



What's Next for LGBT Equality

By the LGBT Progress Team

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In late June the Supreme Court delivered a historic ruling affirming that all loving and committed couples who marry deserve equal respect and treatment under federal law.¹ This decision is key in strengthening families and ensuring greater access to the rights and responsibilities of marriage for same-sex couples.

Marriage equality, however, is not the end of the road in the progression toward full equality for lesbian, gay, bisexual, and transgender, or LGBT, Americans. Pervasive discrimination in the workplace harms the economic security of LGBT workers and their families. LGBT immigrants and asylum seekers continue to face significant barriers to shelter, safety, and security. LGBT youth face injustice in schools, on top of alarming rates of family rejection at home. And basic health care is still out of reach for too many LGBT patients.

Here are some of the issues that continue to face the LGBT community and the policy solutions helping to progress toward equality.

Workplace protections²

Without federal protection against workplace discrimination, LGBT workers face day-to-day challenges in finding and keeping employment. Instead of being evaluated on their qualifications, skills, and work ethic, LGBT workers too often face discrimination on the basis of sexual orientation and gender identity.³ These workers face inequalities in hiring, obstacles in professional advancement, and even job loss, simply because of who they are or whom they love. Although discrimination based on LGBT identity is currently legal in a majority of states,⁴ 9 out of 10 voters mistakenly believe LGBT workers already have federal protections.⁵

States protecting workers

There is no federal law preventing discrimination against individuals on the basis of sexual orientation or gender identity. Even in a majority of states, LGBT employees have no legal recourse to challenge this kind of discrimination.⁶

States protecting workers from discrimination on the basis of sexual orientation are:

California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.⁷

States protecting workers from discrimination on the basis of gender identity are:

California, Colorado, Connecticut, Delaware,⁸ the District of Columbia, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.⁹

Discrimination and bias figure into nearly every aspect of employment for LGBT Americans, and 4.3 million of these workers live in a state with no laws providing employment protections on the basis of sexual orientation or gender identity.¹⁰ Recent studies have found that discrimination presents significant barriers to advancement in the workplace for LGBT workers. Between 11 percent and 28 percent of gay, lesbian, and bisexual people have been passed over for a promotion because of their sexual orientation,¹¹ and more than a quarter of the transgender population reports having lost a job because of their gender identity.¹²

The workplace is also not always a safe or welcoming place for LGBT employees. Nearly 60 percent of LGBT workers encounter antigay jokes or slurs at work.¹³ Even worse, between 7 percent and 41 percent of lesbian, gay, and bisexual workers have experienced verbal or physical harassment or had their workplace vandalized.¹⁴ For transgender workers, research findings are even bleaker. A national survey of transgender people found that nearly 80 percent of transgender workers have experienced harassment, mistreatment, or discrimination on the job.¹⁵

Passing the Employment Non-Discrimination Act,¹⁷ or ENDA, which has been proposed in almost every session of Congress since 1994,¹⁸ would protect workers from discrimination based on sexual orientation or gender identity. ENDA currently has 53 co-sponsors in the Senate,¹⁹ the most it has ever had. Although the Senate could vote on ENDA soon, with a markup expected this month, it is unlikely that ENDA will make it through the conservative House of Representatives this session.

As ENDA works its way through Congress, President Obama can and should issue an executive order prohibiting federal contractors from discriminating against LGBT workers.²⁰ Former presidents have issued similar executive orders to prevent federal contractors from discriminating on the basis of race, color, religion, sex, or national origin. President Obama could use this opportunity to take a strong stance on the issue of workplace discrimination and have a positive impact on workers, businesses, and the federal government.

Sam's story

Sam Hall was a coal miner for seven years with a mining company in West Virginia. According to Sam, his coworkers verbally and physically harassed him and destroyed his personal property. After filing several complaints, Sam said he eventually realized that his supervisors were trashing them. According to Sam, "they didn't care if I died. It was like, 'accidents' happen ... but that was not going to happen to me." Sam eventually quit his job and filed a lawsuit against his former employer.¹⁶

Immigration reform²¹

Undocumented individuals living in the United States face obstacles to accessing safe and stable employment, housing, and health care, in addition to living in constant fear of being detained and deported. These obstacles are even more pronounced for the 267,000 adult LGBT undocumented individuals living at the intersection of both marginalized groups.²² In addition to the discrimination that LGBT individuals face in the workplace,²³ undocumented individuals are particularly vulnerable to abuse and exploitation because of their lack of legal status.

