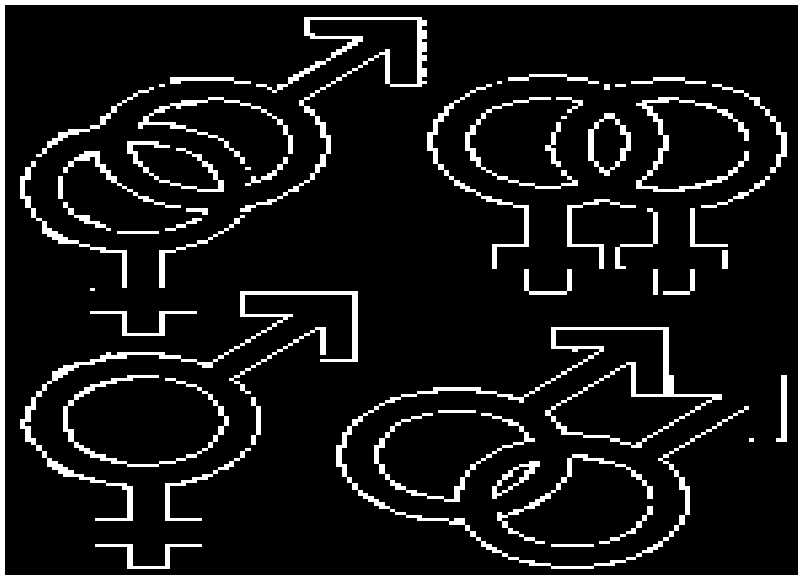


# THE COMMON SENSE FOUNDATION

*presents*

**Liberty and Justice for All:**  
A Study of Issues Affecting the LGBT  
Community in North Carolina



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## Glossary

*This glossary is intended to introduce new terminology to readers who may encounter new words, phrases, or ideas in these pages. It is adapted from a glossary distributed by the UNC-Chapel Hill LGBT office.*

**Ally** – A straight-identified person who is supportive of LGBTIQ equality and civil rights

**Bisexual** - An individual (female or male) who is attracted to and may form sexual and affectionate relationships with both men and women.

**Biphobia** - Irrational fear and hatred of bisexual people, behavior, and/or bisexuality in general.

**Closet/Closeted** - A person who feels they have or may choose to conceal their sexual orientation or gender identity is 'closeted' or 'in the closet'. The closet representing a hiding place for one's sexuality, gender expression, and/or gender identity.

**Coming Out** - Process of disclosing one's sexual orientation, gender expression, and/or identity to themselves. Also known or referred to as "coming out of the closet".

**Co-parent**- An adult besides the legal guardian of a child who is actively involved in parenting, most often the partner of the legal guardian

**Domestic Partnership**- Recognition by an administrative body (employer, government, etc.) of the relationship between two people other than by marriage. Open to both unmarried homosexual and heterosexual couples, with either equal or less benefits of marriage.

**Gay** - Defines a male who is attracted to and may form sexual and affectionate relationships with the same-sex. Often "gay" is used to describe both men and women who partner with the same-sex; this is not universally preferred.

**Gender**- Socially constructed definition of one's sex, based on societal expectations of femininity and masculinity

**Gender Expression** - How a person performs and manifests their biological sex and/or identified gender.

**Gender Identity**- One's psychological sense of oneself as a male or female.

**Hermaphrodite** - Someone who has both male and female sex organs. Often viewed as a derogatory term by intersex individuals.

**Heterosexism** - Societal and institutional reinforcement of heterosexuality as the privileged and norm; with the assumption that everyone identifies as heterosexual.

**Homophobia** - The irrational fear and/or hatred of, aversion to, or discrimination against lesbian, gay, bisexual, or transgender (LGBT) person or LGBT behavior.

**Homosexual** - Initially, introduced in the American Psychological Association (APA) to diagnose someone who partners with the same-sex. Presently, not part of (APA) as a diagnosis and often *not preferred* to describe men and women who partner with the same-sex.

**Intersex**- The preferred term for a person who is born with reproductive or sexual anatomy that does not correspond to typical definitions of male or female. <Intersex society of North America>

**Lesbian** - Defines a female who is attracted to and may form sexual and affectionate relationships with the same-sex. Often lesbians are incorporated into the term gay; which may be used to describe both men and women who partner with the same-sex. This is not universally preferred.

**Lifestyle** - Derogatory term to describe someone who is LGBTIQ.

**LGBTIQ**- Acronym to stand for "Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer"

**MTF/FTM** - Male to Female/Female to Male. The initials are used to specify the direction of a gender change.

**Out (someone)** - To disclose someone else's sexual orientation or gender identity without permission from that person. Also, used to describe how public/"out" someone is with their sexual orientation or gender identity.

**Partner (significant other)** - Gender-neutral and non-heterosexist method of describing someone's "boyfriend/girlfriend", or "husband/wife"; using partner or significant other is most often preferred in LGBTQ communities.

**Preference-** Derogatory description of LGBTIQ sexuality

**Queer** - Reclaimed derogatory slang for the LGBTIQ community. May not be accepted by the entire community, and can still be used as derogatory. Often used by the LGBTIQ community and those who partner with the opposite sex, to defy identities and labeling persons.

**Sex-** One's anatomical designation as either male or female, based on the presence or absence of primary sexual characteristics.

**Sexual Orientation-** The inclination or capacity to develop intimate emotional and sexual relationships with people of the same sex (lesbian, gay), a different sex (heterosexual), or either sex (bisexual).

**Sexual Identity-** Identification with a specific term to define one's sexuality, such as gay or lesbian. This identification may change as a person is going through the coming out process and is not necessarily considered fixed over time.

**Straight-** Slang for a person who is attracted to and may form sexual and affectionate relationships with a person of a different sex

**Transgender (TG)** - A broad and umbrella term used to describe the continuum of individuals whose gender identity and expression, to varying degrees, does not correspond with their genetic sex.

*Confused about the terms "transgender," "transsexual," and "transvestite"? Here are definitions of each word, as well as information about which terms are more accurate.*

**Transsexual (TS)** - An individual who presents themselves and lives as the gender opposite to their sex at birth. Transsexuals may be someone who partners with the opposite sex, bisexual, lesbian, or gay in their sexual orientation; not always a sexual minority. Transsexual individuals may also seek some type of sex reassignment surgery or hormones.

**Transvestite (TV)** - Non-preferred term to describe someone who dresses in clothing of their opposite gender.

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## A Common Sense Poll

The Common Sense Foundation commissioned a survey of North Carolina voters' attitudes toward the LGBT community. The results may surprise you!

We at Common Sense believe that this poll shows that North Carolinians believe in equality for ALL state residents, regardless of sexual orientation. This survey shows particularly strong support for measures outlawing discrimination against LGBT individuals.

- Do you believe all North Carolinians should have equal rights under the law regardless of sexual orientation?

**73% said yes!**

18% said no

8% had no opinion

- Do you think it's fair for an employer to discriminate against an employee based solely on his or her Sexual Orientation?

**57% said no!**

19% said yes

24% had no opinion

- Do you think it's fair for a landlord to deny housing to a tenant based solely on Sexual Orientation?

**69% said no!**

23% said yes

8% had no opinion

- Do you think it is fair to define marriage in such a way that it excludes same-sex couples?

**51% said no!**

39% said yes

10% had no opinion

*More survey questions on next page...*

*Survey continued from previous page*

- When a relative or loved one is sick and hospitalized, same-sex couples can legally be denied visitation rights. Do you think this is fair?

**56% favor same-sex visitation rights!**

34% oppose same-sex visitation rights

10% have no opinion

- Currently, same-sex couples are not legally entitled to coverage under their partner's employee health plan even though heterosexual couples are entitled to this coverage.

35% believe this is unfair

59% believe this is fair

5% have no opinion

- Do you believe same-sex couples should be treated the same under the law as heterosexual couples when it comes to adopting children?

39% favor equal treatment

54% believe the state can discriminate

7% have no opinion

- As long as marriage is defined as the union of one man and one woman, many individuals will be denied the right to hospital visitation, adoption, and may have to forego medical treatment themselves because they are not entitled to benefits under their partner's health plan. On further reflection, do you think defining marriage in this way is fair?

12% believe this is unfair

54% believe this is fair

34% are unsure

*On September 27th and 28th, 2005, Public Policy Polling conducted this telephone survey with a random sample of 25,000 voters in North Carolina. The results of this survey are weighted by gender to reflect the makeup of the original sample. While the number of responses varies per question, the minimum number for any single question was 770. The margin of error is therefore plus or minus 4%.*

## Domestic Partnership

Domestic partnership benefits create a way for committed, unmarried couples to receive some of the same benefits that come automatically with marriage. Advantages can include unemployment insurance; use of sick leave to care for a domestic partner (D.P.) or partner's child; D.P. health insurance coverage (insurance companies that cover employees' spouses must also provide coverage for D.P.s) that may continue after the employee's death; and death benefits and survivor's allowances.<sup>1</sup>

Domestic partnerships are usually recognized by programs offered through public and private employers, extending benefits to partners and families of their unmarried employees, and by registries in many cities that grant some legal rights and protections to D.P.s.<sup>2</sup> Domestic partnership should not be considered a substitute for marriage, but rather as independent from marriage; it is simply an alternative form of identification for a couple.

Domestic partner registration also brings increased legal recognition of a secure, committed bond. Most municipalities require that the partners both be over 18 years of age and emotionally independent. The couple must also share a residence and intend to live together indefinitely.<sup>3</sup>

In order to terminate a domestic partnership, the couple must submit a form to their employers in order to end legally the benefits they have received. Some employers impose a waiting period before an employee may apply for D.P. benefits with another partner.

It has sometimes been easier for the LGBT community to gain rights and recognition in the workplace than in civil society. Since a company C.E.O. or executive may choose to institute a domestic partnership benefits plan, the process is much simpler than, for example, passing a law in Congress. Executives can make decisions affecting hundreds of employees with the approval of a few board members, whereas a senator or representative is responsible to his constituency and political party. Also, such decisions reinforce values that are important in the workplace, such as diversity and acceptance, in a concrete way.

More than 1000 companies include sexual orientation in their non-discrimination policies.<sup>4</sup> Frequently, employers are realizing that neglecting to provide benefits to employees' partners, regardless of sexual orientation, is in violation of these policies. In order not to discriminate based on marital status, many employers are also making benefits available to all unmarried employees, including opposite-sex couples.

