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CELEBRATING FIVE YEARS OF FEDERAL MARRIAGE EQUALITY AND THE ROAD AHEAD TO FULL LIVED EQUALITY FOR LGBTQ PEOPLE

INTRODUCTION

Today, as the five-year anniversary of the historic Supreme Court decision in *Obergefell v. Hodges* is celebrated, millions of LGBTQ people are able to enjoy marriage equality and be with the ones they love like their non-LGBTQ counterparts. It took decades for marriage equality to become a reality, and it will take more time to establish full federal equality for the 16 million¹ LGBTQ people in the United States — and millions more across the globe.

The following research brief broadly reviews a timeline for marriage equality from the 1969 Stonewall Riots to the 2015 Supreme Court decision in *Obergefell v. Hodges*, which federally guaranteed marriage equality in the United States. It explains how the law evolved overtime, including the repeal of laws that criminalized same-sex sexual activity, the development of marriage equality by state and by legal case, and finally, full marriage equality across the United States. Original data analysis conducted by the Human Rights Campaign (HRC) Foundation is also presented, showing the changes in public opinion in the United States about LGBTQ people's relationships and marriage equality over multiple decades. It concludes by reviewing economic and quality of life data that shows the unfortunate reality of many LGBTQ people today, providing a stark reminder of the need to pass the Equality Act and the work remaining before true lived and legal equality can be achieved nationwide as well as across the globe.

¹ HRC Foundation internally estimates there to be 14 million LGBTQ adults and 2 million LGBTQ youth in the United States. Data for estimates come from the General Social Survey (2018, which is the most recent data) and the Youth Risk Behavior System (2017, which is the most recent data).



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FROM STONEWALL TO LAWRENCE

In the early morning hours of June 28, 1969, the Stonewall Riots began, helping ignite the modern LGBTQ movement for equality and harness the political power of LGBTQ people. At the time, states not only criminalized same-sex sexual activity, but also enforced strict dress codes, criminalizing dressing in ways traditionally associated with the opposite sex. These “masquerade laws” overwhelmingly targeted transgender and gender nonconforming people, and led to their subsequent arrest and incarceration. In practice, these laws policed both transgender women for dressing in accordance with their gender identity and gender nonconforming women — many of whom identified as lesbians — for wearing men’s clothing. Police used these laws as cover to raid bars that were heavily frequented by LGBTQ people, arresting transgender women simply for wearing women’s clothes.

Harassed by local police only for congregating, Stonewall’s LGBTQ patrons decided to take a stand and fight back against the brutal intimidation they regularly faced at the hands of police. At the forefront of that fight were many brave Black and Brown trans women. One year later, the first LGBTQ Pride marches were held, establishing June as Pride Month. During the better part of the decade preceding Stonewall, other protests and demonstrations had taken place to demand LGBTQ rights, including at Cooper Donuts in 1959, at Compton’s Cafeteria in 1966, and the Black Cat protests in 1967.

In the decades since, LGBTQ people have continued to endure stigma because of their sexual orientations and gender identities, which has led to numerous economic, health and social inequities. Since the first cases in the U.S. in the 1980s, the HIV epidemic has significantly affected members of the LGBTQ community, with men who have sex with men and transgender women being significantly impacted. Black and Latinx men who have sex with men account for the largest communities that have been and are currently being affected by the HIV epidemic, as well as Black and Latinx transgender women. Gay and bisexual men accounted for **69%** of all HIV diagnoses in the United States and **86%** of diagnoses among men in 2017, with **39%** consisting of Black men and **28%** consisting of Latinx men. Currently, one in two Black transgender women and nearly one in three Latinx transgender women have HIV. These disparities are largely due to stigma about LGBTQ people’s relationships and identities —and especially the systemic racism that is ingrained in the U.S.