Passing the Border Security, Economic Opportunity, and Immigration Modernization Act would provide a path to earned citizenship for undocumented individuals living in the United States.²⁴ This bipartisan bill, which passed the Senate with a vote of 68 to 32, would provide millions with the opportunity to earn a living wage, pursue higher education, preserve family unity, and live without the constant threat of deportation. In addition, the bill would help LGBT asylum seekers by removing the one-year filing deadline, which currently prevents one in five people with legitimate asylum claims from being considered simply because they do not apply within a year of their entrance into the United States. It also explicitly prohibits the use of solitary confinement solely because of a detainee's sexual orientation or gender identity in immigration detention.

Although the Senate's bill does not include provisions allowing U.S. citizens to sponsor their same-sex spouses for immigration benefits, the Supreme Court's decision on Section 3 of the Defense of Marriage Act, or DOMA, went a long way toward remedying this problem. As a result, Sen. Patrick Leahy (D-VT) withdrew his amendment that would allow American citizens to apply for a green card for their foreign same-sex spouses since they are now eligible for the same immigration benefits as heterosexual married couples under federal law.²⁵ People unable to travel to states with marriage equality are unfortunately unable to benefit from the Supreme Court's decision.

While the Senate bill contains numerous protections for LGBT immigrants, there is still a difficult fight ahead to pass common-sense immigration reform in the House of Representatives. House Republicans have signaled an unwillingness to adopt the Senate bill, instead opting to introduce legislation that not only criminalizes undocumented immigrants²⁶ but also provides no roadmap to citizenship. Passing common-sense immigration reform is an important step toward combating the exploitation and insecurity faced by LGBT undocumented immigrants.

Youth homelessness²⁷

Even though LGBT youth are only 5 percent to 7 percent of the population, they make up 40 percent of all homeless youth.²⁸ The overrepresentation of LGBT people among homeless youth is driven in part by high rates of family conflict and abandonment,²⁹ as well as victimization in schools. LGBT homeless youth experience more than double the rate of discrimination from their families³⁰ and more than double the rate of suicide attempts³¹ than non-LGBT homeless youth. In addition, LGBT homeless youth are often prevented from accessing the full benefits of child welfare programs such as the foster care system and homeless shelters because of mistreatment and discrimination.³²

The Runaway and Homeless Youth Act,³⁴ or RHYA, awards federal grants to public and private organizations that assist homeless youth. Yet despite the vast overrepresentation of LGBT youth among the homeless youth population, the current version of RHYA does not specifically address LGBT homeless youth. With the law up for reauthorization this year, Congress has the opportunity to help thousands of LGBT homeless youth by adding a provision to prohibit RHYA grantees from discriminating against homeless youth on the basis of sexual orientation and gender identity.³⁵

The Reconnecting Youth to Prevent Homelessness Act,³⁶ introduced in 2011, was the first Senate bill focused on overall youth homelessness to specifically mention LGBT youth. The bill has provisions for improving training and educational opportunities for older foster-care youth, reducing homelessness among all youth, and developing programs to focus on family relationships specifically for LGBT youth.³⁷ This family-based approach is focused on helping families bridge conflict and allowing youth to remain in the home after coming out. Research by the Family Acceptance Project suggests that this currently could be one of the best ways to reduce LGBT homelessness.³⁸

School climate

For LGBT students across the United States, harassment in school is a huge problem.³⁹ According to a survey by the Gay, Lesbian and Straight Education Network, 6 out of 10 lesbian, gay, or bisexual students and 8 out of 10 transgender students report feeling unsafe at school.⁴⁰ A devastating 85 percent of LGBT students report experiencing harassment because of their sexual or gender identity,⁴¹ with 20 percent reporting they were physically attacked.⁴² Bullying of LGBT students can lead to lower grade point averages,⁴³ absenteeism,⁴⁴ health problems,⁴⁵ failure to graduate,⁴⁶ violence,⁴⁷ and suicide.⁴⁸