Even if marriage is available to same-sex couples, there are many reasons not to marry: a same-sex marriage leads to automatic discharge from the military; a married same-sex couple cannot adopt a child internationally; a bi-national couple may fear exposing the non-citizen partner to the U.S. immigration officials; and, finally, it is still legal to discriminate based on sexual orientation in 36 states. There is also no federal law preventing this type of discrimination in the workplace. If someone moves or transfers within a company, being part of a same-sex marriage can "out"

## **The benefits of domestic partnership registration are considerable.**

### **With registration can come the following advantages:**

- Hospital visitation rights
- Medical decision-making
- Legal and financial decision-making
- State disability benefits: registered D.P.s may file a claim for their partners to receive these benefits if their partner is eligible but mentally unable to make a claim for them
- Compensation for people whose D.P.s are killed or who witness injuries to their partners: just like a spouse can, a D.P. can sue those responsible for his/her partner's death or injury and recover for lost financial support and companionship
- Second-parent adoption: registered D.P.s go through the same process to adopt one another's children as is used for stepparents. This option is generally cheaper and less intrusive than others

him or her, sometimes causing professional problems.<sup>5</sup>

Contrary to stereotype, same-sex couples live everywhere in the U.S.; this is not a niche issue. The 2000 Census found that there are same-sex couple households in more than 99% of all counties in the United States.<sup>6</sup>

D.P. benefits should be offered to all employees, regardless of marital status or sexual orientation. When benefits can comprise up to 40% of the average employee's salary,<sup>7</sup> someone who cannot receive benefits for his/her partner is placed at a great disadvantage.

The ideal domestic partnership benefits policy would not discriminate between heterosexual couples and LGBT couples. Since D.P. benefits are supposed to reflect an understanding of the diversity of family relationships, sexual orientation should not be used as an exclusive dividing line. Also, any documentation required to prove a marriage to receive benefits should

also suffice for a domestic partnership. There should not be an undue burden placed on members of a domestic partnership that is not placed on spouses. Benefits offered to spouses and spouses' children should also be offered to D.P.s and their children.

Many companies have discovered that offering D.P. benefits is actually beneficial to the company. Making such benefits available shows a commitment to diversity and is very appealing in the hiring process. D.P. benefits have been ranked as the primary recruiting incentive for executives and the third-ranked most compelling recruiting incentive for managers and line workers.<sup>8</sup> It also enables employees to be more open about their sexual orientation. If a company fails to offer D.P. benefits, employees may choose to work for an employer who does.

Employers may have several fears about starting a D.P. benefits program; the primary one is likely

its potential cost. The experiences of employers who have offered D.P. benefits have shown, however, that this cost is negligible. In 2000, a study by the Institute for Gay and Lesbian Strategic Studies showed that the addition of D.P. benefits would increase total healthcare costs by only one to two percent. This increase would be offset by savings in hiring and training that might result from better employee retention<sup>9</sup>: some researchers have found the cost of recruiting a new employee to reach \$75,000, including advertising, interviewing, training, testing, relocation costs, lost productivity, and recruitment incentives.<sup>10</sup>

Some employers fear that D.P.s will require more expensive health care than married couples.<sup>11</sup> This idea results from prejudice: associating gay men with HIV/AIDS and assuming that the need for medication, etc., will increase insurance costs. The numbers show otherwise: a lifetime of healthcare for HIV/AIDS averages around \$119,000, which costs the same or less than the treatment for cancer and costs far less than a premature birth.<sup>12</sup> Many D.P. benefits, including family leave and access to company facilities, barely cost a company anything. Moreover, employers cannot justly exclude certain employees from receiving benefits so as to reduce health care costs.

Another common fear is that offering D.P. benefits will result in increased administrative costs or fraud. In practice, there is very little administrative difference between providing benefits for D.P.s and for married couples. Employers may also fear that employees will create fraudulent D.P. documentation in order to receive funds for sick friends; however, LGBT and heterosexual employees are no more likely to fabricate domestic partnerships than they are marriages. If an employee is found to have fabricated the affidavit that is generally necessary to obtain D.P. benefits, it is a legally prosecutable offense.<sup>13</sup> According to the Human

Rights Campaign, there have been no cases of D.P. fraud reported.<sup>14</sup>

Finally, some employers think that the possibility of legal, same-sex marriage means that offering D.P. benefits is unnecessary. Currently, however, same-sex marriage within the United States is only legal in Massachusetts, and many other states restrict or deny completely its validity within their own jurisdictions. Even if same-sex marriage were legal and respected everywhere in the country, not all same-sex couples would choose to marry—just as not all heterosexual couples choose to do so.

### **Hospital Visitation Rights**

One extremely important right that can more easily be given to domestic partners is visitation. If a couple is registered as domestic partners, it is far more straightforward to obtain hospital visitation rights and thus be considered family for purposes of involvement with routine, emergency, or long-term illness health care of a partner.<sup>15</sup>

However, D.P. registry and even a civil union do not always guarantee that a couple will be recognized as family. (Such recognition is, however, required by law in California, Vermont, and some cities<sup>16</sup>) Although D.P. certificates should be ample evidence of a family relationship, hospital staff may not understand because of insufficient training or problems with hospital policy. Suggested additional life-planning documents include a healthcare proxy, living will, power of attorney, and last will and testament. These documents help establish who has the right to make healthcare decisions and can ensure the inclusion of a partner in these choices.<sup>17</sup>

There is substantial support among professional healthcare organizations for the equitable treat-

ment of same-sex couples. According to the Joint Commission on Accreditation of Healthcare Organizations, which evaluates and accredits hospitals nationwide, a family member is defined as “the person(s) who plays a significant role in the individual’s [patient’s] life. This may include a person(s) not legally related to the individual.”<sup>18</sup>

The American Medical Association (AMA) has repeatedly included sexual orientation in its nondiscrimination policies. In December, 2001, the AMA passed a resolution supporting legal recognition of D.P.s for hospital visitation rights and, in the absence of another healthcare proxy, as the primary healthcare decision-maker.<sup>19</sup>

### **Additional Support for D.P. Benefits**

Some cities, such as San Francisco, Los Angeles, Berkeley, Minneapolis, and Oakland, have expanded their own D.P. benefits programs in an attempt to effect change with companies as well. If a company does business with one of these cities, it may be obliged to offer D.P. benefits to all unmarried employees.<sup>20</sup>

Several religious organizations have also voiced their support of D.P. benefits by offering them to their members or employees. Groups that represent a variety of beliefs have done so, including Episcopalian (Episcopal Church of the United States); Unitarian Universalist (National Headquarters); Jewish (Union of American Hebrew Congregations); Quaker (American Friends Service Committee); and Catholic (Archdiocese of San Francisco).<sup>21</sup>

### **The Federal Government’s Policy**

The federal government does not recognize domestic partnership as comparable to marriage under any of the over 1000 federal laws that differentiate according to marital status. For example, marital status

can be a factor in laws regarding inheritance, income, property, and estate tax obligations.<sup>22</sup> Marriage still conveys a far greater degree of legal protection than domestic partnership.

Furthermore, the federal government has not offered domestic partnership benefits to all employees. After lobbying by the federal LGBT employees’ organization GLOBE, however, some branches do include domestic partnerships in bereavement leave policies (such as the U.S. Civil Service, the Department of Housing and Urban Development, and the Office of Personnel Management). And in 1998, President Clinton signed an executive order to ban discrimination based on sexual orientation among federal employees.

### **State by State**

Several state governments offer D.P. benefits to state employees: **California, Connecticut, Illinois, Iowa, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.**<sup>23</sup> In some regions, however, states regulate the extent to which employers can provide D.P. coverage. These rules usually apply to certain kinds of coverage or certain types of policy. Such regulations are most strict in **Georgia** and **Virginia**, where the state has prohibited all insurance providers from providing coverage for domestic partners. Employers in Virginia may contract with out-of-state providers; Georgia employers do not have this option.<sup>24</sup>

### **North Carolina**

North Carolina state government does not offer domestic partnership benefits to its employees, but municipal and county governments can decide to make D.P. benefits available. In 1995, the **Carrboro** Board of Aldermen and the **Chapel Hill** Town Council chose to offer D.P. benefits and to keep a registry of domestic

partnerships. More recently, **Orange County** and both the **city of Durham** and **Durham County** decided to offer health insurance to employees' domestic partners, regardless of sexual orientation.

In Chapel Hill, there is no residency requirement to register and the registry is open both to same-sex and opposite-sex couples. As of May, 1995, benefits in Chapel Hill include bereavement, family, and sick leave; medical and vision benefits; and COBRA (some health plans not available).

In Carrboro, applicants for the D.P. registry must either live in the town or have at least one partner employed by the town. This registry is also open to all couples, regardless of sexual orientation.

### **Domestic Partnership vs. Marriage**

Over the last 15 years, the number of employers offering D.P. benefits has increased dramatically, a development that has echoed increasing societal awareness and acceptance of the needs of the LGBT community. Although the increasing availability of D.P. benefits is encouraging, domestic partnership is still not equivalent to marriage in many respects. Domestic partnership does not bring the same comprehensive benefits, nor does it have the same legal and social significance, as civil marriages, and it should not be considered a wholly acceptable substitute.

### **North Carolina Policy Recommendations**

- North Carolina state government should take note of the few cities and counties in the state that do offer D.P. benefits and registries, as well as of the successes in other states that make these benefits available to all unmarried citizens.
- The state should require employers in both the private and public sectors to offer

D.P. benefits that mirror those offered to spouses and their children. Documentation should also be required of domestic partners that is similar to—not greater than—what is required of married couples.

- These D.P. benefit plans should be available both to opposite-sex and same-sex couples.

<sup>1</sup><http://www.lambdalegal.org/>

<sup>2</sup>*Ibid.*

<sup>3</sup>Kohn, Sally. "The Domestic Partnership Organizing Manual for Employee Benefits." The Policy Institute of the National Gay and Lesbian Task Force.

<sup>4</sup>*Ibid.*

<sup>5</sup><http://www.glad.org/rights/DPpostgoodridge.html>

<sup>6</sup>"The State of the Workplace for Lesbian, Gay, Bisexual, and Transgender Americans: 2003." Human Rights Campaign, <http://www.hrc.org>.

<sup>7</sup>[www.lmaw.org](http://www.lmaw.org).

<sup>8</sup>"1999 Society for Human Resource Management/Commerce Clearing House Recruiting Practices Survey," Human Resources Management: Ideas & Trends, Chicago, No. 460, June 16, 1999.

<sup>9</sup>*Ibid.*

<sup>10</sup>[www.hrc.org](http://www.hrc.org).

<sup>11</sup>Kohn, "Manual."

<sup>12</sup>*Ibid.*

<sup>13</sup>[www.hrc.org](http://www.hrc.org).

<sup>14</sup>Kohn, "Manual."

<sup>15</sup><http://www.lambdalegal.org/>.

<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

<sup>19</sup>Resolution number 101 by the American Medical Association, December 2001.