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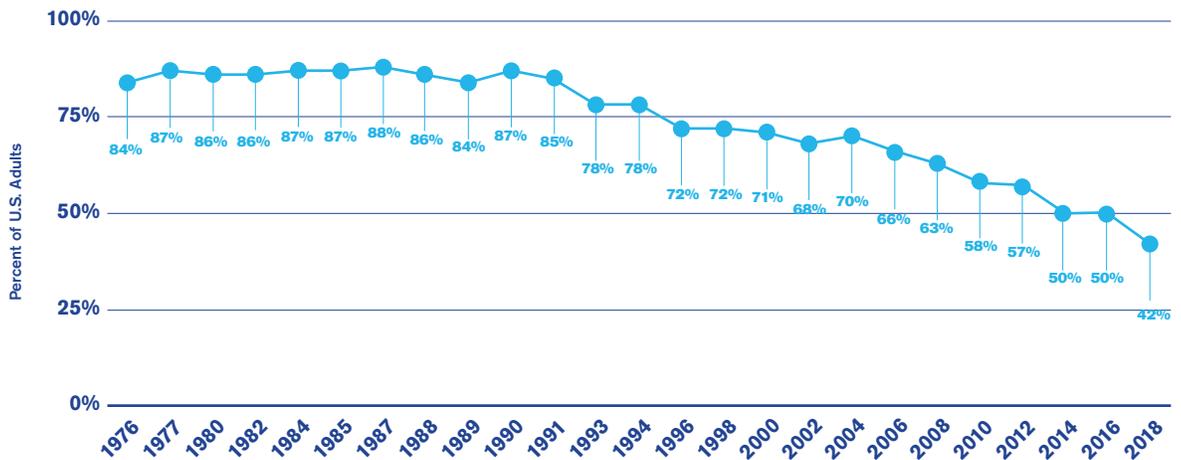
Beyond the HIV/AIDS crisis, for much of American history, the LGBTQ community has been the target of additional draconian laws and policies that criminalize their identities. In the mid-20th century, courts and police began using anti-sodomy laws to criminalize same-sex behavior. These laws categorized same-sex conduct as “sexual misconduct” and “deviant sexual intercourse.” Individuals arrested for violating anti-sodomy laws



not only faced imprisonment and fines, but also public humiliation, proliferating a culture of stigma and violence against LGBTQ people. These convictions were also accompanied by disenfranchisement as they were categorized alongside sexual abuse and assault. It was only in 2003, with the decision in the landmark Supreme Court Case, *Lawrence v. Texas*, that same-sex relations were federally decriminalized. This case laid the groundwork for much of the tremendous progress we've seen over the last several years by ensuring that LGBTQ people could not be arrested for their loving relationships, and serves as a reminder of how much has been accomplished within

PERCENT OF ADULTS IN THE U.S. THAT BELIEVE SAME-SEX RELATIONS ARE WRONG (1978-2018)

The percent of adults in the U.S. that believe same-sex relations are wrong decreased by 42% from 1972 to 2018



Source: HRC Foundation analysis of General Social Survey. N = 34,881. Figure presents weighted estimates, including for an oversample of Black respondents.

the LGBTQ community. Today, the American people are on the side of the LGBTQ community and support the decision in *Lawrence v. Texas*. HRC Foundation's analysis of four decades of GSS public opinion data shows that while **84%** of U.S. adults in 1976 said that same-sex relations were wrong, that number declined to **70%** in 2004 and then to less than a majority (**42%**) in 2018.

THE OBERGEFELL DECISION AND THE AMERICAN PEOPLE'S SUPPORT FOR MARRIAGE EQUALITY

June 26, 2020 marks the five-year anniversary of the historic Supreme Court decision in *Obergefell v. Hodges*, which made marriage equality the law of the land and changed the lives of millions of people who can now marry the person they love. While marriage equality is federally recognized today, it took years to get here: In 2010, same-sex marriage was legal in only 5 states. In 2013, same-sex marriage was legal in 17 states. By February 2015, same-sex marriage was legal in 36 states. On June 26, 2015, same-sex marriage was legalized nationwide



