

Walking the Talk: Do Public Systems Have the Infrastructure Necessary to Implement and Enforce LGBT and Gender Identity Rights?

Kristen Norman-Major
Hamline University

Carol Becker
Hamline University

Public policies require public administration infrastructure and systems for implementation. This article examines whether such an infrastructure is in place to support the implementation and enforcement of LGBT rights at the federal, state and local level in the United States. The article concludes that while some units of government are making progress in supporting LGBT rights, there is no consistent set of policies or systems in place to assure universal protections of LGBT and gender identity.

Every public policy requires public administration infrastructure and systems to implement that policy. Policies related to the protection of rights for the LGBT population are no different. As society evolves in its recognition of sexual orientation and gender identity issues, public administration also needs to evolve. But is this occurring, especially given how divided our society is on these topics? Despite policy changes in many states, questions arise as to whether administrative policies and administrative systems have been created to support and enforce LGBT rights. Challenges include how to collect data from a group that may be harmed by that very collection of data; balancing the right to privacy with the protection of civil/human rights; remaining value-free while working in cultures that are diverse and often still highly discriminatory; understanding what a representative bureaucracy means for a population that is hard to define much less know if you are involving; how politics affects how public policy evolves; and the lack of overarching federal policy that leaves action up to states and localities that often have conflicting policies. Perhaps most important is the question of how public administrators can be democratically responsive in a society that is profoundly split on its perspectives on gays and lesbians in our society. This paper looks at how the understanding and perspectives of LGBT citizens and employees are changing and what challenges public administration still faces in understanding this group of individuals.

The Changing State of LGBT Rights in the US

The Civil Rights act of 1964 provides protection on the federal level against discrimination based on race, sex, religion or national origin. Other federal laws prohibit discrimination based on disability and age. However, there is no parallel federal law prohibiting discrimination in the public or private sector on the basis of sexual orientation or gender identity. While organizations such as the National Gay and Lesbian Task Force (NGLTF) have been working to get such legislation passed since 1974, most agree that the prospects of what is now known as the Employment Nondiscrimination Act (ENDA) being passed any time soon are dim (NGLTF, n.d.).

Limited Federal Protections

Title VII of the 1964 Civil Rights Act prohibits discrimination in employment based on race, color, religion, sex, or national origin (EEOC 2009). The US Equal Employment Opportunity commission (EEOC) was established to enforce these provisions and other laws regarding discrimination in the workplace and is responsible for adjudicating claims of discrimination, harassment or “employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, religion, or ethnic group, or individuals with disabilities, or based on myths or assumptions about an individual’s genetic information” (EEOC 2009, 2). Two recent rulings by the EEOC have effectively expanded the definition of discrimination based on sex to included cases related to sexual orientation and gender identity.

In *Veretto v. Donahoe*, which was issued in July 2011, the EEOC ruled that Title VII’s prohibition against discrimination and harassment based on sex stereotyping provided grounds for a claim of discrimination due to sexual orientation (FEDManager 2011). In this case, a US Postal Service (USPS) worker claimed a hostile workplace due to bullying he received after the announcement of his impending marriage to his same-sex partner appeared in the local newspaper. The USPS initially dismissed the case by claiming the complaint was based on sexual orientation, not gender and thus not covered under Title VII. The EEOC instead ruled that the discrimination was based on sex stereotyping, that is, the assumption that men should only marry women and not other men, and thus was covered under Title VII (FEDManager 2011). This ruling effectively expands Title VII prohibitions against discrimination in employment to cases based on sexual orientation.

In its *Macy v. Holder* ruling the EEOC did for cases of discrimination based on transgender identity what it did for cases based on sexual orientation in *Veretto* (Mottet 2012 and EEOC 2012). Macy, while identifying as a male, interviewed for and was all but guaranteed a job with the Bureau of Alcohol Tobacco and Firearms (ATF) as a ballistics expert pending completion of a background check. During the process of the background check, Macy informed the company completing the check for the ATF that she was transitioning to female and would be known as female when she began the new position. Five days after revealing this information, Macy was informed that the position was being cut due to budget reductions (EEOC 2012). Mia Macy claimed sex discrimination under Title VII arguing that she lost the job due to discrimination based on gender identity. The EEOC argued that “when an employer discriminates against someone because the person is transgender, the employer has engaged in disparate treatment ‘related to the sex of the victim’” (EEOC 2012, 6) and “thus, a transgender person who has experienced discrimination based on his or her gender identity may establish a prima facie case of sex discrimination through any number of different formulations” (9).

These two EEOC rulings are important in the expansion of protections for the

LGBT community against discrimination in employment. However, employment is only one area where discrimination occurs. These rulings do not affect discrimination in housing, public accommodation, lending, health care or employee benefits which are other areas where discrimination is often prevalent.