<sup>20</sup>[www.hrc.org](http://www.hrc.org).

<sup>21</sup>Kohn, "Manual."

<sup>22</sup><http://www.lambdalegal.org/>.

<sup>23</sup>[www.hrc.org](http://www.hrc.org).

<sup>24</sup>Kohn, "Manual."

# Same-Sex Marriage

Among the many questions that have developed as societal awareness of the LGBT community has increased, same-sex marriage has been one of the most polarizing topics. Different sides of the debate have phrased it as protecting traditional, American family values, or as promoting equal rights and equal protections for all American citizens.

The inclusion of lesbian, gay, bisexual, and transgender people in the historically heterosexual institution of marriage means that they can no longer be ignored by so many sectors of American society.

In the last decade, numerous state legislatures have passed resolutions and bills and pushed forward constitutional amendments in order to limit marriage explicitly to heterosexual couples. Some respect civil unions performed in other states or concede some form of domestic partnership benefits; others deny any legal recognition whatsoever to same-sex couples.

After the 2004 Massachusetts Supreme Judicial Court decision that banning same-sex marriage was unconstitutional in that state, conservative activists pushed for more solid measures to prevent “activist” judges from affecting state policy. Eleven states passed ballot initiatives in the 2004 election alone to amend their Constitutions so as to ban same-sex marriage or define marriage specifically as a relationship between a man and a woman.

On the federal level, similar measures are in place: the Federal Marriage Amendment, for example, would amend the U.S. Constitution with a heterosexual definition of marriage, and the Defense of Marriage

Act—reflecting new laws in many states—also limits the rights of same-sex couples.

## North Carolina

Concurrent with a movement nationwide to pass Defense of Marriage Acts (DOMAs; see section on federal legislation), the North Carolina General Assembly passed the No Same-Sex Marriages bill in June, 1996. This law mandates that same-sex marriages performed in other states cannot be legally recognized in North Carolina.

Conservative advocates decided to push further; echoing later action on the federal level, they wanted an amendment to the state Constitution that would include the provisions of the No Same-Sex Marriages bill. A bill asking for such an amendment—the Defense of Marriage Act—was filed in January, 2005, in both the Senate and House and referred to committee. If passed by both houses, the amendment would be included in the ballot in the next election for voters’ approval; however, neither bill was approved in committee.

## States Nearby

Other southeastern states’ legislatures have passed resolutions and bills with anti-LGBT intent as well. Last year, **Georgia**’s legislature approved a ballot initiative to amend the state Constitution, banning same-sex marriage; voters approved the amendment in the November election. In May, 2004, **Tennessee**’s legislature passed a resolution that went almost unopposed in both House and Senate votes, intending to

amend the Constitution to include a definition of marriage as a heterosexual bond. The state would not respect marriages or civil unions performed elsewhere. This measure must be approved by the legislature in the 2005-2006 term and could be included in the ballot as soon as 2006.

Not surprisingly, **South Carolina** and **Virginia** do not issue marriage licenses for same-sex couples, nor do these states recognize or honor marriages of same-sex couples that were performed elsewhere. There is no form of statewide recognition for same-sex relationships. Virginia law explicitly prohibits same-sex marriages, civil unions, and the recognition of unions from other states.

Although our neighboring states have changed their laws and amended their constitutions to limit the rights of LGBT citizens, it seems that North Carolina is somewhat more progressive: legislation asking for an anti-same-sex-marriage ballot initiative has not passed out of committee.

### **Case Studies – Hawaii, Vermont, San Francisco, Massachusetts, Canada**

The mid-1990s saw an increase in judicial and legislative action regarding same-sex marriage on both the state and federal levels. In **Hawaii**, however, the first case of a same-sex couple suing for the right to marriage occurred in 1993. The state Supreme Court ruled that for a prohibition on same-sex marriage to comply with the state Constitution's ban on sex-based discrimination, the prohibition must be justified by a compelling reason.

In 1996, a Hawaii trial court ruled that a ban on same-sex marriage is not justified by any reason, much less a compelling one, and that same-sex couples should be allowed to marry. Although the case subsequently went to the state Supreme Court, voters chose

in 1998 to amend the state Constitution to allow the legislature to restrict marriage to men and women only. Before the Supreme Court could hand down a ruling, the legislature passed the amendment, and the same-sex couples' lawsuit ended.

So far, **Vermont** is the only state that will join same-sex couples in civil union. (Connecticut will join Vermont in doing so in October, 2005.) In December, 1999, the Vermont Supreme Court ruled that "the State is constitutionally required to extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law."

The Court ordered the legislature to determine how their decision would be implemented; the justices did not specify whether Vermont should allow same-sex marriage specifically. The legislature passed the Civil Unions Law on April 26, 2000, choosing to allow civil unions instead of civil marriage.

This is a significant step forward in the recognition of the rights of same-sex couples; however, there are still many problems with this choice. The word "marriage" is still reserved for heterosexual couples, denying same-sex couples the complete societal recognition that comes with the use of such a historical term.

Although there are no residency requirements to obtain a civil union in Vermont, one of the partners must have lived in the state for at least six months in order to lodge a complaint for dissolution of the union, and dissolution cannot be granted unless one partner has lived in Vermont for at least one year before the final hearing. Despite these ongoing issues, 3,471 couples had entered into civil unions in Vermont by January, 2002.

**California** was one of the first states to change its Constitution in response to the debate over same-sex marriage. In 2000, Proposition 22 was passed by voter referendum, amending the California Family

Code to say that “only a marriage between a man and a woman shall be valid or recognized.”<sup>1</sup>

However, **San Francisco** tries to be more liberal on the question of same-sex marriage than the rest of California. On February 12, 2004—concurrent with the debate in the Massachusetts legislature regarding same-sex marriage—Mayor Gavin Newsom encouraged city authorities to perform at least 15 same-sex weddings and issue about 12 additional marriage licenses to same-sex couples. These marriages were later struck down as invalid by the California Supreme Court.

**Massachusetts** is currently the only state in the U.S. that issues same-sex marriage licenses. On November 18, 2003, the state Supreme Judicial Court ruled that the state had “failed to identify any constitutionally adequate reason for denying civil marriage to same-sex couples.” As of May 17, 2004, same-sex couples received the right to civil marriage in Massachusetts.

Although there is no residency requirement for marriage in Massachusetts, there are some outdated provisions of state law that intend to prevent non-residents from marrying if it is forbidden in their state of residence. Since the majority of states have Defense of Marriage Acts (DOMAs) that do not permit same-sex couples to marry, these laws may endanger the legal rights of same-sex couples to marry in Massachusetts.

**Canada** also issues same-sex marriage licenses. On December 9, 2004, the Canadian Supreme Court ruled that it is not unconstitutional for the government to legalize same-sex marriage. Courts in eight of the ten Canadian regions ruled similarly, and these provinces (British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, Sas-

katchewan, and the Yukon) chose to allow same-sex marriages. In June, 2005, the Canadian Parliament formally legalized same-sex marriage for all of Canada.

Same-sex couples can marry in Canada under the same conditions as heterosexual couples, with no residency requirement. To obtain a divorce in Canada, however, at least one partner must live there for one year before a Canadian court will have jurisdiction over the divorce. And although same-sex marriage is legal in Canada, it may not be respected in the U.S. by the government or private organizations.

### **Federal Legislation**

The **Defense of Marriage Act** (DOMA) was passed in 1996, echoing the passage of many similar laws on the state level. The DOMA includes a definition of marriage for federal purposes: “the word ‘marriage’ means only a legal union between one man and one woman and husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”<sup>2</sup>

In March, 1997, shortly after the DOMA was passed, the General Accounting Office reported that there are at least 1,049 ways in which marital status factors into how a couple is treated under federal law. These laws affect such wide-ranging areas as social security, veterans’ benefits, employment benefits, housing, taxation, family violence, loans, conflict-of-interest rules, naturalization and aliens, and immigration.

LGBT advocacy groups and legal scholars have found several problems with the DOMA. It violates equal protection doctrine, writing into federal law a way of treating certain citizens in unequal ways.<sup>3</sup> The DOMA does not legitimize any formal relationships among same-sex couples—such as Vermont’s civil unions—that are treated like marriages under state law.

The Defense of Marriage Act also violates the Full Faith and Credit Clause of the U.S. Constitution: “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof” (U.S. Constitution, Article IV, Section 1).

With the federal DOMA, Congress has attempted to limit the scope of this Constitutional protection: certain groups receive full faith and credit in their relationships and contracts, and other groups do not. The Tenth Amendment expressly states that “the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states.” The DOMA seems a clear overreach of Congressional power.<sup>4</sup>

The **Federal Marriage Amendment** is another, more recent attempt by some Congressmen to limit marriage exclusively to heterosexual couples. A resolution calling for the amendment was brought before the House of Representatives on May 21, 2003. Its supporters hope that its ratification would prevent state legislatures from recognizing same-sex marriages. They believe that if the DOMA is struck down in court, there must be another level of protection against the validation of same-sex marriages. An amendment to the Constitution would provide exactly that protection.

### **Civil Union vs. Marriage: Separate and Unequal**

Although the ability to be joined in civil union is a significant step forward for many same-sex couples, many problems remain with this compromise. Places where civil unions are performed often do not have residency requirements in order to obtain a civil

union, but do have such requirements for dissolution (see sections on Vermont and Canada).

Also, a civil union can be considered a second-class marriage. According to the New England-based advocacy group Gay and Lesbian Advocates and Defenders, “[m]arriage is a unique legal status conferred by and recognized by governments the world over. It brings with it a host of reciprocal obligations, rights, and protections. Yet it is more than the sum of its legal parts. It is also a cultural institution. The word itself is a fundamental protection, conveying clearly that you and your life partner love each other, are united and belong by each other’s side. It represents the ultimate expression of love and commitment between two people and everyone understands that. No other word has that power, and no other word can provide that protection.”<sup>5</sup>

A heterosexual marriage is respected without question throughout the country; a civil union does not engender anywhere near that level of recognition. A state that does not itself grant civil unions or marriages is under no legal or governmental obligation to respect them.

The dichotomy of civil union and marriage creates tax problems as well. Many federal laws have separate provisions for single and married people. A couple joined by civil union is not married, yet neither partner is technically single. This creates problems with taxation: can a couple in a civil union be taxed as if married by state government, and each partner taxed as if single by the federal government?

