

# FROM OUTSIDER TO INSIDER AND OUTSIDER AGAIN: INTEREST CONVERGENCE AND THE NORMALIZATION OF LGBT IDENTITY

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## I. INTRODUCTION

After the Supreme Court’s decision in *United States v. Windsor*, which declared the federal Defense of Marriage Act (DOMA) unconstitutional,<sup>1</sup> and after the granting of certiorari in *Obergeell v. Hodges*, where the Supreme Court will decide whether the Fourteenth Amendment requires states to provide a marriage license to same-sex couples,<sup>2</sup> national marriage equality seems like a legal inevitability.<sup>3</sup> However, *Windsor* and *Obergeell*, along with other state-level advances toward marriage equality, are not equally promising for all members of the lesbian and gay<sup>4</sup> community. Although *Windsor* and the revolution of cases that have led to *Obergeell* hold significant promise for one privileged subset of gays and lesbians—white, economically

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1. 133 S. Ct. 2675, 2696 (2013).

2. *Obergeell v. Hodges*, No 14-566, 2015 WL 213646 (U.S. Jan. 16, 2015).

3. “I have long argued that marriage equality is inevitable, as the arguments against it do not bear serious examination.” William N. Eskridge Jr., *Backlash Politics: How Constitutional Litigation Has Advanced Marriage Equality in the United States*, 93 B.U. L. REV. 275, 307-08 (2013); see also Carlos A. Ball, *The Backlash Thesis and Same-Sex Marriage: Learning from Brown v. Board of Education and Its Aftermath*, 14 WM. & MARY BILL RTS. J. 1493 (2006) (arguing that while backlash may result from advances in gay rights through marriage, the backlash will ultimately be outweighed by public support for gay rights).

4. Because the Marriage Equality movement focuses predominantly on lesbians and gay men, this Article will discuss primarily these groups within the LGBT construct.

privileged, and educated gays and lesbians—they do not necessarily carry the same potential for less privileged subgroups within the gay and lesbian community, namely gays and lesbians of color. In fact, it is possible that inequality among these subgroups within the gay community will increase as gays and lesbians achieve marriage equality and other legal rights. After all, the gay community is not monolithic,<sup>5</sup> and there are various forms of diversity among homosexuals, which have largely been overlooked in the mainstream gay rights movement.

This Article aims to challenge the progress narrative that has been advanced by gay rights advocates by suggesting that, thus far, the victories of the gay rights movement have been made possible because of the dominant media image of its would-be recipients. Specifically, this Article contends that this dominant image—one of a white, upper middle class, educated, and Northern-city-based gay community—has thus far worked to persuade those in the decision-making elite that the gay community's interests converge with their own because it implicitly reinforces racial, class, and regional hierarchies within the gay community and in society more generally. In other words, this Article maintains that marriage equality is imminent today in part because of what Professor Derrick Bell identified as interest convergence, which is the notion that the rights of marginalized people are acknowledged and recognized through legal protection only when their interests converge with those in the white decision-making elite.<sup>6</sup>

Indeed, *Windsor* itself conforms to this archetype, as the case concerned manifest elite interests and parties. Under the theory of interest convergence, Edith Windsor, a wealthy, white woman in a long-term committed relationship in New York City, was, in many ways, the perfect plaintiff to challenge DOMA because she could be sold as part of a respectable, assimilation-based gay image to the general public and, more importantly, to those in power.<sup>7</sup> In addition

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5. See Jeffrey A. Redding, *Querying Edith Windsor, Querying Equality*, 59 VILL. L. REV. 9, 10 (2013).