State and Local Policies

While there are no universal federal protections against discrimination based on sexual orientation or gender identity, several states and localities have passed laws and ordinances that provide such protections. According to a 2009 report by the Government Accountability Office (GAO) 21 states and the District of Columbia provide protections against discrimination in employment based on sexual orientation and thirteen of these 21 also explicitly prohibit discrimination based on gender identity (GAO, 2009). In a 1996 article by Gossett and Riccucci, they noted that at that time there were approximately 144 localities with ordinances or executive orders protecting gays and lesbians from employment discrimination in the public sector. This number has likely increased in the past 16 years but a more recent accounting of local policies on LGBT non-discrimination was not readily available.

Along with allowing for closer access to government by citizens, a purpose of state and local government is to allow for development of policies that address the varying needs of different regions and communities. However civil rights protections in the categories of race, religion, age, sex and disability are covered on a national level to assure equal protections regardless of where one lives. LGBT rights do not fall under the same umbrella and thus have been left to state and local discretion. Leaving protection of LGBT rights to state and local level governments provides the challenge of inconsistent policies and enforcement mechanisms. Community standards and acceptance of LGBT individuals are inconsistent and despite the 'full faith and credit clause' of the constitution, the laws and rulings of one jurisdiction often do not apply in other jurisdictions. This is particularly challenging when LGBT citizens live in one jurisdiction and work in or travel to another jurisdiction.

For example, a legally recognized same-sex marriage in the state where the couple lives might not be recognized in the state where a spouse works thus affecting benefits if their employer does not provide benefits for unmarried partners. Or, a family where the relationship and parental rights of both partners is recognized in their home community may find there is no recognition of those rights when traveling to another jurisdiction. If a partner or child is in an accident in that jurisdiction, the rights of the other partner/parent may be limited. These types of inconsistencies make it difficult for public administrators to efficiently, effectively and equitably work to protect the rights of LGBT citizens. Appendices A and B reflect these variations in policy around the country. By state, it shows:

- the status of legal recognition of LGBT relationships (same sex marriage, civil unions, domestic partnerships) and whether these recognitions are currently in place or before voters;
- whether state law provides protection against discrimination based on sexual orientation or gender identity for the general public or for public employees specifically only;
- whether a state recognizes LGBT relationships for the purpose of healthcare benefits

- whether a state recognizes LGBT relationships for the purpose of nepotism

Regional Policy Differences

Same-sex couples reside in virtually all regions of the country but are more heavily concentrated in certain areas. The states with the highest number of same-sex couples per 1000 households are the District of Columbia, Vermont, Massachusetts and California. Massachusetts, Vermont, Connecticut, Iowa and New Hampshire have the highest percentage of same-sex couples that identify as husbands or wives and the cities with the highest number of same-sex couples per 1000 households are San Francisco, Seattle, Oakland, Minneapolis and Atlanta (Gates and Cooke 2012).

These distributions reflect the regional differences in policies that support LGBT members of the community. A state by state summary of Gay Rights in the US completed by *The Guardian* clearly illustrates the regional differences within the United States. (2012) *The Guardian* looked at provisions that give rights and protections to LGBT citizens in the areas of marriage, hospital visits, adoption, employment, housing, hate crimes and schooling. The greatest concentration of states with protections on almost all these fronts is the northeast where only Pennsylvania does not provide at least limited protections on all of the issues considered. In the Midwest, Iowa provides the maximum protections in all the issue areas and Illinois follows with maximum provisions in all areas except same-sex marriage. Minnesota and Wisconsin also have several protections in place. By contrast of the 13 states grouped in the southeast, all prohibit same-sex marriage, none have clear laws against discrimination based on sexual orientation or gender identity in employment or housing and only a few states have provisions against hate crimes directed at the LGBT community (The Guardian 2012).

These types of regional differences reflect the challenge public administrators face in creating the infrastructure and systems to protect the rights of LGBT population and the ability to create policies that support these groups. These differences may also help explain why it has not been possible to get national LGBT non-discrimination legislation passed. These differences occur not just on the state level but across local units of government as well. In an interview with Jaqueline Byers, Director of Research and Outreach for the National Association of Counties (NACo) she noted that given the NACo policy that its board members come to consensus on policy issues the organization decides to promote, it is unlikely that LGBT rights will ever make the organization's agenda. The regional differences of opinion on what is seen by many as a moral issue are too great to ever come to consensus on a policy upon which all counties across the country could agree (Personal communication, July 24, 2012).

States with Same Sex Marriage Rights

One question that arose in conducting research for this paper was whether or not states with marriage equality had stronger or different systems and infrastructure in place to protect LGBT rights. The assumption was that these states are the most likely to need to have systems in place that protect and support LGBT rights given open support of same-sex couples. Currently, six states and the District of Columbia recognize same-sex marriage. The states and the year same-sex marriage was or will be implemented are: Washington DC (2010), Connecticut (2008), Iowa (2009), Massachusetts (2004), New Hampshire (2010), New York (2011) and Vermont (2009). Maryland has passed laws to enact same-sex marriage in 2013.