### **Domestic Violence**

Domestic violence is not unique to heterosexual relationships by any means: the National Coalition of Anti-Violence Programs (NCAVP) found in a ten-year study in ten American cities that domestic violence

**The concept of a civil union** for LGBT couples is a relatively new one. A state has the authority to grant civil union to couples, thereby giving them the same rights, protections, and responsibilities as a married couple would under state law, such as:

- automatic inheritance rights without needing to obtain a will, and many protections for the surviving partner under the probate laws
- right to dispose of partner's bodily remains upon death
- preference for becoming partner's guardian if partner is incapacitated
- preference for making health care decisions without having to execute a Power of Attorney
- hospital visiting rights
- wrongful death cause of action if partner is killed in an accident
- loss of consortium claim if partner is injured due to another's negligence
- exemption from Property Transfer Tax when one person puts his or her partner's name on the deed
- right to hold property as Tenants by the Entirety, protecting property from some creditors
- communication privileges, so partners cannot be forced to testify against the other
- leave from work to care for an ill partner under family medical leave laws
- leave from work when one's partner gives birth to or adopts a child under parental leave law
- rights as a stepparent for a child of the other partner
- protection from discrimination in insurance and credit (to get, for example, joint car insurance)
- greater access to health insurance coverage to partners in a civil union
- potential responsibility to provide support (alimony) to the other partner upon dissolution.<sup>8</sup>

All of these rights, granted by a civil union, add up to a more complete package than a piecemeal attempt at individually obtaining as many as possible, such as a power of attorney or a detailed will.

occurs in 25% to 33% of same-sex relationships.<sup>6</sup> Problems of underreporting are even more egregious in the LGBT community, and many domestic violence agencies and shelters are not prepared or trained for the issues specific to this constituency.<sup>7</sup>

Someone who is coming out as lesbian, gay, bisexual, and/or transsexual may already feel isolated; a batterer may exploit this isolation for leverage over his/her partner; for example, s/he may threaten to "out" his/her partner to employers or family members.

Also, it is difficult for a same-sex couple to obtain two-parent rights when adopting a child. Often only one partner is legally able to adopt the couple's child, or the birth-parent is the only one with legal rights to the child. If the batterer is the one with such rights, s/he has significant leverage over his/her partner.

A survey to domestic violence agencies in all counties of North Carolina showed major differences in the services and programs available for people of LGBT gender expression or sexual orientation. Help

centers subjectively estimated that 0 to 20% of their visitors were lesbian, gay, bisexual, or transgender. Of the 79 agencies that responded, all have services for lesbians and bisexual women; four programs (5%) have services designed specifically for lesbians. Seventy-six programs (96%) have services for gay men, straight men, and transgender people; none of the programs, however, have programs specifically for these constituencies.<sup>9</sup> Our domestic violence help centers should tailor their services and train their employees to reflect the growing awareness of the needs of the LGBT community.

Some institutional protections for people who are in abusive relationships apply regardless of gender expression or sexual orientation. A Domestic Violence Protective Order (also known as a restraining order) is such a protection: a civil document, signed by a judge, it states that the batterer is not permitted to contact the plaintiff. In North Carolina, however, someone in a same-sex relationship may take out a restraining order against his/her partner only if the two are currently living together or have lived together in the past. People in heterosexual relationships may take out restraining orders regardless of current or past cohabitation.

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## A PERSONAL REFLECTION

### Until Death Do Us Part

*By Rabbi Richard C. Jernigan*

Mr. John H. Nitzsche passed away at 12:30 the 29th day of July 2005. His death was quiet and peaceful. His last breath was taken in the arms of his Husband. I am that husband, which is what a married man is called in even the most politically correct terms. I say that, as we were legally joined in the contractual manner in the state of Vermont on the 28th of June, 2002, in the city of Hartland. We resided in our home in Hope Mills, North Carolina the entirety of our Union until his passing.

The real problem is that North Carolina has never by logic or common sense exercised the concept of reciprocity in this legal union forged in Vermont. Because of this lack of reciprocity, legal documentation had to insure our union. Wills, Power of Attorneys, Medical Power of Attorneys, every conceivable binding and protective documentation was enjoined to be absolutely sure that in any event the issues of the union were to remain in place.

John's passing was and remains one of the most devastating emotional events in my 57 years of life. There is nothing to equate the loss of a partner in which you invested you life and love.

The courts of the state of North Carolina have refused to accept his Will. His will, which was written by Cumberland County Legal Aid, states that he was married and gives my name as his Spouse. The document grants me the right of inheritance, just as it would any other citizen of the state. The probate division refused his will, rejected his bequest and negated his will in entirety.

Let me bring you up to present. After two encounters with the probate office of the Cumberland County Probate Division, this will has had to be placed in the hands of an attorney who specializes in probate issues. This attorney is in Raleigh, North Carolina, not even in the same county I reside. It has yet to be recorded or its provisions granted.

In the interest of good taste and printability I will not say just how enraged and infuriated I am with this situation. By the codes of this state and the statutes of the present laws my deceased husband's provisions to grant me protection have been totally negated. His will under the law is useless at least at this point. Our relationship—one that is and was and still remains as viable as any heterosexual marriage—is voided and made a mockery.

I have to look at the present percentage of heterosexual marriages that manage to last until the passing of one of the partners; 60% never manage to make it to that point. I have and remain in a discriminated situation, and that discrimination is made legal by the existing statutes in every way.

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I am not by any measure equal under the laws of the state of North Carolina. I am at best a second-class citizen but have the responsibility to support the state of North Carolina as all other citizens. My elected legislative representatives, who are responsible to me as my voice, choose not to even acknowledge or recognize me as an element of the constituents they are bound to speak for or in defense of.

I know that I do not stand alone in this, what seems to be an obvious injustice. In the not-so-distant past, interracial marriages were illegal and forbidden in North Carolina. I cannot see that the logic and insight that brought about the revocation and elimination of that injustice is not recognized in this case as well. People get married, and the laws of marriage, in every marriage logically should be the same regardless of gender.

Rights are granted to human beings, and only in rare exceptions is gender the prime prerequisite to the applicability to those rights. Why in the age of this enlightened society do we quibble over something like same sex marriage? Why does it matter what the gender of the couples is? If the laws are applied equally such issues are a moot and useless point.

I render this article in the memory of my beloved and deceased husband.

# HIV/AIDS

## Still a Tragedy

Today when people think about the typical person suffering from AIDS the image that comes to mind is likely a poor, African villager as opposed to the 30-something gay male that was associated with the disease in the 1980's. Despite this new association, or perhaps because of it, it is of vital importance that the LGBT community and the larger community as a whole does not lose sight of the fact that in the United States HIV and AIDS have had a tremendous effect on men who have sex with men (MSM).

Over 300,000 MSM have died of AIDS and in 2003, MSM represented the largest proportion of HIV/AIDS diagnoses in the U.S.<sup>1</sup> Even though only about 5-7% of men in U.S. identify themselves as MSM, this group accounted for 63% of the new cases among males and 46% of the total new cases.<sup>2</sup> Though the number of HIV diagnoses for MSM decreased during the 1980s and 1990s, recent data shows that infections are once again on the rise.<sup>3</sup> HIV/AIDS is a real problem for a whole new generation of Americans and, unless a greater emphasis is placed on prevention, we will be faced with an increasingly permanent struggle against a deadly disease that disproportionately affects gay and African-American men.

### HIV/AIDS in North Carolina

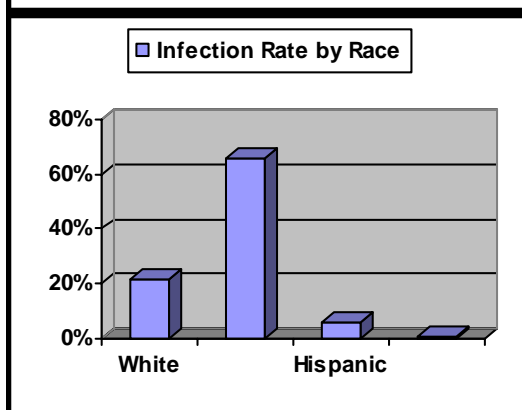
According to the 2005 HIV Prevention & Community Planning Epidemiologic Profile for North Carolina, an estimated 28,000 people are living with HIV/AIDS in North Carolina. In 2004, 1641 new cases of HIV were diagnosed in the state.<sup>4</sup> Although 2004 statistics are not yet fully available for the other 49 states, North Carolina ranked 10<sup>th</sup> in the country with 1,083 new cases in 2003.<sup>5</sup>

Among MSM and African-Americans, the situation in North Carolina is dire. In 2004, African-Americans, who constitute 22% of the state's total population, accounted for more than two-thirds of new HIV/AIDS cases.<sup>6</sup> African-American men are 6.5 times more likely to contract HIV/AIDS than their white counterparts and overall the infection rate for black North Carolinians is 8 times that of whites.<sup>7</sup>

Other minority groups continue to be disproportionately affected as well. In 2004, the rate of infection for Hispanics was almost three times that of whites.<sup>8</sup>

Although the disease has spread to other exposure groups, MSM continue to account for a significant portion of new HIV/AIDS cases and MSM infections have increased by 46% since 2000.<sup>9</sup> In fact,

**Table 1: 2004 N.C. HIV/AIDS Demographics, Race**



nearly 50% of reported HIV cases in 2004 indicated MSM or MSM/IDU (Injection Drug Use) as a potential risk factor.<sup>10</sup> Among African-American men the problem is even more distinct, with MSM and MSM/IDU accounting for 68% of the reported risks in 2004.<sup>11</sup> Overall, men account for more than two-thirds of all HIV/AIDS cases in North Carolina.<sup>12</sup>

**Why do the rates of transmission remain high among MSM?**

Sexual risk factors account for the vast majority of HIV infections among MSM. While some MSM contract HIV through intravenous drug use, most new cases are the result of unprotected sex. Not using a condom during anal sex with someone other than a monogamous partner whose HIV status is known continues to be a significant threat to the health of MSM.<sup>13</sup> Unfortunately, despite evidence that condom use significantly decreases the risk of contracting HIV, rates of unprotected anal intercourse appear to be rising.<sup>14</sup> One possible reason for this is that not having seen firsthand the tremendous toll of AIDS in the LGBT community, young MSM may not view themselves as at risk and are thus less motivated to practice safe sex. This could explain the fact that young MSM are among the groups at highest risk for HIV infection. According to the 2005 HIV Prevention & Community Planning Epidemiologic Profile for North Carolina, MSM was indicated as a risk factor in 90% of the new cases involving adolescent men ages 13-24.