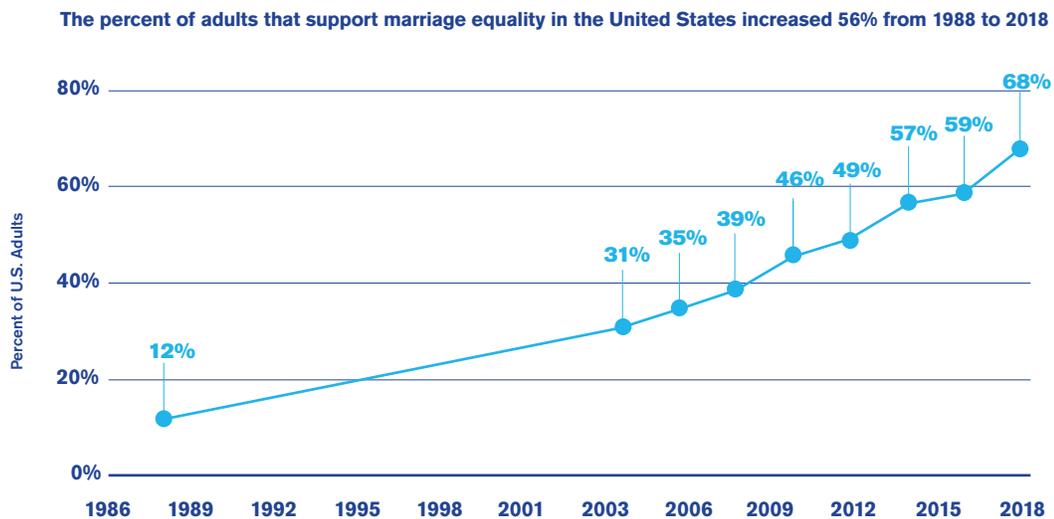
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Prior to the decision in *Obergefell v. Hodges*, brave LGBTQ plaintiffs from around the nation stood up for their rights by asking the Supreme Court to affirm their fundamental liberties. In *United States v. Windsor*, Edith Windsor and Thea Spyer, who were legally married in Toronto, Canada in 2007, challenged the government's ban on recognizing legally married same-sex couples. Their marriage was officially recognized in New York in 2008 when their home state ordered state agencies to recognize same-sex marriages performed in other jurisdictions. When Thea died in 2009, she left her entire estate to her wife, Edie. However, Edie was barred from claiming the federal estate tax exemptions for surviving spouses under the Defense of Marriage Act (DOMA), a law that prohibited the federal government from recognizing the marriages of same-sex couples, and as a result was faced with a \$363,000 estate tax bill. Windsor took her case to the Supreme Court, challenging the government's ban on recognizing legally married same-sex couples for federal purposes including social security, immigration, and family and medical leave. Same-sex couples across the nation came away victorious as section 3 of DOMA, the section which prevented the federal government from legally recognizing same-sex marriages, was overturned.

In a case decided on the same day as *United States v. Windsor*, in *Hollingsworth v. Perry*, two same-sex couples, Kris Perry and Sandy Stier, and Paul Katami and Jeff Zarrillo, filed suit against the state of California in federal court, arguing that California's Proposition 8 violated the U.S. Constitution by denying them a fundamental right and depriving them of equal protection under the law. Prop 8, a state constitutional amendment defining marriage as between one man and one woman, had passed as a ballot measure the previous November, stripping same-sex couples of the right to marry in California. However, this landmark case restored marriage equality to the state of California.

In January 2015, the Supreme Court announced that it would hear *Obergefell v. Hodges*, a consolidation of cases from dozens of plaintiffs in Kentucky, Ohio, Michigan and Tennessee. In a historic, sweeping ruling, the Supreme Court sided with loving,

PERCENT OF ADULTS IN THE U.S. THAT SUPPORT MARRIAGE EQUALITY





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committed same-sex couples and found all bans on marriage equality across the country to be unconstitutional - and that the fundamental right to marriage is a fundamental right for all.

Not only have these cases changed the law, they have changed the hearts and minds of millions of Americans throughout the last decades. HRC Foundation's analysis of roughly three decades of GSS public opinion data shows that while only **12%** of U.S. adults in 1988 said they supported same-sex marriage, that number increased to over a majority (**57%**) in 2014 and then to **68%** in 2018.

In addition to growing support, marriage equality has generated significant economic benefits. A recent analysis by the Williams Institute found that there are more than 500 thousand same-sex couples in the United States, with more than half getting married after the *Obergefell v. Hodges* decision. As a result, tremendous economic gains have been reported. The Williams Institute estimates that wedding-related spending since marriage equality has generated over 3 billion dollars of economic activity, over 500 million dollars in wedding guest-related economic activity, over 200 million dollars in generated sales tax revenues, and the security of 45 thousand jobs.