As well as providing for marriage equality, all of these states prohibit discrimination in employment and housing based on sexual orientation and most protect against discrimination based on gender identity as well. Gender identity is not explicitly protected in Maryland, New Hampshire and New York. However, the New Hampshire courts have ruled that gender identity can be protected under the provisions protecting against discrimination based on disability and New York courts have included gender identity in the category of sex discrimination (HRC). Hate crimes laws in these states parallel provisions on discrimination with all states protecting against crimes directed toward sexual orientation and all states but Maryland, New Hampshire and New York also explicitly protect against hate crimes based on gender identity (HRC). Interestingly, all of the states with same-sex marriage also prohibit harassment in schools based on both sexual orientation and gender identity (HRC).

All of the states with marriage equality have Human or Civil Rights commissions that are tasked with investigating discrimination in private sector employment, housing and public accommodation. A review of Annual Reports from these commissions show varying levels of claims filed due to discrimination based on sexual orientation or gender identity in each of the states but the number of cases is consistently small, usually ranging between 2-5% of all cases. In some states, such as Iowa, protections of rights based on sexual orientation and gender identity are relatively new provisions and thus the processes and data on claims are evolving (Iowa Civil Rights Commission). In other states, such as Massachusetts, discrimination based on sexual orientation and gender identity was already protected before adoption of marriage equality so little has changed (Barbara Green, Assistant to the Chairman, Mass. Commission against Discrimination, personal communication August 15, 2012).

A GAO report on discrimination in employment based on sexual orientation and gender identity in all states also shows that in those states with prohibitions against one or both of these types of discrimination, the number of cases filed using these claims are low as a percent of total discrimination filings. The report also reflects the variations of definitions of sexual orientation and gender identity used across the states and as noted earlier, several US states do not have any explicit protections in these areas (GAO 2009). A question beyond the scope of this paper is if the low percentage of discrimination cases based on LGBT rights is a reflection of limited discrimination, a lack of systems that inform individuals of their rights, or unwillingness to come forward. While several of the human/civil rights commissions have training, outreach and education efforts, what and how much they do varies.

While anti-discrimination polices are in place in several states and localities that does not guarantee enforcement. As Gossett and Riccucci note, the presence of anti-discrimination measures alone does not guarantee enforcement of those measures (1996). States and localities must back up laws, ordinances and executive orders with the infrastructure necessary to enforce them. A more in-depth examination of the disposition of discrimination claims based on sexual orientation or gender identity may be ripe for a dissertation.

The presence of marriage equality, anti-discrimination policies and commissions investigating discrimination do not mean a state's work is done. In an interview with Joni Esperian, Executive Director of the New Hampshire Commission for Human Rights (August 15, 2012) she related that while New Hampshire has made progress in protecting the rights of LGBT citizens, there are still issues. She specifically cited the example of current policy

in the Department of Motor Vehicles related to the ability of transgender individuals to change the gender on their driver's license. According to Esperian, DMV regulations currently require transgender individuals to provide medical proof of sex reassignment surgery in order to change the gender identifier on their license. Besides the burden and invasion of privacy that this places on the transgender individual, it does not take into account those individuals that are in the transition process or who may, for several reasons, choose not to have surgery. This is just one example of the continuing work that needs to be done in assuring the rights of LGBT individuals.

Challenges in Understanding the LGBT Population

In order to have a responsive public administration and a representative bureaucracy, public agencies must know about the populations they are serving and including. Yet little, if any, data is collected on sexual orientation or gender identity. This provides a challenge for public administrators. In the case of LGBT citizens, we don't even know how many people we are talking about, much less what their characteristics are. In the case of LGBT employees, we don't know how many there are, much less if there is discrimination or underrepresentation. As Gary Gates notes in the introduction to his 2011 estimate of LGBT population in the US:

Understanding the size of the lesbian, gay, bisexual and transgender (LGBT) population is a critical first step to informing a host of public policy and research topics. Examples include assessing health and economic disparities in the LGBT community, understanding the prevalence of anti-LGBT discrimination, and considering the economic impact of marriage equality or the provision of domestic partnership benefits to same-sex couples (p. 2).

Data collection on LGBT citizens and LGBT employees face four major hurdles unique to that group: lack of centralized data collection, lack of universally accepted definitions of "gay," "lesbian," and "bisexual", lack of a definition of gay relationships and a population that may not want to be recognized.