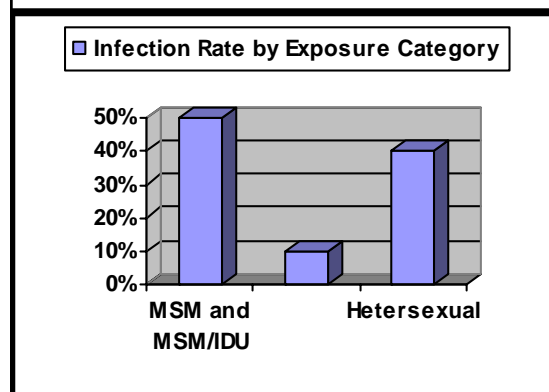
Another factor of importance is that many young MSM are unaware of their HIV status. According to a recent study of young MSM, 77% of those who tested HIV-positive incorrectly believed that they were not infected.<sup>15</sup> Of the men who tested positive, 59% believed that they were at low or very low risk.<sup>16</sup>

Young African American MSM in this study were especially likely to be unaware of their infection – approximately 9 of 10 young African American MSM, compared with 6 of 10 young white MSM were unaware of their status.<sup>17</sup>

**AIDS Drug Assistance Program**

According to the Kaiser Family Foundation, at least 6,545 people are living with full-blown AIDS in North Carolina.<sup>18</sup> One of the forms of assistance in place to help people living with AIDS is the AIDS Drug Assistance Program (ADAP). The ADAP provides life-saving drugs to low-income patients and currently serves 1,843 people in North Carolina.<sup>19</sup> Despite the recent appropriation of one million dollars in

**Table 2: 2004 N.C. HIV/AIDS Demographics, Exposure Category**



new funds for the N.C. ADAP, 805 people still sit on a waiting list because of lawmakers’ shameful reluctance to fully fund the program.<sup>20</sup> Adding insult to injury, North Carolina is one of only nine states with a waiting list and Tar Heel patients account for 42% of the total persons waiting for drugs in the United States.<sup>21</sup>

State law in North Carolina requires ADAP clients to have an annual income of less than 125% of the Federal Poverty Line (FPL) or the equivalent an-

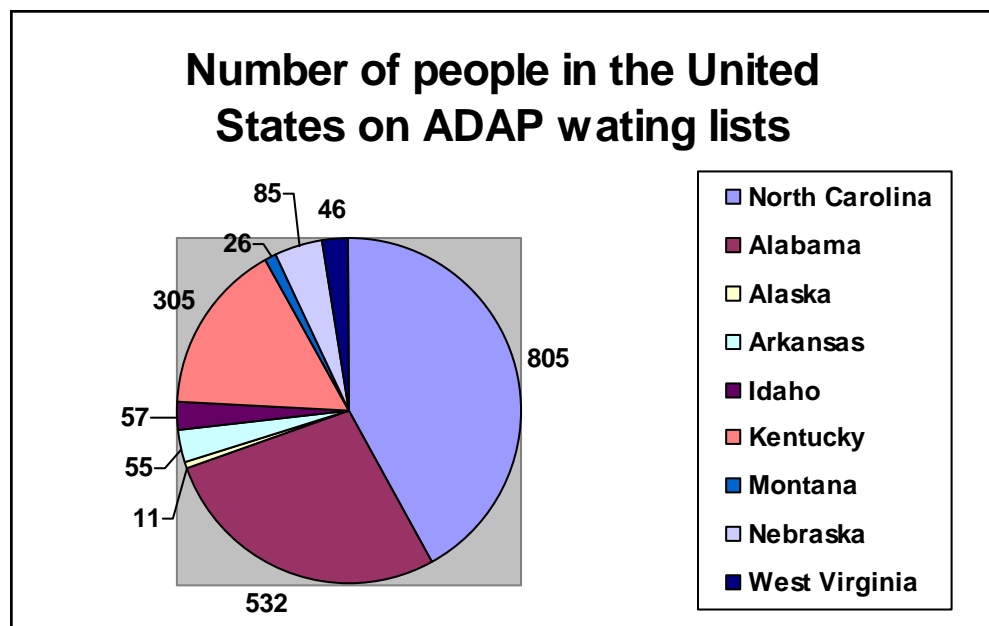
nual salary of \$11,638.22 This is the lowest eligibility requirement in the country and every other state has set their eligibility level at 200% or higher- the equivalent annual salary of \$18,620.<sup>23</sup> North Carolina's closest neighbors (Virginia, South Carolina, Tennessee, and Georgia) have all set their eligibility requirement at 300% of the FPL.<sup>24</sup> In fact, 35 states have set their eligibility requirement at 300% of the Federal Poverty Line, 14 at 400% of the Federal Poverty Line, and six states limit their eligibility to persons earning less than \$44,000 per year.<sup>25</sup> What this means is that the number of people not receiving life-saving drugs in N.C. is much higher than it appears at first glance.

Ninety percent of the clients served by the N.C. ADAP fall below the Federal Poverty Line yet only 50% of clients nationwide fall below the FPL. In addition, more than 16% of all clients nationwide earn between 200 and 400% of the FPL.<sup>26</sup> These glaring differences clearly demonstrate North Carolina's lack of commitment to care for low-income groups and the importance of raising the eligibility requirement to accommodate the many people earning more than 125% of the Federal Poverty Line.

Still, the most glaring argument for raising the eligibility requirement is the cost of the drugs. The U.S. Department of Health and Human Services estimates that Highly Active Antiretroviral Therapy (HAART), the standard of care for the majority of

individuals living with HIV disease, costs at least \$12,000 per year.<sup>27</sup> This is of course independent of any additional primary care costs or other treatment issues. The recent FDA approval of Enfuvirtide, a fusion inhibitor also known as Fuzeon or T-20, should further exacerbate the problem. Fusion inhibitors work by blocking the HIV virus from entering healthy human cells and are widely regarded as the most effective treatment. Patients that have developed resistances to other medications are most likely to benefit from the new drug and the medication is most needed by the sickest and hardest to treat patients. Enfuvirtide is expensive to manufacture and North Carolina currently spends less than 1% of all funding on providing the drug.<sup>28</sup>

North Carolinians deserve the best drugs



available. Funding should include money for new drugs, including fusion inhibitors, and other drugs provided by the ADAP should not be reserved to North Carolinians earning \$5.60 or less an hour. As it currently stands, lawmakers have set the eligibility requirement at less than the average annual costs of the drugs themselves. It's hard to imagine many North

Carolínians that are able to spend more on purchasing HIV/AIDS medication each year than they earn in annual income.

Sadly, ADAP funding is completely dependent on the ideological whims of federal and state politicians. Each year, hundreds of North Carolínians wait for North Carolina lawmakers to fully fund this critical program. Steven Sherman, Coordinator of N.C. ADAP, expressed caution for the years ahead. According to Sherman, "In order for the ADAP to be an accessible and open program, accepting new clients, the N.C. ADAP program would need at least 2-3 million dollars in additional funding for next year."

Ironically, funding for the program may save the state money in the long run. In providing these drugs, the ADAP allows people with HIV/AIDS to live normal productive lives. Medicine doesn't just save lives, it allows more people to work and reduces expensive hospitalization for people without health insurance. These benefits are passed on to the taxpayer by reducing the demand for welfare programs and by lowering the cost of hospitalization and insurance premiums.

In fact, due to eligibility requirements, none of the 1,843 North Carolínians in the AIDS Drug Assistance Program have private insurance.<sup>29</sup> Further demonstrating the need for an expanded ADAP, the national average for ADAP client insurance coverage is 15% and more than 17 states have at least 20% of their ADAP clients benefiting from private insurance as well.<sup>30</sup> Delaying life-saving medication to patients living with HIV/AIDS because of arbitrary insurance regulations accelerates the disease and inevitably leads to the need for more expensive drugs.

There is no doubt that people should not have to wait for life-saving drugs and that funding to the N.C. ADAP must be increased to meet the need. There is no cure for AIDS and the life-saving medicine pro-

vided by the ADAP improves the life of people with HIV/AIDS and allows them to live normally. But the larger issue that cannot be avoided is that people shouldn't still be getting infected at such high rates. HIV is largely preventable and thus logic establishes that we should focus our efforts on prevention. Sherman says, "Until we find a cure or vaccination for AIDS there will be an ever increasing need for more and more expensive drugs. The only way to curtail that need is to provide more money for H.I.V. prevention."

### **Prevention is the Key**

For more than a decade, funding to the HIV/STD Prevention and Care Branch of the North Carolina Department of Health and Human Services has been frozen at less than \$1.5 million per year. Funding for the program is used to support counseling and testing, community outreach, risk-reduction education and referral programs conducted by grassroots community-based organizations and local health departments. These programs are critical components of a comprehensive prevention plan that prevents the spread of HIV/AIDS and catches the disease in its early stages among those who are already infected. According to their website, branch staff and its funded agencies are on the front lines of HIV prevention and care in North Carolina.

Once HIV has advanced to the later, more serious, stage of AIDS, medical care and treatment costs rise exponentially. The fact that nearly half of all newly reported cases of HIV/AIDS in 2003 had advanced to AIDS should be a wake-up call for progressive leaders that state lawmakers are failing the people of North Carolina when it comes to statewide education and prevention programs.<sup>31</sup> Common sense would dictate a greater investment in community based programs

yet the legislature continues to under fund the HIV/STD Prevention and Care Branch. In 2005, lawmakers spent more than 8 times as much on the AIDS Drug Assistance Program than on the prevention programs that would reduce our need for expensive life-saving drugs.

In 2004, the North Carolina AIDS Advisory Council and the Minority Health Council asked state lawmakers for more than \$3 million in additional funds to enhance HIV/AIDS and STD prevention program efforts. This request fell on deaf ears and funding for these critical programs stagnated for the tenth year in a row. A greater investment in local prevention programs would increase the number of people educated, tested, and counseled in North Carolina and reduce the spread of the disease by unknowing carriers. According to Evelyn Foust, Director of the HIV/STD Prevention and Care Branch, "Clearly given North Carolina's on-going increases in HIV and AIDS cases, we must reinvest in HIV prevention. I am so frustrated that this fact doesn't seem obvious to everyone who cares about the future of North Carolina"

With HIV/AIDS cases on the rise for the fourth year in a row, it is absolutely necessary that lawmakers invest in prevention and care by community-based organizations. Testing programs need to be expanded to include churches and public schools and the state must assist community-based organizations, local health departments and college campuses in providing free and confidential HIV/AIDS education, testing, and counseling. In the words of Ms. Foust, "I was disheartened and disappointed that we didn't see an increase in funding from the legislature in 2005. This is completely unacceptable; we have to increase our investment in HIV/AIDS prevention, now!"