Studies further show that LGBT youth are disproportionately victimized by harsh school discipline policies that push them out of their classrooms and into the arms of law enforcement for minor offenses and noncriminal behavior.⁴⁹ Gender nonconforming youth in particular are more likely to be caught up in this “school-to-prison pipeline,”⁵⁰ and without adequate institutional support, they are at greater risk of unfair criminalization and unnecessary contact with the juvenile justice system. Although LGBT youth represent just 5 percent to 7 percent of the nation’s overall youth population, they compose 13 percent to 15 percent of those currently in the juvenile justice system, largely due to such hostile school policies.⁵¹

Luisa’s story

Luisa, the oldest daughter in a Latino immigrant family, was raised in Southern California. When Luisa came out at 13 years old, fights at home escalated. Luisa fought back and ended up in a foster care group home where she was ridiculed and harassed. The staff ignored Luisa’s calls for help, telling her that she provoked the fights and “brought them on herself.”

Luisa ran away from the group home and lived on the streets where she was raped and beaten by several men. The adult shelters were usually full, so Luisa found an abandoned building where she slept with a group of homeless teens who taught her some survival skills. Pregnant as a result of the rape, Luisa found a placement in a homeless prenatal program where she was able to go to school, receive health care services, and prepare for the birth of her baby. By then Luisa learned that she had also been infected with HIV. She hoped her baby would not get infected as well.³³

Discrimination on the basis of actual or perceived sexual orientation and gender identity is not federally prohibited in public schools. But several bills are in the works to improve school climates for LGBT youth. The Student Non-Discrimination Act, or SNDA, acknowledges that the current state of harassment and violence deprives LGBT students of their right to equal education. The bill would add sexual orientation and gender identity to the existing list of federally protected bases of discrimination alongside race, color, sex, religion, disability, and national origin.⁵³ This measure would allow the federal government to withdraw funding from secondary schools that condone such discrimination, as well as empower students to take legal action against perpetrators of harassment. Sen. Al Franken (D-MN) introduced SNDA in the Senate, and Reps. Jared Polis (D-CO) and Ileana Ros-Lehtinen (R-FL) introduced it in the House. Both bills have been referred to committee.

The Safe Schools Improvement Act includes SNDA's prohibition of discrimination on the basis of sexual orientation and gender identity in schools and would also require primary and secondary schools to take a proactive role in preventing harassment and discrimination by adopting and enforcing antibullying policies.⁵⁴ Sens. Robert Casey (D-PA) and Mark Kirk (R-IL) introduced the bill in the Senate, and Rep. Linda Sanchez (D-CA) introduced the bill in the House. Both bills have been referred to committee.

The Strengthening America's Schools Act, the broadest of the three, is a proposed amendment to the Elementary and Secondary Education Act that includes a variety of reforms designed to make American schools safer and more effective institutions.⁵⁵ The bill has provisions to expand resources and establish guidelines for kindergarten and early childhood education, to encourage equity by assessing individual school's climates and opportunities, and to support high-quality instruction. In addition to broader reforms, the Strengthening America's Schools Act includes SNDA's prohibition of discrimination on the basis of sexual orientation and gender identity in schools. The Strengthening America's Schools Act was introduced into the Senate by Sen. Tom Harkin (D-IA) and has not been introduced in the House. Last month the Senate Committee on Health, Education, Labor, and Pensions advanced the bill with a majority of the committee reporting favorably.

Independent of these three legislative attempts to grant LGBT students equal access to educational opportunities, the Department of Education recently announced that it will begin gathering data on bullying based on sexual behavior, which may help expand knowledge of bullying against LGBT students.⁵⁶ Data on the specific experiences of LGBT youth help inform future policy solutions and help drive LGBT inclusive

Kyeon's story

Similar to many LGBT youth, Kyeon attended a school in New Orleans that was not inclusive for gay students. Kyeon was ridiculed and bullied because of his sexual orientation, but the harassment went unchecked because the school had not adopted an antibullying policy to protect LGBT students. The hostility rose to the level where his ability to pay attention in class and thrive academically was disrupted. The taunting by his classmates ultimately led to a fight with another student, and both Kyeon and the other student were arrested for the incident and incarcerated in a juvenile detention center—a harsh punishment for what felt like self-defense for Kyeon.⁵²

improvement of school climate. Many areas remain where increased data collection is needed, including bullying of transgender and gender nonconforming students, bullying of students based on association with LGBT parents, LGBT youth experiences with the juvenile justice system, and LGBT youth experiences with school discipline.