Lack of centralized data collection

Part of the challenge of gathering data on both LGBT citizens and LGBT employees is that centralized data collection systems have not evolved to gather data on LGBT populations. Currently the only national data on the number of LGBT individuals in the US is culled from either the Household Survey of the US Census or estimated based on extrapolation from various surveys done for other purposes. The US Census itself does not directly ask questions regarding sexual orientation or gender identity and no state or local government has a broad-based survey that would provide this information.

Researchers have attempted to address this problem by looking at less comprehensive data sources and interpolating. By looking at nine surveys on other topics that also either ask individuals to identify sexual orientation and gender identity or ask questions about behaviors that are identified with being lesbian, gay, bisexual or transgender, Gary Gates estimated that 3.5 % of US adults identify as lesbian, gay or bisexual and .3% of US adults identify as transgender. This translates to approximately 9 million US adults identifying as LGBT (Gates, 2011). More detailed socioeconomic data is non-existent.

Gates' estimate has been criticized by many as too low. Critics argue that it does not take into account the number of LGBT individuals that remain in the closet. In addition,

some critics disagree with definitions Gates used to classify individuals as lesbian, gay or bisexual (Gates 2012).

Likewise, this same bias exists in public administration. Not only do we not know basic information about our citizens, we also don't know that same information about public employees. Title VII of the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972 require state and local governments with 100 or more employees within the 50 U.S. states and District of Columbia to file reports on the composition of their workforce. Because of this reporting requirement, almost every governmental entity collects data on the gender, race (white, black, Asian/pacific islander and American Indian or Alaskan native) and Hispanic origins of its staff. In addition, salary and level within the organization is collected. This requirement by the federal government shapes what state and local government does. Only a small number of governments go beyond mandated reporting. A handful collect data on disability status or veteran's status, for example, but that is rare.

No similar data collection mechanism exists for LGBT employees. No state or local government routinely collects data similar to that submitted to the federal Equal Opportunity Office for LGBT employees. No state or local governments have mechanisms to collect even how many LGBT employees an organization has. It would be possible, for example, to add sexual orientation to the federal Equal Opportunity Employment Commission (EEOC) reporting but this has not occurred. And despite many states now recognizing gay relationships in some way (marriage, civil unions, anti-discrimination laws, etc.) data collection efforts have not followed.

Lack of universally accepted definition of "gay" and "lesbian"

In Gates' response to critiques, he points out some of the challenges with gathering data on the LGBT population. One issue is that there are still differences in how "lesbian", "gay", "bisexual" and "transgender" are defined. There is not unanimity in definition about whether being gay is an inherent characteristic (like eye color) or whether it is a behavior (I am gay because today I am having a sexual relationship with someone of my same gender, something that could change tomorrow). Can one be gay without being in a relationship? If a person had one gay relationship in their life, does that make them gay? This also raises the question about what it means to be bisexual if someone is also monogamous. For someone who identifies as transgender, exactly where does one have to be in the process to be transgender?

Gates likened the challenges related to measuring the LGBT population to those present with the passage of civil rights in the 1960s. He writes:

The evolution of racial and ethnic identity may be constructive in how we think about these issues. Fifty years ago, the Census categorized your race based upon the Census enumerator looking at your skin color. Today, individuals are free to define their racial and ethnic identities separate from how they look. We consider this to be an advance in how we think about race and ethnicity in our society. In the LGBT framework, we might ask, is it correct to impose an LGBT identity based on observation of particular behaviors rather than on personal affiliation?.. (2012, 713-14).

Lack of uniform definition of gay and lesbian family status

One of the key socioeconomic questions is family status. Family status determines worker benefits but more importantly, the fundamental needs of an employee. In the United States, we have a legal definition of marriage that defines a partnership between two people. It is recorded by the government and recognized in a myriad of federal, state and local laws. Yet the United States does not have a uniform legal definition of gay and lesbian partnerships. So asking the simple question of “Are you married” becomes a question of in which entity’s eyes and to what degree. Currently, the federal government does not recognize gay and lesbian partnerships. Six states currently permit marriage between same sex couples: Connecticut, Iowa, Massachusetts, New Hampshire, New York, and Vermont, as well as in Washington, D.C.

At the writing of this article, an additional three states have laws that would legalize same-sex marriage but require some sort of voter referendum (Washington, Maryland and Maine). California, previously granted same-sex marriage but now only recognizes those entered into before November 5, 2008. Maryland (Maryland Court of Appeals, *Jessica Port v. Virginia Anne Cowan*) and Rhode Island (State of Rhode Island and Providence Plantations Governor’s Executive Order 12-02) recognize same-sex marriages from other jurisdictions but do not perform them.

To complicate matters, some states have created a quasi-marriage alternative called “civil unions” or “domestic partnerships.” These laws convey some or all of the benefits of marriage under state or local law. California, Connecticut, Delaware, Hawaii, Illinois, Maine, New Hampshire, New Jersey, Nevada, Oregon, Rhode Island and Vermont all have some sort of civil union or domestic partnership laws. So if you were to ask whether an employee is married, the actual answer may be something like, “No in the eyes of the federal government but yes in the eyes of my home state but sort of in the state that I am currently residing.”

