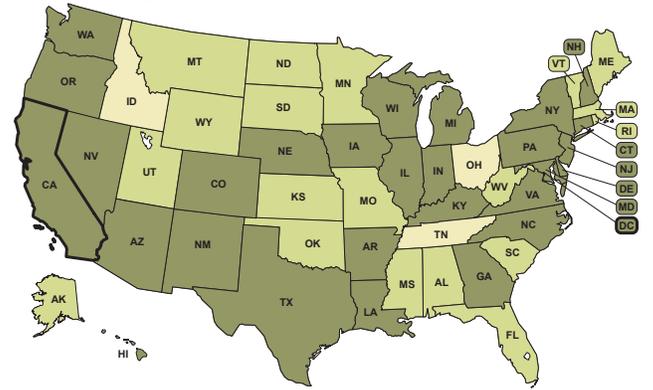
^e In the 2011 edition of this report, we noted that the administration extended limited federal benefits, such as long-term care insurance and travel relocation assistance, to the same-sex partners of federal employees.

Identity Documents



Transgender people face substantial obstacles in daily life because they may be unable to obtain identity documents accurately reflecting their gender. Many states make it difficult to obtain a new birth certificate or other identity documents with corrected gender markers. Some states will only issue an obviously amended birth certificate, which can draw attention to the changes. Additionally, states may require that transgender people have proof of surgery or a court order in order to obtain accurate documents, which present costly and intrusive burdens. When transgender people's identity documents, such as a driver's license, don't reflect the gender they live every day—or when a birth certificate is amended rather than reissued—transgender people are at risk for being “outed.” This can result in discrimination; physical violence; denial of employment, housing, or public benefits; and more.

Figure 12: State Birth Certificate Laws



- State issues new birth certificate after sex reassignment (28 states + D.C.)
- State amends existing birth certificate after sex reassignment (19 states)
- State does not issue new birth certificate or amend existing documents (3 states)
- Outlined - 2 states advancing on this issue in 2012-2013

Source: Movement Advancement Project, Equality Maps, current as of December 31, 2013. For updates see http://lgbtmap.org/equality-maps/birth_certificate_laws.

In June 2013, the Social Security Administration changed its policy to allow transgender people to request a gender-marker change on their Social Security card with simply a passport, birth certificate, or physician's certification. Previously, the Obama administration had required proof of “gender reassignment surgery,” a burdensome and sometimes insurmountable barrier for some transgender people. The change came after the Veteran's Health Administration announced in May 2012 that it would now simply require a physician's certification to change a veteran's gender marker on his or her health records.

Identity Documents: Recent Progress & Setbacks

At the federal level.

- ✓ May 2012. VHA eases procedure for changing gender on health records.
- ✓ June 2013. SSA eases procedure for changing gender on Social Security card.

In the states.

- ✓ August 2013. D.C. passes a law ensuring that transgender people will be issued a new birth certificate and making it possible for non-residents to get a court order from D.C. asking the vital records agency of their state to issue an updated birth certificate.
- ✓ October 2013. California legislature passes bill creating private, more streamlined system for transgender people seeking to amend their birth certificate without a court order.
- ✗ December 2013. New Jersey Governor vetoes law that would have streamlined process for changing gender marker on birth certificates.

Public Service & Cultural Visibility

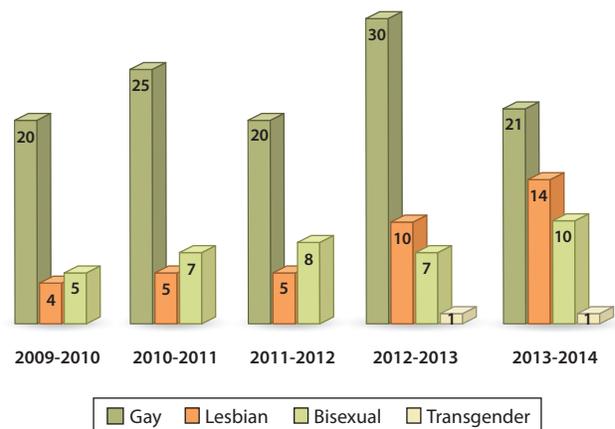
LGBT people have achieved unprecedented visibility in American society. A growing number of celebrities, lawmakers, journalists, professional athletes, and others in high-profile jobs are openly LGBT. In the past two years alone, prominent people “coming out of the closet” have included CNN anchor Anderson Cooper; actors Raven-Symone, Zachary Quinto, Matt Bomer, and Wentworth Miller; director Lana Wachowski and musician Frank Ocean; and athletes Jason Collins (football), Orlando Cruz (boxing), Brittany Griner (basketball), and Megan Rapinoe (soccer). Research also shows that the number of regular and recurring LGBT characters on broadcast network television reached its highest point in five years during the 2012-13 season (see *Figure 13*).

It is not just media and sports stars who are coming out; public officials are, too. Every state but one has at least one elected official who is openly LGBT. In November 2012, Wisconsin elected the first openly gay or lesbian U.S. Senator, Tammy Baldwin. The 2012 elections also brought the first openly gay person of color to Congress, Representative Mark Takano from California, and the first bisexual member of Congress, Representative Kyrsten Sinema from Arizona. The 113th Congress had the highest number of out LGBT members of any Congress in history: seven.⁶⁸ In September 2013, the Senate unanimously confirmed Todd Hughes to serve on the U.S. Court of Appeals for the Federal Circuit, making him the first openly gay federal appellate judge. And Elaine Kaplan was confirmed to the U.S. Court of Federal Claims, the second openly LGBT person to serve on that court.