THE GLOBAL MOVEMENT FOR MARRIAGE EQUALITY

The road to marriage equality in the U.S. was part of the ever-growing global movement. In 2001, the Netherlands became the first nation to recognize same-sex marriage. Today, 29 countries recognize same-sex marriages: Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Taiwan, the United Kingdom, the United States of America and Uruguay. With fewer than one in five individuals living in a country with marriage equality, the road to global marriage equality has many miles to go.

THE ROAD AHEAD TO FULL EQUALITY IN EVERY COMMUNITY

Despite our victory with marriage equality, there is much more work to do. Discrimination is a real and persistent problem for far too many LGBTQ people in the United States, which is why the need for the Equality Act, legislation that would ensure explicit and equal protections from discrimination for LGBTQ people, has never been more clear. Our nation's civil rights laws protect people on the basis of race, color, national origin, and in most cases, sex, disability, and religion. But there are too many gaps in our federal and state laws that fail to provide clear, permanent protections on the basis of sex, sexual orientation, and gender identity. In many states, LGBTQ people can be refused services and denied access to government social safety net programs.

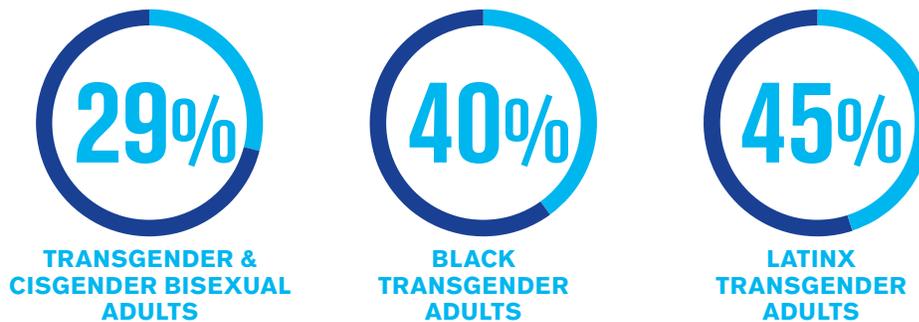


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However, there still remains much progress to celebrate. On June 15, 2020, just days before the anniversary of nationwide marriage equality, the Supreme Court affirmed that employment discrimination on the basis of sexual orientation and gender identity is prohibited under Title VII of the 1964 Civil Rights Act. In *Bostock v. Clayton County*, the Court determined that “[t]he statute’s message for our cases is equally simple and momentous: An individual’s [LGBTQ] status is not relevant to employment decisions.”

Furthermore, a record-setting 88 cities in 2019 across the U.S. earned the highest possible score in the eighth annual Municipal Equality Index (MEI). The MEI is the only nationwide assessment of LGBTQ inclusion in municipal law, policy and services conducted by HRC Foundation and Equality Federation Institute. Since the MEI’s debut in 2012, the number of cities earning the highest score has increased by more than eightfold, and today at least 25 million people live in cities that have more comprehensive, transgender-inclusive non-discrimination laws than their state. The record 88 cities earning the highest score in 2019 (the most recent report) is up from 78 in 2018 and 11 in 2012, the first year of the MEI. And the average score for cities has increased every year Trump-Pence have been in office. Furthermore, HRC Foundation and the Equality Federation Institute released the 6th annual State Equality Index (SEI), a comprehensive report detailing statewide laws and policies that affect LGBTQ people and their families and assessing how well states are protecting LGBTQ people from discrimination. In 2019 (the most recent report), 17 states and Washington, D.C., achieved the SEI’s highest rating with Maryland joining those in the top category for the first time.

POVERTY RATES AMONG LGBTQ ADULTS



* Williams Institute analysis

Prior to the Supreme Court’s ruling on employment and workplace protections, the Center for American Progress reported that anywhere from **11%** to **28%** of LGBTQ people had they lost a promotion because of their sexual orientation, and **27%** of transgender workers reported having been fired, not hired or denied a promotion due to their transgender identity. This has led to adverse economic outcomes and financial situations for LGBTQ people. In fact, a 2019 Williams Institute analysis of Behavioral Risk Factor Surveillance System (BRFSS) data, about one in five LGBTQ adults in the United States (**22%**) live in poverty, compared to an estimated **16%** poverty rate among their straight and cisgender counterparts. The poverty rates of transgender adults (**29%**)



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and cisgender bisexual women (**29%**) in the U.S. tower over those of other groups, with Black (**40%**) and Latinx (**45%**) transgender adults being some of the most likely.