The Census has attempted to take a different approach. As noted earlier, the US Census itself does not ask questions regarding sexual orientation or gender identity beyond simple male and female. However, the number of same-sex couples in the US is estimated based on responses to the Household Survey conducted by the Census. Same-sex partners identified in this survey are counted as unmarried partner households even if they have recognized marriages in states with marriage equality or have civil unions or domestic partnerships. Estimates from the 2010 Census show there are 646,464 same-sex couple households in the United States or .6% of all households. According to the Census,

an “unmarried partner household” consists of a householder and a person living in the household who reports that he or she is (1) an unmarried partner of the householder and of the opposite sex; (2) an unmarried partner of the householder and of the same sex; or (3) a spouse of the householder and of the same sex. Procedures for the 2010 Census edited same-sex spouse households as unmarried partner households (2012, 3).

For public administrators, the situation becomes even more difficult than just understanding the family issues of their employees. For example, healthcare benefits are administered based on family status. People who are single get single healthcare coverage. People who are married get family healthcare coverage. In every state that allows gay marriage, states provide equal benefits to all persons who are married. In every state that allows civil unions or domestic partnerships, the state provides equal healthcare benefits among married persons and persons in civil unions or domestic partnerships (see Appendix B). But after that, it gets

murkier. In New Mexico, Colorado and Maine, healthcare benefits are provided to domestic partners of state employees despite the lack of a state law recognizing domestic partnerships. Similarly, many state universities have also extended same sex healthcare benefits to employees despite not having a legal state definition of same sex relationships (see Appendix B). In each case, public administrators have had to create and actualize a definition of relationships that does not exist outside of that public organization. In some cases, there are registries similar to marriage rolls which record relationships. In other places, convoluted definitions of relationships have been created. Neither is particularly efficient or easy.

Nepotism

Probably the most difficult area related to definition and recognition of family for public administrators is policy around nepotism. Nepotism is favoritism granted to relatives regardless of merit. Embedded in this issue is the definition of who is a relative. All nepotism laws cover spouses and children and the spouses of children. After that, laws diverge wildly. Some laws focus solely on blood relations or marriage. The State of Alabama defines family for the purpose of nepotism as “within the fourth degree of affinity or consanguinity” (Alabama Nepotism Statute 205.01). Similarly, Nebraska defines family as an “individual who is the spouse, child, parent, brother, sister, grandchild, or grandparent, by blood, marriage, or adoption” (Nebraska Statutes 49-1499.07). Arizona includes common-law spouses as spouses even though there is no legal relationship between the two individuals. (Arizona R6-11-106) Michigan includes foster children and foster parents (Michigan State Employee Policy Manual, 2012). Rhode Island specifically includes step-siblings and step-parents (Rhode Island General Laws §§ 36-14-5(a), 5(d), 5(f), 7(a), 7(b), and Commission Regulations 36-14-5004 and 5005).

35 states have nepotism laws that do not recognize same sex relationships at all. Fifteen states have nepotism laws that can be construed to extend to same sex couples (Alaska, California, Delaware, Kansas, Michigan, Minnesota, Nevada, New York, Ohio, Oregon, Utah, Vermont, Washington, West Virginia and Wyoming). Of these, only two (Washington and Michigan) specifically include domestic partners under nepotism laws. (See Appendix B) Nine states (Alaska, California, Delaware, Kansas, Minnesota, New York, Oregon, Vermont and West Virginia) cover LGBT partnerships under a prohibition of perks to persons who live in the same household. (See Appendix B) Other states have somewhat vague definitions. Utah prohibits nepotism for “persons with whom there is a close, personal relationship” (State of Utah, Department of Human Resource Management, 2012). Likewise, Ohio prohibits nepotism for “person closely related by blood, marriage or other significant relationship including business association” (Ohio Department of Administrative Services, DAS Directive HR-D-02). Nevada includes “dating relationship” which could be construed to extend to unmarried same sex partners (State of Nevada Department of Administration, 2012).