The heightened visibility of lesbian, gay and, bisexual people in the U.S. military, thanks to the end of the Don't Ask, Don't Tell policy in 2011, has been another important cultural marker. Today, more than 1 million lesbians, gay men, and bisexuals are veterans, and an estimated 71,000 are currently serving in the U.S. military.⁶⁹ Transgender people, however, are still barred from serving openly. There are an estimated 140,000 transgender veterans,⁷⁰ who are, as of 2011, receiving trans-inclusive care from the Department of Veterans Affairs. Open service remains a goal for transgender service members and veterans.

Governmental recognition of the contributions of LGBT civilians reached a high in 2013 when astronaut Sally Ride and civil rights leader Bayard Rustin were

Figure 13: Number of Regular and Recurring LGBT Characters on Broadcast Network Television



Source: GLAAD. “2013 Where We Are On TV Report” 2013. <http://www.glaad.org/files/2013WWATV.pdf>.

posthumously granted the Presidential Medal of Freedom. In 2013, the Boy Scouts of America lifted their ban on openly gay scouts. The change took effect on January 1, 2014.

The increasing acceptance and higher profile of LGBT people in society has helped provide many who may have hidden their sexual orientation or gender identity in the past with the courage to live openly as who they are. This trend is especially prevalent among young people. According to a 2012 Gallup survey, 6.4% of adults between ages 18 and 29 self-identify as LGBT.⁷¹ This is three times the percentage of adults age 65+ who do so.

Simply put, it is more and more likely with each passing year that an American will have family members or friends who are openly LGBT. In fact, a May 2013 Gallup poll found that 75% of Americans have a friend, relative, or coworker who has come out to them as gay or lesbian, compared to just 56% 10 years ago.⁷² This increasing familiarity with LGBT people, in turn, has led to growing support for LGBT issues. A 2013 Gallup poll found that 36% of respondents said they had become more accepting of gay men and lesbians over the past few years.⁷³ When asked what changed people’s minds about marriage equality, 32% of respondents said it was because they knew someone who is gay or lesbian.⁷⁴

But public opinion is hardly settled on LGBT issues. When compared to those who know someone who is gay or lesbian, far fewer people say they know someone who is transgender; in fact, 2011 polling by Public Religion Research Institute showed that only 11% of Americans say they know a transgender person. And, while the

increased visibility of gay and lesbian people in American society is helping drive acceptance, there are still sobering challenges ahead. The percentage of Americans currently supporting marriage equality for same-sex couples is a very narrow majority, and opposition is intense in many states. In addition, more than one in three Americans (38%) do not agree that same-sex relations among consenting adults should be legal,⁷⁵ and almost as many (32%) believe that gay couples cannot be as good parents as opposite-sex couples.⁷⁶ In Virginia in May 2012, an openly gay prosecutor lost a confirmation vote in the state

legislature to become a district judge, even though he was highly qualified for the post and came recommended by members of both parties. And, despite taking action to allow gay Scouts, the Boy Scouts of America still maintains its ban on openly gay scout leaders.

In sum, there has been historic and important progress in the last few years in visibility and acceptance of LGBT people in the United States. However, bias and social stigma remain barriers to continued progress toward equality.

Public Service & Cultural Visibility: Recent Progress & Setbacks

At the federal level.

At the federal level, the past two years have brought a continued increase in openly LGBT public officials.

- ✓ November 2012. Wisconsin elects the nation's first openly gay or lesbian U.S. Senator – Sen. Tammy Baldwin. The November elections also bring the first openly gay person of color to Congress, Rep. Mark Takano from California, and the first bisexual member of Congress, Rep. Kyrsten Sinema from Arizona.
- ✓ June 2013. Eric Fanning is named Air Force undersecretary, the second-highest ranking civilian position within the Air Force.
- ✓ 2012-2013. 10 openly gay and lesbian people are nominated to serve on federal benches under the Obama administration, including the first openly gay black, Latina, and Asian federal judge.⁷⁷

In the states.

- ✓ 2013. For the first time, all but one state in the U.S. has at least one openly LGBT public official.

CONCLUSION

The growing number of marriage equality states, together with the 2013 Supreme Court decision striking down Section 3 of the Defense of Marriage Act, may create an impression that nationwide marriage equality is a foregone conclusion and that there is broad support for equal rights for LGBT people. But the truth is that the LGBT movement and its allies still have a significant amount of work to do to change the culture, build broader social acceptance, and advance the cause of equality. Over the past two years, progress on issues other than marriage has been patchy at best, and the degree to which LGBT people are accepted and treated equally under the law depends almost entirely on where they live.

To date, the advances for marriage equality have followed the same journey that many Americans have experienced on a personal level—change may have not happened overnight, but rather, was a culmination of years of thoughtful engagement and shifting attitudes. Yet the majority of states have much further to go. They

often lack even the most basic forms of legal equality such as employment nondiscrimination laws, state-based hate crimes protections, and safe schools protections. These states are home to significant LGBT populations, people who are bound to their communities and families despite experiencing extreme discrimination and high rates of poverty. Advocates in these states are working tirelessly to promote acceptance and change. The movement has won some local victories in these states, but state legislatures have put a stranglehold on much statewide progress.

Looking forward, LGBT Americans may continue to see more advances on the issue of marriage in the coming months and years, especially if pending court challenges are successful. However, there are many states still at the beginning of their journeys toward creating the legal, political, and social climate that would make marriage advances possible. If America is a nation that truly believes all people are created equal, the next challenge is for those states that continue to treat their LGBT population as second-class citizens to join in the journey toward acceptance and true equality.

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