Discrimination in housing and shelters continues to face LGBTQ people. One survey found that roughly **seven in ten** LGBTQ people were strongly concerned about housing discrimination. Without federally inclusive laws, LGBTQ people remain at risk of this discrimination. Moreover, discrimination in access to shelters and housing also disproportionately impacts transgender people, especially transgender women. Data collected by Equal Rights Center and Center for American Progress shows that only **30%** of shelters were willing to house transgender women.

More research from American Progress found that LGBTQ people are more likely to experience discrimination, with **29%** of transgender people saying a doctor or other health care provider refused to see them because of their actual or perceived gender identity. The report of the 2015 United States Transgender Survey found that transgender people of color, specifically, Asian (**26%**) Black (**34%**), Latinx (**32%**), and Middle Eastern (**40%**) transgender people have had a negative experience accessing health care, such as being denied transition-related care.

Factors like these - and others - have contributed to an epidemic of violence against transgender individuals in the U.S., with at least 27 known violent deaths of a transgender or gender non-conforming person in 2019 and at least 15 in 2020 thus far.

THE EQUALITY ACT IS THE NEXT STEP

The Equality Act would provide consistent and explicit non-discrimination protections for LGBTQ people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service.

The Equality Act would amend existing civil rights law—including the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Jury Selection and Services Act, and several laws regarding employment with the federal government—to explicitly include sexual orientation and gender identity as protected characteristics. The legislation also amends the Civil Rights Act of 1964 to prohibit discrimination in public spaces and services and federally funded programs on the basis of sex.

Additionally, the Equality Act would update the public spaces and services covered in current law to include retail stores, services such as banks and legal services, and transportation services. These important updates would strengthen existing protections for everyone.

Decades of civil rights history show that civil rights laws are effective in decreasing discrimination because they provide strong federal remedies targeted to specific vulnerable groups. By explicitly including sexual orientation and gender

Support for a bill
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identity in these fundamental laws, LGBTQ people will finally be afforded the exact same protections as other covered characteristics under federal law

The nonpartisan Public Religion Research Institute (PRRI) found that nationally, support for a bill like the Equality Act topped **70%**, which includes a majority of Democrats, Republicans, and Independents. In addition, there is strong business support for non-discrimination protections for LGBTQ people. The legislation has been endorsed by the Business Coalition for the Equality Act, a group of more than 277 major companies with operations in all 50 states, headquarters spanning 31 states, and a collective revenue of \$5.1 trillion. In total, these companies employ more than 11.9 million people across the United States. More than 60 business associations including the Business Roundtable, National Association of Manufacturers, and U.S. Chamber of Commerce have also followed suit endorsing the Equality Act.

It is time to finally pass the Equality Act.

METHODOLOGY

- Human Rights Campaign Foundation utilized data from the 1976-2018 General Social Survey combined dataset to produce public opinion trends in the United States on issues relating to same-sex relations and marriage equality. The General Social Survey is a national in-person household probability survey of adults. The survey is conducted by the National Opinion Research Center at the University of Chicago, and is now conducted biannually. Since the General Social Survey is a probability survey, the findings presented from HRC Foundation's original analyses are generalizable to the population. However, weighting is utilized in order for such generalizations.
- HRC Foundation constructed an analytical weight using two calculated weights provided in the dataset. The first weight, *wtssall*, is recommended for when analyses include data before 2004. The *wtssall* weight takes into consideration the sub-sampling strategy of non-respondents, the number of adults in the household, and differential non-response across areas. It also essentially maintains the original sample size. The second weight, *oversamp*, accounts for the oversample of Black respondents in 1982 and 1987. Respondents who were not part of the oversample received a weight equal to one in the *oversamp* weight. The final analytical weight used for HRC Foundation's original analyses is the product of *wtssall* and *oversamp*. Lastly, for variance estimation, strata that contained a single unit were centered at the population mean.



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