Most interesting are states where gay relationships have been recognized by state law but are not covered under nepotism rules. For example, New Jersey recognizes domestic partnerships but its definition of family for nepotism includes “an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption” (New Jersey Conflicts

of Interest Law, N.J.S.A. 52:13D-12). Likewise, Rhode Island recognizes civil unions but defines family for purposes of nepotism as “any person who is related to any public official or public employee, whether by blood, marriage or adoption, as any of the following: spouse, father, step-father, father-in-law, mother, step-mother, mother-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandfather, step-grandfather, grandfather-in-law, grandmother, step-grandmother, grandmother-in-law, grandson, step-grandson, grandson-in-law, granddaughter, step-granddaughter, granddaughter-in-law, uncle, step-uncle, uncle-in-law, aunt, step-aunt, aunt-in-law, niece, step-niece, niece-in-law, nephew, step-nephew, nephew-in-law, first cousin, step-first cousin and first-cousin-in-law” (Rhode Island Gen. Laws §§ 36-14-5(a), 5(d), 5(f), 7(a), 7(b), and Commission Regulations 36-14-5004 and 5005). Wisconsin defines family for the purpose of nepotism as a “spouse or dependent relative” (Wisconsin Statutes 19.45(2) and 19.59(1)(a)).

It should also be noted that five states (Colorado, Hawaii, Iowa, Pennsylvania, and South Dakota) have no laws specifically about nepotism, although nepotism may be banned under other more general laws. (see Appendix B) In those cases, the definition of specifically what is a family relationship is left to the courts.

Health Care Benefits

Similarly, for many places, the definition of family for healthcare benefits is not the same as the definition of family for nepotism laws. In the City of Minneapolis, for example, domestic partners are considered family under nepotism laws but not under health insurance (Minneapolis Code of Ordinances 15.40). The State of Michigan is similar. (Michigan Department of Human Resources, 2012) Conversely, in Wisconsin, LGBT families are able to get healthcare benefits but are not considered families under nepotism rules (Wisconsin Statutes 19.45(2) and 19.59(1)(a)). Rhode Island, New Mexico, New Jersey, Arizona and Maine are similar (See Appendix B).

Both of these issues – a lack of unanimity among governmental levels about whether someone is married and a lack of unanimity about how we recognize a relationship between two same-sex persons – affect how public administration approaches its understanding of the needs of its citizens and of the needs of its employees.

Population that may not want to be identified

Another difficulty with data collection is that LGBT persons may not want to be identified. People who are identified as gay or lesbian can be harassed, denied employment or even (in rare instances) killed. Many religions condemn homosexuality, which makes it difficult for gay and lesbian believers to be open about their lives or even accept themselves. Unlike issues around race, gender and Hispanic status, families may not know about a person being gay until they come out. Families may be disapproving of someone who comes out as gay to the point of ostracizing them from the family. Because of this, there are large incentives to not come out in surveys.

There is an additional hurdle that government needs to overcome. The Holocaust was possible because the government collected data on religious affiliation through its census. This data was then later used by the Nazi regime to know who to single out for persecution. Gays and lesbians are cautious about providing information to government officials because this information could be used to harass or persecute them. Similarly, there are many instances of employment data being used to harass or marginalize

employees. Because of this, it is likely that a significant portion of the overall population will not come out in surveys. Data analysis will need to find a way to address this inherent bias.

Analysis and Conclusions

At the core of public administration is the obligation to serve the public. The public sector is often differentiated from the private sector based on non-excludability of products and services. That is, the public sector must serve all individuals. While public systems are by no means perfect in meeting this obligation across the board, there are overarching provisions that assure inclusion and non-discrimination based on race, ethnicity, national origin, ability, age and sex. As we have shown here, however, the same is not true for LGBT individuals. While progress is being made in some areas, it is highly piecemeal. The regional and jurisdictional differences in the policies and procedures that support LGBT individuals make it difficult for public administrators to deliver public services that are efficient, effective, economical and equitable.

Support for LGBT rights is an area where public opinion is evolving and many differences exist across communities. The case was likely similar during the expansion of civil rights in the 1960s. In that instance however, there was national legislation that set the context for the development of public policy and administrative systems. In the case of LGBT rights, action has largely taken place on the state and local level making consistency of policies a challenge. As opinions evolve, public systems will need to keep up and assure that the infrastructure is in place that protects the rights of LGBT individuals. An important place to start in this process is by having data.

Collecting data on LGBT citizens and on LGBT employees has challenges, however. Despite recent recognition of LGBT citizens in some areas, data systems have not responded. There are still no uniform definitions of what “gay” and “lesbian” are and there are conflicting definitions and conflicting levels of government in defining LGBT relationships. And substantial incentives exist for LGBT persons not to come out when surveyed. However, the data gathering process may evolve as has been the case with data on race and ethnicity. Resolving these issues will be crucial since knowing a population is a key part of being able to serve it.

To this end, the federal government is taking the first initial steps towards including LGBT information in its data collection. The Office of Personnel Management will be including questions about how many LGBT employees work in the government on its 2012 Federal Employee Viewpoint Survey (FEVS). This information will also be available for cross-tabulation with other data collected such as level in the organization, type of work and job satisfaction. This survey began in April 2012 and is projected to be completed in October 2012 and will survey over 1.8 million public employees. It will give the first comprehensive national data on LGBT public employees.