While these antibullying efforts are critical to improving school climate by setting expectations for the way in which youth should engage with one another, it is also important that we hold adults responsible for the way they treat LGBT youth. We must remove zero-tolerance policies that leave no room for considering the circumstances facing a student, as well as gender-biased dress codes and other subjective discipline measures that perpetuate bias and fuel hostility toward LGBT youth.

Health disparities⁵⁷

Due to factors such as low rates of health insurance coverage, high rates of stress due to systematic harassment and discrimination, and a lack of cultural competency in the health care system, LGBT people experience significant health disparities⁵⁸ compared to the general population. Among gay and bisexual men, as well as transgender women, studies have found increased HIV prevalence rates.⁵⁹ Gay and bisexual men are at increased risk for several types of cancer, and lesbian and bisexual women are at increased risk for developing breast cancer.⁶⁰ The LGBT population as a whole uses tobacco at rates between 50 percent and 200 percent higher than the general population.⁶¹ Studies show that 41 percent of transgender people have attempted suicide at some point in their lives—a rate more than 25 times higher than the general population of the United States.⁶² Lack of access to health insurance also pushes LGBT people further to the margins of the health care system. On the whole, same-sex couples are more than twice as likely as other couples to be without adequate health insurance coverage,⁶³ and rates of uninsurance are significantly higher for transgender and bisexual individuals than for the general population.⁶⁴ In addition, the lack of adequate data collection on LGBT populations prevents the development of a broader knowledge base on LGBT health disparities.⁶⁵

Federal health experts are increasingly acknowledging the significant health disparities the LGBT population faces. The Office of Minority Health has noted that, “evidence continues to expand, which documents the existence of ... health disparities by ... sexual orientation or gender identity.”⁶⁶ And sources such as the Institute of Medicine,⁶⁷ the Agency for Healthcare Research and Quality,⁶⁸ and Healthy People 2020⁶⁹ have all identified LGBT people as a population that experiences significant health disparities.

Full and inclusive implementation of the Affordable Care Act has the potential to help correct some of these disparities and improve the health of the LGBT population. The law prohibits discrimination based on sexual orientation or gender identity in large segments of the health insurance market, implements new coverage standards requiring

more comprehensive coverage, and provides financial assistance for those who need it most to purchase coverage.⁷⁰ All of these reforms will make health insurance more accessible to LGBT individuals and families headed by same-sex partners.⁷¹

Healthy People 2020, the national blueprint for a healthier America between 2010 and 2020, recognizes that routine data collection on sexual orientation and gender identity is another major need in the fight against LGBT health disparities.⁷² Even outside the health context, high-quality data about the concerns and experiences of LGBT people are essential if federal, state, local, and nonprofit agencies are to adequately serve the LGBT community.

While several administrative data collection efforts by federally supported health programs collect this information,⁷³ and the Department of Health and Human Services has emphasized that these data are crucial to improving health, comprehensive collection of LGBT-inclusive data is yet to be actualized.⁷⁴ To address this gap in knowledge on the health of LGBT communities, federal agencies must coordinate with each other and with the Office of Management and Budget to develop LGBT data collection instruments and use the information to better understand the LGBT population.

Another key aspect of improving LGBT access to health care is the promotion of cultural competency training for health care providers. The National Standards for Culturally and Linguistically Appropriate Services, released in 2013,⁷⁵ addressed the need for LGBT awareness in a blueprint for health care providers that emphasizes the need for routine cultural competency training and the detrimental effect that discrimination has on health status and access to health care.⁷⁶ If widely implemented, these standards could vastly improve the experiences of LGBT individuals with health care providers.

Conclusion

The momentum for LGBT equality shows no signs of slowing. Shifting public opinion and growing political courage are aligning, resulting in even greater support for LGBT individuals and families. The historic victories for marriage equality in the Supreme Court were significant steps toward a more just society, but policymakers must stay focused on solutions that will ensure better health and brighter horizons for all LGBT Americans.

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