#### **North Carolina Policy Recommendations:**

- **Statewide Comprehensive Sexual Education Standards** for curriculum that includes information on the transmission and prevention of HIV/AIDS and other Sexually Transmitted Diseases. According to state law, sexual education must promote "a mutually faithful monogamous heterosexual relationship in the context of marriage" as the best means of avoiding sexually transmitted diseases, including H.I.V./AIDS. This policy must be reversed to include information on safe-sex, birth control and contraception, sexual orientation, and gender identity.
- **Free and Anonymous Testing** to ensure that everyone in the state is tested for HIV/AIDS. Currently, North Carolina is one of only ten states that does not offer anonymous testing.<sup>32</sup>
- **Sterile Syringe and Clean Needle Exchange Programs** to reduce the transmission of the disease among injection drug users (IDU).
- **Full funding for the AIDS Drug Assistance Program and the HIV/STD Prevention and Care Branch.** State lawmakers should allocate an additional \$25 million for the ADAP and improve the eligibility requirement by making it 400% of the Federal Poverty Line. The ADAP should also increase the availability of fusion inhibitors such as Enfuvirtide and serve clients who also have partial-coverage private health insurance. An additional \$10 million should also be allocated for prevention programs through the

HIV/STD Prevention and Care Branch. This money could be used to expand community-based programs such as public outreach, risk-reduction education, testing, counseling, and other public health strategies that have been proven to reduce transmission rates of the disease.

- **Medicaid Expansion** to cover more people with HIV/AIDS. According to the Kaiser Family Foundation, most people with HIV who qualify for Medicaid do so by meeting the program's income and disability standards once their illness has already progressed.<sup>33</sup> In fact, a recent study by the University of Duke shows that low-income or unemployed patients who qualify for Medicaid actually cost the state less than those who are excluded until they reach income or disability requirements.<sup>34</sup>
- **Single-payer Universal Health Care** that guarantees free and full access to quality health care regardless of income.

<sup>1</sup>“A Glance at the HIV/AIDS Epidemic”, CDC HIV/AIDS Fact Sheet. June 2005. <http://www.cdc.gov/hiv/pubs/Facts/At-A-Glance.pdf>

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<sup>23</sup> “ADAP Waiting Lists.” Kaiser Family Foundation, State Health Facts. <http://www.statehealthfacts.kff.org>

<sup>24</sup> “ADAP Financial Eligibility Requirement.” Kaiser Family Foundation, State Health Facts. <http://www.statehealthfacts.kff.org>

<sup>25</sup> “ADAP Waiting Lists.” Kaiser Family Foundation, State Health Facts. <http://www.statehealthfacts.kff.org>

<sup>26</sup> “Distribution of AIDS Drug Assistance Program (ADAP) Clients Served by Income, June 2004.” Kaiser Family Foundation, State Health Facts. <http://www.statehealthfacts.kff.org>

<sup>27</sup> U.S. Department of Health and Human Services, HIV/AIDS Bureau. <http://hab.hrsa.gov/programs/factsheets/adap1.htm>

<sup>28</sup> “Drug Expenditures by Drug Class.” Kaiser Family Foundation, State Health Facts.

<sup>29</sup> “Insurance Status of ADAP clients.” Kaiser Family Foundation, State Health Facts.

<sup>30</sup>*ibid.*

<sup>31</sup> “New AIDS cases, reported in 2003.” Kaiser Family Foundation, State Health Facts.

<sup>32</sup> “Anonymous/Confidential Testing.” Kaiser Family Foundation, State Health Facts.

<sup>33</sup> “Status of State Medicaid Expansion Efforts for People with HIV, May 2004.” Kaiser Family Foundation, State Health Facts.

<sup>34</sup> Karen Kemp. “North Carolina's Medicaid Program Offers AIDS Patients Revolving-Door Care, Duke Research Shows.”

# Employment and Housing Discrimination

It is a fundamental value in the American workplace that a person should be judged based on merit, not on his or her membership in a particular group. However, no federal law prohibits employment discrimination based on sexual orientation or gender identity and expression. Federal law currently forbids employment discrimination based on race, gender, religion, nationality, or disability; sexual orientation and gender identity and expression should be added to this list. However, with no federal ban on such inequity, many states, counties, cities, universities, and companies have enacted their own policies to protect LGBT workers.

### The Private Sector: Corporate and Academic Policies

At the end of 2004, 410 companies in the Fortune 500 (or 82%) included sexual orientation in their written non-discrimination policies.<sup>1</sup> Fifty of these companies had added this provision in 2004. Moreover, the higher-ranked a company is according to the Fortune list, the more likely it is to include sexual orientation in its non-discrimination pol-

icy: only one of the Fortune 50 companies—ExxonMobil Corp—does not have such an inclusive policy.

Not as many companies include gender identity and expression, but the number is increasing. Although only three Fortune 500 companies had such policies in 2000, 26 Fortune 500 companies included gender identity and expression in their non-discrimination policies by the end of 2003 (up 73%).<sup>2</sup> Now, 51 Fortune 500 companies include transgender people in their non-discrimination policies.<sup>3</sup>

Similar percentages of institutions of higher

education have inclusive policies. Forty-nine of the *U.S. News and World Report's* top 50 universities and colleges include sexual orientation in their non-discrimination policies; the University of Notre Dame is the exception.<sup>4</sup>

As of December 31, 2003, the Human Rights Campaign found a total of 2,253 private employers, colleges, and universities with non-discrimination policies that included sexual orientation. This number represents a 19% increase from

**Chart 1**

Written non-discrimination policies covering <b>sexual orientation</b> (public sector only)	Written non-discrimination policies covering <b>gender identity and/or expression</b> (public sector only)
Carrboro, Chapel Hill, Raleigh, City of Durham, Greensboro, Mecklenburg County, Orange County	Carrboro, Chapel Hill <sup>6</sup>

2002.<sup>5</sup> Furthermore, 79 employers of this group included gender identity and/or expression in their written non-discrimination policies.<sup>6</sup>

**State by State**

Given the lack of federal legislation on the topic, different states have made their own decisions. Although several states have elected to protect their LGBT workers, there is no protection based on sexual orientation in 34 states, and none based on gender expression and/or identity in 44 states.

**Federal Legislation**

As previously stated, there is no federal law that prohibits employment discrimination based on sexual orientation and gender expression and/or identity.

step forward for LGBT employees, ENDA is still not all-encompassing. The law would only apply to companies with 15 or more employees and, like most similar bills on the state level, would not affect religious schools or organizations or the military.<sup>10</sup> The act also does not require employers to grant benefits to domestic partners of employees (see section on domestic partnership). Furthermore, it does not directly address gender expression or identity.

Although few state laws or policies protect transgender people, state courts or agencies have interpreted existing state law to provide at least some protection in Connecticut, Florida, Hawaii, Illinois, Massachusetts, New Jersey, and New York.<sup>11</sup>

Several counties or cities, especially in California, have chosen to include protections for their

The Employment Non-Discrimination Act (ENDA) has been proposed every year since 1997,<sup>7</sup> modeled on Title VII of the Civil Rights Act of 1964. Even though more than three dozen major corporations have voiced their support for this bill,<sup>8</sup> it has consistently failed to be passed by Congress.<sup>9</sup>

<b>Chart 2</b>		
	<b>Non-discrimination policies</b> (apply to public sector only)	<b>Laws</b> (apply to all residents)
<b>Sexual orientation</b> protected	Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin	California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Wisconsin
<b>Gender identity</b> protected	California, Illinois, Indiana, Kentucky, Maine, Minnesota, New Mexico, Pennsylvania, and Rhode Island	California, Illinois, Maine, Minnesota, New Mexico, and Rhode Island <sup>13</sup>

L G B T citizens in their business practices by refusing to contract with companies that do not have inclusive non-discrimination policies. No county or

Although it would be a significant and crucial city in North Carolina has such a business policy.

At the end of 2003, 285 cities, counties, and governmental organizations provided some level of professional protection to their LGBT communities. Of these, 152 extended that protection to private sector employment as well.<sup>12</sup>

### North Carolina

North Carolina has no state-wide law or policy that protects LGBT workers in either the public or private sector. However, several counties and cities have decided to protect their own residents (*see chart 1*).

### Housing Discrimination

At least eight states and the District of Columbia prohibit discrimination based on sexual orientation in housing. Housing discrimination usually involves a property owner who refuses to rent or sell to someone solely based on his or her sexual orientation or gender identity.

### North Carolina Policy Recommendations

- More North Carolina cities should follow the example of Carrboro, Chapel Hill, and others by revising their non-discrimination policies to be more inclusive.
- The North Carolina General Assembly should pass legislation that would require all public- and private-sector employers to add sexual orientation and gender identity and expression to their non-discrimination policies.
- The state should recognize the right to shelter by expressly prohibiting housing discrimination on the basis of sexual orientation or gender identity.

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<sup>1</sup>www.hrc.org.

<sup>2</sup>“The State of the Workplace for Lesbian, Gay, Bisexual, and Transgender Americans: 2003.” Human Rights Campaign, www.hrc.org.

<sup>3</sup>*Ibid.*

<sup>4</sup>www.hrc.org

<sup>5</sup>“State of the Workplace,” HRC..

<sup>6</sup>www.hrc.org

<sup>7</sup>www.aclu.org

<sup>8</sup>“State of the Workplace,” HRC.

<sup>9</sup>www.aclu.org.

<sup>10</sup>*Ibid.*

<sup>11</sup>www.hrc.org

<sup>12</sup>“State of the Workplace,” HRC.

<sup>13</sup>www.hrc.org.

## Adoption

There is no official count of how many LGBT couples have adopted children. In October, 2003, the Evan B. Donaldson Adoption Institute reported that 60% of American adoption agencies accept applications from same-sex couples. Furthermore, 40% of adoption agencies in the U.S. have placed children in homes with LGBT parents.<sup>1</sup> By analyzing data from the 2000 Census, the Human Rights Coalition's FamilyNet project and the Urban Institute found that same-sex parents are somewhat more likely to have adopted than all other households.<sup>2</sup>

Despite impassioned, conservative statements to the contrary, the Human Rights Coalition's Political Director, Winnie Stachelberg, has stated: "Every credible study has shown that sexual orientation has no effect on parenting ability. Adoption should be about what's best for the child, not appealing to a political base. The nation's leading child welfare, psychological and children's health organizations agree that gay parents make just as good parents as straight ones. With so many children in foster care in need of permanently nurturing homes, it's critically important that we put science before ideology when making family policy decisions."<sup>3</sup>

Stachelberg's claim is well-supported by scientific evidence. In 2001, a meta-analysis of twenty years of studies on this topic showed that the sexual orientation of a parent affects neither the development of a child's mental health and social development nor the quality of the parent-child relationship [see "(How)

Does the Sexual Orientation of Parents Matter?" by Judith Stacey and Tim Biblarz in the *American Sociological Review*, April 2001].<sup>4</sup> Clearly, the myth of different parenting ability based on sexual orientation is not an issue of science, but of politics.