Despite the challenges, public administration needs to follow the lead of the federal government and begin data collection on LGBT citizens and employees if it is going to be a good steward of the public interest. As Gary Gates notes:

These are challenging questions with no explicit correct answers. The good news is that strong evidence suggests that, politically at least, the stakes in this discussion are no longer rooted in an urgent need to prove the very existence of LGBT people. This progress hopefully provides the space to more critically and thoughtfully assess these issues in an

environment where a sense of urgency is not paramount. Today, the size of the LGBT community is less important than understanding the daily lives and struggles of the still-stigmatized population and informing crucial policy debates with facts rather than stereotype and anecdote. (2012, 713-14)

Kris Norman-Major is an Associate Professor and Director of Public Administration Programs at Hamline University. Her research focuses on issues of cultural competency and social equity and she is co-editor, along with Susan Gooden, of *Cultural Competency for Public Administrators*, from ME Sharpe.

Dr. Carol Becker is an instructor at Hamline University. She has over 25 years of experience with public administration and has also been an elected official for eight years.

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Appendix A: Status of Public and Private Sexual Orientation and Gender Protections by State

State	Legal recognition of relationships	Private Sexual Orientation Protection	Private Gender Identity Protection	Public Sector Sexual Orientation Protection	Public Sector Gender Identity Protection
Alabama	No	No	No	No	?
Alaska	No	No	No	Yes	?
Arizona	No	No	No	Yes	?
Arkansas	No	No	No	No	No
California	Domestic Partnerships - allowed marriage stopped	Yes	Yes	Yes	Yes
Colorado	No	Yes	Yes	Yes	Yes
Connecticut	Marriage	Yes	No	Yes	No
Delaware	Civil Unions	Yes	No	Yes	Yes
District of Columbia	Marriage	Yes	Yes	Yes	?
Florida	No	No	No	No	?
Georgia	No	No	No	No	?
Hawaii	Civil Unions	Yes	Yes	Yes	?
Idaho	No	No	No	No	?
Illinois	Civil Unions	Yes	Yes	Yes	?
Indiana	No	No	No	Yes	?
Iowa	Marriage	Yes	Yes	Yes	Yes
Kansas	No	No	No	No	No
Kentucky	No	No	No	No	?
Louisiana	No	No	No	No	No
Maine	Approved by Leg - Before voters	Yes	No	Yes	?
Maryland	Approved but not implemented	Yes	No	Yes	?
Massachusetts	Marriage	Yes	No	Yes	?
Michigan	No	No	No	Yes	?
Minnesota	No	Yes	Yes	Yes	Yes
Mississippi	No	No	No	No	?
Missouri	No	No	No	No	?

Montana	No	No	No	Yes	?
Nebraska	No	No	No	No	No
Nevada	Domestic Partnerships	Yes	Yes	Yes	Yes
New Hampshire	Marriage	Yes	No	Yes	?
New Jersey	Civil Unions	Yes	Yes	Yes	Yes
New Mexico	No	Yes	Yes	Yes	Yes
New York	Marriage	Yes	No	Yes	Yes
North Carolina	No	No	No	No	?
North Dakota	No	No	No	No	?
Ohio	No	No	No	Yes	Yes
Oklahoma	No	No	No	No	No
Oregon	Domestic Partnerships	Yes	Yes	Yes	Yes
Pennsylvania	No	No	No	Yes	Yes
Rhode Island	Civil Unions	Yes	Yes	Yes	?
South Carolina	No	No	No	No	?
South Dakota	No	No	No	No	?
Tennessee	No	No	No	No	?
Texas	No	No	No	No	No
Utah	No	No	No	No	No
Vermont	Marriage	Yes	No	Yes	Yes
Virginia	No	No	No	No	?
Washington	Domestic Partners Marriage Before voters this fall	Yes	Yes	Yes	Yes
West Virginia	No	No	No	No	?
Wisconsin	Domestic partnership	Yes	No	Yes	?
Wyoming	No	No	No	No	?

Appendix B: LGBT Recognition by State Government

State	Legal recognition of relationship	Same Sex Health Benefits	LGBT in Anti-Nepotism rules	Nepotism Citation
Alabama	No	No	No	State of Alabama. Nepotism Statute 205.01.
Alaska	No	No	Yes	Alaska Statute 39.90.020 and AS 39.52.120 and AS 39.52.150, Executive Branch Ethics Act.
Arizona	No	Yes - Domestic Partners	No	Arizona Statutes R6-11-106.
Arkansas	No	No	No	Executive Order 98-04, Act 34 OF 1999 AND Act 2262 OF 2005
California	Domestic Partnerships - allowed marriage stopped	Yes - Domestic Partners	Yes	Department Of General Services Administrative Order 99-02
Colorado	No	Yes - Designated Beneficiary	No	No specific prohibition
Connecticut	Marriage	Yes - Marriage	No	Connecticut Statutes Chapter 10 Sec. 1-84
Delaware	Civil Unions	Yes - Civil Union	Yes	29 Delaware 5802, 5805, 5806 and Merit System Rules
District of Columbia	Marriage	Yes - Marriage	No	District of Columbia Government Comprehensive Merit Personnel Amendment Act of 2012"
Florida	No	No	No	Florida' Anti-nepotism Law, Section 116.111(2)(a), F.S.
Georgia	No	No	No	2006 Georgia Code - 21-5-3
Hawaii	Civil Unions	Yes - Civil Union	No	No nepotism law
Idaho	No	No	No	Office of the Attorney General of Idaho - Ethics in Government Manual 2008
Illinois	Civil Unions	Yes - Civil Union	No	No specific definition of nepotism
Indiana	No	No	No	Indiana Laws IC 4-15-7-1
Iowa	Marriage	Yes - Marriage	No	No direct ban on nepotism
Kansas	No	No	Yes	Kansas Conflict of Interest Laws (K.S.A. 46-215)
Kentucky	No	No	No	KRS 164.360(2); KRS 164.001; KRS 164.020(10); KRS 164.225; KRS 164.830(1)(a)
Louisiana	No	No	No	Louisiana's Code of Governmental Ethics. (LSA-R.S. 42:1119)
Maine	Approved by Leg - Before voters	Yes - Domestic Partner	No	Maine M.R.S.A., § 558.
Maryland	Approved but not implemented	Yes- Marriage	No	Maryland Ethics Law

Massachusetts	Marriage	Yes - Marriage	No	Massachusetts State Ethics Commission Advisory 86-02: Nepotism
Michigan	No	No - but yes at university	Yes	Michigan Human Resources Department. 2012. Michigan State Employee Policy Manual, 2012.
Minnesota	No	No	Yes	No specific law
Mississippi	No	No	No	Miss. Code Ann. §25-1-53 (1975),
Missouri	No	No	No	Article VII, Section 6 of the Missouri Constitution
Montana	No	No	No	Montana Statues MCA 2-2-302.
Nebraska	No	No	No	Nebraska Statutes 49-1499.07.
Nevada	Domestic Partnerships	Yes - Domestic Partners	Yes	State of Nevada Department of Administration. 2012. <i>Employee Handbook</i> .
New Hampshire	Marriage	Yes - Marriage	No	New Hampshire Statutes RSA 21-G:22
New Jersey	Civil Unions	Yes - Civil Union	No	New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12.
New Mexico	No	Yes - Domestic Partners	No	General Administration Policies 044.6
New York	Marriage	Yes - Marriage	Yes	Public Officers Law §73.14
North Carolina	No	No	No	NC Office of State Personnel - Inside North Carolina, a guide to state employment
North Dakota	No	No	No	North Dakota Statutes NDCC 44-04-09
Ohio	No	No - University yes	Yes	Ohio Department of Administrative Services, DAS Directive HR-D-02.
Oklahoma	No	No	No	Oklahoma Statutes Title 11, Chapter 1 - Article VIII -Section 8-106 - Nepotism
Oregon	Domestic Partnerships	Yes- Domestic Partners	Yes	Oregon Statutes - Chapter 244 — Government Ethics
Pennsylvania	No	Yes	No	No specific law
Rhode Island	Civil Unions	Yes - Civil Union	No	State of Rhode Island and Providence Plantations Governor's Executive Order 12-02. May 14, 2012.
South Carolina	No	No	No	SC Code of Laws 8-13-750 and State HR Regulations Section 19-701.06 A.
South Dakota	No	No	No	No specific law
Tennessee	No	No	No	2010 Tennessee Code, Title 8 - Public Officers And Employees, Chapter 31 - Uniform Nepotism Policy 8-31-102
Texas	No	No	No	Texas Attorney General -2012 <i>Texas Nepotism Laws Made Easy</i>
Utah	No	No	Yes	State of Utah Department of Human Resource Management (DHRM). 2012. <i>Employee Handbook, July 2012 Version</i> .
Vermont	Marriage	Yes - Marriage	Yes	Department of Human Resources, Agency of Administration - Conflict of Interest/Nepotism Policy
Virginia	No	No	No	Code of Virginia (§2.2-3106)

Washington	Domestic Partners - Marriage Before voters this fall	Yes - Domestic Partners	Yes	Washington Statutes - Chapter 42.17.020
West Virginia	No	No	Yes	West Virginia Ethics Act - (W. Va. Code § 6B-1-1, et seq.)
Wisconsin	Domestic partnership	Yes - Domestic Partners	No	Wisconsin Statutes 19.45(2) and 19.59(1)(a)
Wyoming	No	No	Yes	Wyoming Statutes. Chapter 13 - Government Ethics