### Methods of Adoption for LGBT Parents

#### *Individual adoption*

An unmarried person adopts a child who has been placed for adoption by the child's biological parent(s) or is in the state's custody. This is allowed by almost all states, presumably including LGBT prospective parents. **Florida** is the only state that explicitly prohibits unmarried LGBT people from adopting: a law passed in 1977 to ban adoptions by LGBT people was upheld in January, 2005, when the Supreme Court refused to hear an appeal challenging the law.<sup>5</sup>

#### *Second-parent adoption*

One member of a same-sex couple may petition to adopt a child; following the successful adoption, the other partner may petition for a second-parent adoption (note that this may also happen after one member of a same-sex couple has a child). Both partners would then share the same legal standing as parents. This method enables the second parent to become a legal parent without terminating the first partner's parental rights. It also gives adoptive parents the same rights as the biological parents as far as custody and visitation are concerned. Of course, for a new partner of one of the biological parents to obtain second-parent legal standing, the child's other biological or adoptive parent must also consent.<sup>6</sup> This option is not available in all states.

*Joint adoption*

After a class action suit in 1997 by the American Civil Liberties Union, filed on behalf of 200 gay and lesbian couples in **New Jersey**, the state approved a policy allowing gay and lesbian couples to pursue joint adoption. The policy obligates the state’s Division of Youth and Family Services to use the same standards for all parents, regardless of sexual orientation or marital status.<sup>7</sup>

This method allows an unmarried couple to adopt a child together. Although many states allow a husband and wife to jointly petition to adopt, it is unclear whether a same-sex couple would have the same right if challenged.

*Other options*

If second-parent adoption is unavailable, a *co-parenting agreement* is another way to declare explicitly a shared interest in parenting rights. Such an agreement can include a co-parenting arrangement for both partners, with shared rights and responsibilities concerning the child’s healthcare, financial support, and legal inheritance. The document would also spell out how custody would be shared if a break-up were to occur.

Regardless of adoption method, a clerk or judge makes the final decision on whether to allow an adoption based on what s/he feels is in the “best interest” of the child. Different judges have different views

on this topic, varying even among counties in the same state. (An exception to this variation is when, as in New Jersey, a law prohibits sexual orientation-based discrimination).

Although no state has a law that specifically forbids transgender people from adopting, this lack of legislation does not mean that adoption agencies and judges will welcome such an application.

*Several professional organizations have voiced support for adoption by LGBT parents and/or for increased availability of joint and second-parent adoption protections for LGBT parents and their children:*

- American Psychological Association
- Child Welfare League of America
- American Bar Association
- American Psychiatric Association
- National Association of Social Workers
- North American Council on Adoptable Children
- American Academy of Pediatrics
- American Psychoanalytic Association
- American Academy of Family Physicians

**State by State**

The latitude given to judges or clerks creates a variable probability of approval for an LGBT parent within a state. Some judges and clerks have been amenable to second-parent adoptions, but not adop-

tion of a child from an agency. Still, gay and lesbian people have done individual adoptions in the following states: Alaska, California, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin.<sup>8</sup>

- Some states, such as **California, Connecticut, Illinois, Massachusetts, New Jersey, New Mexico, New York, Oregon, Vermont,** and the **District of Columbia**, do allow same-sex couples to file petitions for *joint adoptions*.<sup>9</sup>
- *Second-parent adoptions*, often the best op-

tion to ensure that both partners enjoy equal parenting rights, is available legally in a number of states, including **California, Connecticut, Illinois, Massachusetts, New Jersey, New York, Pennsylvania, and Vermont.**<sup>10</sup>

- **Florida, Mississippi, North Carolina and Utah** are among the states that explicitly prohibit unmarried couples from petitioning for joint adoption. Florida is the only state that specifically forbids adoption by gay and lesbian individuals and same-sex couples.
- **Georgia, Tennessee, Virginia, North Carolina and Kentucky** allow single LGBT people to adopt and do not explicitly forbid same-sex couples from petitioning for adoption. It is not explicit, however, whether someone may petition for second-parent adoption of his/her same-sex partner's child.<sup>11</sup>

### **Custody**

Custody disputes are always problematic, but perhaps especially so when one or both parents are lesbian, gay, bisexual, or transgender. If the dispute is between a heterosexual and a LGBT parent, the LGBT parent may not be treated fairly because of a judge's prejudice. In a same-sex couple, problems arise when only one partner has legal parenting rights. A judge may then award sole custody or visitation to the legal parent, regardless of the relative closeness of the relationship of each parent with the child. In the case of any couple, the law is usually in favor of the biological parent over the non-biological parent.

There are two components of custody: physical custody (with which parent the child makes his/her home) and legal custody (who makes important decisions for the child regarding issues like healthcare and education). These components may be awarded sepa-

rately or together.

One principle is usually the factor most influential to a final decision: what the judge determines is in the best interest of the child. Although this is difficult to define, judges may be guided by some of the following considerations:

- How much time does each parent spend with the child? Who is the primary caregiver?
- How close is the child to each parent?
- Where has the child been living?
- Does one parent cultivate or undermine the other parent's bond with the child?
- Does one parent act in a way that could be harmful to the child?
- Does one parent offer the child the opportunity to build sibling relationships in a way that the other fails to do?<sup>12</sup>

Overall, custody decisions are made on a case-by-case basis. Although this lack of standardization can cause problems when a judge has misinformed beliefs regarding the abilities of LGBT parents, a focus on each individual situation can also be beneficial.

### **North Carolina Policy Recommendations**

- North Carolina state policy must reflect a repeatedly proven scientific fact: that parents' sexual orientation has no effect on a child's social and mental development, nor does it affect the bond between parent and child.
- Accordingly, the General Assembly must clarify our laws to allow any couples to pursue joint adoption and second-parent adoption.
- The legislature must also follow the lead of such states as New Jersey and forbid county judges from allowing prejudice to affect custody and adoption rulings. Such decisions

should be made based on parenting ability  

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and the parent-child bond, not on bias against  
LGBT people.

<sup>1</sup>www.hrc.org

<sup>2</sup>*Ibid.*

<sup>3</sup>“Contrary to President’s Claim, Studies Show Sexual Orientation Has No Effect on Parenting Ability.” Human Rights Campaign website, www.hrc.org.

<sup>4</sup>*Ibid.*

<sup>5</sup><http://www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=17292&c=104>

<sup>6</sup>www.hrc.org

<sup>7</sup>*Ibid.*

<sup>8</sup>*Ibid.*

<sup>9</sup>*Ibid.*

<sup>10</sup>*Ibid.*

<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

## Gender Identity and Expression

The term “gender identity” refers to how one sees one’s sex matching who one feels one is. Transgender individuals do not feel that the body they were born into matches their idea of what their sex is. Someone who is born a female may consider herself to be truly a man. This is different from being a tomboy. Whereas, a tomboy knows that she is a woman and wants to be a woman; a transgender female knows she was born a woman and does not feel that her body matches her understanding of who she is as a person.

People with variant gender identities may or may not seek a physical transformation from one sex to the other. One’s gender identity is based on how one feels their sex should be, not what it may look like to other people. Therefore, a transgender person may have completely transitioned his or her sex or not at all. Anti-discrimination laws based on protecting citizens on the basis of sex, gender, or sexual orientation often do not protect transgender individuals.<sup>1</sup> By including the language “gender identity” in its anti-discrimination laws, North Carolina will protect its citizens who identify with a sex other than the one they were born into and wish to live as a full citizen in this state.

Gender expression involves how we appear and display ourselves to others. Almost all our decisions from the way we dress to the way we talk are based on how we think a man or a woman is supposed to act. Both heterosexual and LGBT citizens are protected by laws which protect gender expression. Men who act effeminate and women who act in a masculine way are

often discriminated against in society. These people often experience the prejudice of homophobia by others who are intolerant of those who “act gay.”

Unlike gender identity, which predominately protects transgender people, gender expression language applies to everyone. Without protections on gender expression, people can be victimized for simply looking or acting “gay.” The 2004 National Coalition of Anti-Violence Programs’ Anti-LGBT Violence report noted that 11% of victims of hate crimes targeting LGBT people identified as heterosexual.<sup>2</sup> Gender expression protects all of us—including heterosexual people—who are victimized by prejudice and homophobia.

Currently, North Carolina has no state-wide protections against discrimination on the basis of gender identity or gender expression. Chapel Hill is the only North Carolina jurisdiction to include “gender identity and gender expression” in its employment non-discrimination policy.<sup>3</sup>

In 2004, the Guilford County Board of Education implemented the Discrimination-Free Environment Policy which protects employees and students from harassment on the basis of many criteria including “gender identity/expression.” However, the Guilford County Board of Education’s Equal Opportunity Employment Policy does not include such protections.<sup>4</sup>

In the private sector, of the 88 North Carolina-based businesses included in the Human Rights Campaign’s 2004 Corporate Equality Index, only 3 have a non-discrimination policy that includes gender identity and expression. They are Replacements Ltd. of McLeansville, Mitchell Gold & Bob Williams of Taylorsville, and McKinney & Silver of Raleigh.<sup>5</sup> BB&T, a

North Carolina-based business that employs many North Carolinians, received an embarrassing 14% percent rating overall for its employment practices toward LGBT employees.

Transgender employees are some of the least protected in the state. While some counties and cities provide anti-discrimination laws based on sexual orientation, only one jurisdiction, Chapel Hill, provides employment security based on gender identity and gender expression for public employees.<sup>6</sup> Private companies based in North Carolina are only slightly better. Of the nine North Carolina-based companies ranked by the Human Rights Campaign's 2004 Corporate Equality Index only two offer benefits and protections for transgender employees.<sup>7</sup>

North Carolina is behind other Southern states, including Georgia and Kentucky, in the percentage of the population covered by gender identity and/or gender expression employment protections. Since 2000, Atlanta, Georgia, has been the largest city in the South to include gender identity in its Bill of Rights, protecting transgender citizens from discrimination in all areas of public accommodation.<sup>8</sup> In 2003, Kentucky became one of two states in America to offer state employees job protection based on gender identity.<sup>9</sup>

According to a 2002 poll conducted by the Human Rights Campaign foundation, 61 percent of Americans believe that transgender citizens should be protected from discrimination by the law.<sup>10</sup> However, federal legislation, even those inclusive of LGB citizens, consistently fails to include the transgender population. Across the country, there are only 78 jurisdictions (local, county, and state level) that have laws prohibiting discrimination on the basis of gender identity or expression.<sup>11</sup> According to the National Gay and Lesbian Task Force, as of January 2006, 27.6% of the current US population will be covered by local or state transgender-

inclusive anti-discrimination laws.<sup>12</sup>

North Carolina must include language that protects transgender individuals with laws inclusive of sexual orientation. The NGLTF's Transgender Civil Rights Project report found that unless gender identity, gender expression, and sexual orientation are passed together, they are passed, on average, 13.8 years apart.<sup>13</sup>

**Health care** for transgendered persons is an issue as well. In 1994, The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, fourth edition, replaced the diagnosis of transsexualism with Gender Identity Disorder.<sup>14</sup> GID is defined as having had the "desire to live and be accepted as a member of the opposite sex" for at least two years. However, the 1990 Americans with Disabilities Act specifically exempts transgender individuals from its benefits, comparing "transsexualism" to such extreme behavior as child molestation.<sup>15</sup>

The Henry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders, sixth version, is the current standard reference book for health care providers. However, many transgender individuals feel unwelcome in many doctor's offices, having faced years of being treated as a curiosity rather than a patient.

Mental health care is a crucial part of a healthy lifestyle for many transgender individuals, whether transitioning or not. Transgender individuals are often the most prone of all LGBT populations to suicidal thoughts.<sup>16</sup> Also, those considering hormone therapy or surgery are often required to have had extensive psychotherapy as a requirement of receiving other medical care.<sup>17</sup>

Furthermore, because they are more likely to be underemployed or unemployed than the average person, many transgendered persons are unable to afford basic medical and mental health services.<sup>18</sup> Additionally, the

cost of treating the mental and physical health issues of transgender individuals is very high. The estimated cost of a sex reassignment surgery (SRS) for a male-to-female person is between \$7,000-\$15,000. For female to male transitions, costs are nearly triple—between \$40,000 and \$70,000. This does not include the costs of hormonal or psychological therapies which are also part of the lengthy process of physical transformations.

There is hope. In a groundbreaking 2004 case, the Internal Revenue Service granted transsexual female Rhiannon O'Donnabhain the ability to deduct costs toward her sex reassignment surgery as “a necessary medical expense.”<sup>19</sup> Previously, a tax examiner had determined that her medical costs were not valid grounds for claiming a deduction because her surgery was viewed as “cosmetic.”

North Carolina public employees have little health care provisions for transgender employees. The State Health Plan considers “sex transformation surgery” cosmetic, as defined in North Carolina law, and therefore uninsurable.<sup>20</sup> However, surgery for intersex individuals to change their anatomy is not considered cosmetic. Also, many transgender individuals feel isolated by their health care practitioners who may not understand transgender issues, which often prevents them from seeking care.

Fortunately for some, North Carolina is one of 18 states<sup>21</sup> to have a specific statute (N.C. Gen. Stat. § 130A-118(b)(4) (2004)) enabling a sex change on one's birth certificate. The State Registrar will provide the change if the person seeking the new birth certificate provides a written request and a letter from their physician affirming that the person has obtained a “sex reassignment surgery.”

For most people, the ability to use a public bathroom is not considered a privilege. However, many transgender and gender variant people view public rest-

rooms as intimidating and potential threats to their safety. Since most restrooms are divided into women's and men's rooms, those persons whose genitalia does not match their gender identity or expression often feel uncertain about which restroom to use. In a March 2005 *New York Times* article, Rolan Gregg, a 29-year-old student at the California College of Arts and Crafts in San Francisco, who was born female and has begun hormone therapy in order to transition to a physical male, said that, “The problem with not passing is that my risk of violence is really high. So going to the bathroom becomes really scary.”<sup>22</sup> Avoidance of restrooms often leads to physical health problems such as stress on the bladder and kidneys.

Advocates of gender neutral restrooms want bathrooms to be accessible and safe to everyone. This range of accommodations includes allowing people to use the bathroom based on their gender identity or expression, not only on their biology to changing current single-stalled restrooms to be gender inclusive. A study by the city of Eugene, Oregon, Human Rights Program concluded that, “in the 70 plus jurisdictions that have implemented [transgender-inclusive anti-discrimination] legislation, no company or place of public accommodation has been forced to construct or been sued for not constructing reasonable [bathroom] accommodations.”<sup>23</sup>

Allowing people to use the bathroom based on their own gender identity is not enough. There is enough anecdotal evidence in local studies and throughout the transgender community to support the idea that bathrooms are not safe spaces for transgender individuals. Allowing individuals the right to use public restrooms based on their presented gender is a start but it does not adequately address safety concerns. The surest way to protect transgender and gender variant individuals is to designate existing single stalled, locked restrooms as gender-neutral.

The purpose of establishing gender-neutral restrooms is to protect transgender and gender variant people from the harassment and danger of prejudice. The Jim Crow laws in the South established a hierarchy of social worth. Southern whites, who established and maintained such laws and customs through control of the legislative, business, and judicial arenas, did not provide regularly accessible and clean restrooms to African-Americans. Likewise, an absence of gender-neutral bathrooms sends the message that we as a society do not care about the safety of some of our most vulnerable citizens.

In 2005, The American Civil Liberties Union successfully defended a case between a couple married in North Carolina and the Department of Homeland Security. Gia Lovo-Ciccone, a female to male transgender person and North Carolina resident, married El Salvadorian citizen José Mauricio Lovo-Lara and was issued a North Carolina marriage license. DHS accused the couple of actually being a same sex couple, and therefore their marriage void and the couple's subsequent immigration also invalidated.<sup>24</sup> However, the panel ruled that since the couple was married in a state which allows for individuals to change their sex on their birth certificates, which was done by the bride who transitioned from a male to a female, that DHS had no jurisdiction to invalidate the marriage. In its decision, the Immigration Board of Appeals ruled that "There is no indication that the DOMA was meant to apply to a marriage involving a post-operative transsexual where the marriage is considered by the State in which it was performed as one between two individuals of the opposite sex."<sup>25</sup>

Recently, the Department of Homeland Security and Citizenship and Immigration Services has focused a lot of attention on the status of transgender marriages. In multiple cases, the US government has attempted to deny engagement or marriage based citizenship or permanent resident petitions by questioning the

status of postoperative transgender individuals, including those who have received new birth certificates and other pieces of identification which reflect their current sex.<sup>26</sup> The decision in *Matter of Lovo-Lara* will establish a strong precedent for recognizing transgender marriage across the country, safeguarding marriages in the 23 states, including North Carolina, which already recognize these marriages.

### North Carolina Policy Recommendations

- North Carolina must include gender identity and gender expression in its current anti-discrimination legislation. North Carolina should also grant contracts to companies who treat LGBT employees equally with heterosexual employees.
- North Carolina needs to add equal protection for its transgender citizens and to add "gender expression and gender identity" language explicitly to its protections for all citizens.
- The state should ensure that gender-neutral bathrooms are available in all public facilities.
- North Carolina must require health insurers to ~~extend coverage to transgendered individuals~~ by repealing the law that calls "sex reassignment surgery" a "cosmetic" practice.

<sup>1</sup>[http://www.glad.org/GLAD\\_Cases/Conn\\_Hate\\_Crime\\_Testimony.pdf](http://www.glad.org/GLAD_Cases/Conn_Hate_Crime_Testimony.pdf)

<sup>2</sup>[http://www.ncavp.com/common/document\\_files/Reports/2004NationalHV%20Report.pdf](http://www.ncavp.com/common/document_files/Reports/2004NationalHV%20Report.pdf)

<sup>3</sup>Code of Ordinances of the Town of Chapel Hill, Article IV, Section 14-28

<sup>4</sup>[http://www.safeschoolscoalition.org/lawpolicy-guilford\\_nc.html](http://www.safeschoolscoalition.org/lawpolicy-guilford_nc.html)

<sup>5</sup>HRC: Corporate Equality Index, [www.hrc.org](http://www.hrc.org)

<sup>6</sup><http://townhall.townofchapelhill.org/Agendas/ca040510/4g-%20Discrimination%20memo.htm>

<sup>7</sup><http://www.hrc.org/>

<sup>8</sup><http://library3.municode.com/gateway.dll/GA/georgia/>

<sup>9</sup><http://personnel.ky.gov/info/eo03-533.htm>

<sup>10</sup>Human Rights Campaign, “Transgender Basics” <http://www.hrc.org/>

<sup>11</sup>NGLTF, “Populations of Jurisdictions with Explicitly Transgender-Inclusive Anti-Discrimination Laws” email from Lisa Monette (7/5/05)

<sup>12</sup><http://www.thetaskforce.org/downloads/trans/YearsPassedbetweenGIEandSOJan05.pdf>

<sup>13</sup><http://www.behavenet.com/capsules/disorders/genderiddis.htm>

<sup>14</sup>[http://en.wikipedia.org/wiki/Diagnostic\\_and\\_Statistical\\_Manual\\_of\\_Mental\\_Disorders](http://en.wikipedia.org/wiki/Diagnostic_and_Statistical_Manual_of_Mental_Disorders)

<sup>15</sup><http://www.eeoc.gov/policy/ada.html>

<sup>16</sup><http://www.glbtc.com/social-sciences/suicide,2.html>

<sup>17</sup><http://www.hbigda.org/socv6.cfm#10>

<sup>18</sup>American Public Health association, 1999, “The Need for Acknowledging Transgender Individuals within Research and Clinical Practices.”

<sup>19</sup>[http://www.glad.org/News\\_Room/press83-11-30-04.html](http://www.glad.org/News_Room/press83-11-30-04.html)

<sup>20</sup><http://statehealthplan.state.nc.us/policies/PDFs/SU0600.pdf>

<sup>21</sup><http://www.nclrights.org/publications/tgclients.htm>

<sup>22</sup>Brown, Patricia Lee, “A Quest for a Restroom That’s Neither Men’s Room Nor Women’s Room.” *New York Times*, 4 March 2005.

<sup>23</sup>[www.ci.eugene.or.us/hrc-erac/hrcsite/code/entirepacket.pdf](http://www.ci.eugene.or.us/hrc-erac/hrcsite/code/entirepacket.pdf)

<sup>24</sup>Leonard, Arthur S., “Panel OKs Transgendered Marriage.” *Gay City News*, 26 May 2005.

<sup>25</sup><http://www.usdoj.gov/eoir/vll/intdec/vol23/3512%20.pdf>

<sup>26</sup>Katayama, Lisa, “Sex and the Citizen.” *Mother Jones*, 25 May 2005.

## Conclusion

In this report, the Common Sense Foundation seeks to gather under one cover a number of issues that are important to a large and diverse community. It is our hope that this study will provide ammunition for advocates in the struggle against discrimination in North Carolina (and elsewhere).

The Common Sense Foundation is North Carolina’s progressive think tank promoting fairness, justice, and opportunity in state public policy. As part of that mission, we are committed to ensuring that the state extend fairness, justice, and opportunity to *all* its residents, regardless of their sexual orientation or gender identity.

Please read this study and discuss it with your friends, family, and colleagues. It is designed to help introduce new ideas into North Carolina’s public-policy debate.