6. See Angela Onwuachi-Willig & Osamudia James, *The Declining Significance of Presidential Races?*, 72 LAW & CONTEMP. PROBS., Fall 2009, at 89, 105-06 (discussing Bell's interest convergence theory and offering an example of interest convergence at work). See generally Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

7. Edie Windsor closely hews to the image of homosexuality that has been consciously crafted in the public sphere. Her wedding was "mainstream" enough to be featured in the *New York Times* wedding section, even though the state of New York did not recognize same-sex marriage until 2012. See *Thea Spyer, Edith Windsor*, N.Y. TIMES, MAY 27, 2007, at H14. Both Windsor, who holds a Master's degree from N.Y.U., and Spyer, who has a Ph.D., have elite pedigrees in terms of education. *Id.* As this Article will demonstrate, high educational attainment and income are the exception, not the norm, among gays and lesbians. See *infra* Part III.

to conforming to society's perceived normative ideal in all ways except for sexuality, Windsor was also a sympathetic plaintiff because of how sexuality-based discrimination caused her to suffer a significant financial loss.<sup>8</sup> As her filings made clear, because Windsor was unable to marry her partner of more than forty years, she was forced to pay \$363,053 in estate taxes: an amount she would not have been forced to pay if she were heterosexual and married.<sup>9</sup>

Critically, Windsor's underlying claim, which concerned disputes over large estate taxes, was an issue that was highly salient to white elites, both gay and non-gay alike.<sup>10</sup> Furthermore, her respectability-based identity as a lesbian represented a departure from the stereotype of hyper-sexuality that is often affiliated with or imputed to gay culture. Additionally, her racial identity as a white woman reified the primacy of whiteness in the gay community and gay rights movement. Finally, her identity as an educated Northerner reinforced notions of sophistication and assimilation in the gay and lesbian community.<sup>11</sup> While all of these aspects of Windsor's identity helped to remove the stigma of otherness (to an extent) and thus enabled broad swaths of people to identify with her, they also implicitly worked to mark those who did not fit this normative ideal as outsiders. In this sense, they marked many gays and lesbians of color, particularly those who are less educated and economically disadvantaged, as the ultimate outsiders. After all, if associating whiteness and wealth with homosexuality has in fact helped gays and lesbians make strides toward equality, then the inverse implication is that the public will not be particularly responsive to concerns that exist for gays and lesbians of color, especially those who are poor or working class. The result is that gay and lesbian communities of color, particularly poorer ones, have become even more vulnerable to continued unequal-

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8. Richard Socarides, *A Widow's Victory, and a Defeat for DOMA*, THE NEW YORKER (Oct. 18, 2012), <http://www.newyorker.com/news/news-desk/a-widows-victory-and-a-defeat-for-doma>.

The case today, *Windsor v. United States*, presented the court with an enormously sympathetic plaintiff in the person of Edith Windsor, a New York widow who, after more than forty years of romantic partnership and eventual marriage to Thea Spyer, was assessed over three hundred and fifty thousand dollars in federal estate taxes after the death of her wife merely because the Defense of Marriage Act prevented her from taking advantage of the marital deduction she would be entitled to had she been married to a man.

*Id.*

9. "Windsor paid \$363,053 in estate taxes and sought a refund . . ." *United States v. Windsor*, 133 S. Ct. 2675, 2679 (2013).

10. *Id.*

11. See, e.g., Aderson Bellegarde François, *To Go into Battle with Space and Time: Emancipated Slave Marriage, Interracial Marriage, and Same-Sex Marriage*, 13 J. GENDER RACE & JUST. 105 (2009) (arguing that the stereotype of homosexual hyper-sexuality has been used as a basis for denying same-sex marriage to gay couples).

ity, both on racial and sexual orientation grounds, and have become even more invisible to the public.<sup>12</sup>

Such consequences are a significant consideration when looking beyond marriage equality to the impending legal and legislative battles over employment nondiscrimination, adoption, and housing. After all, the need to consider intersectional identity is particularly important in these contexts because gays and lesbians of color, in part because of their generally lower socioeconomic class and educational status, are most vulnerable to these forms of discrimination. Furthermore, to remedy discrimination against gays and lesbians, anti-discrimination laws alone are not sufficient. As the years following the racial civil rights movement have taught us, formal equality is just the beginning of the path to true equality, but not an end in itself; to ensure that all members of the gay community benefit from formal equality, social progress must also buttress political and legal victories, and meaningful social progress requires a more diverse portrayal of gays and lesbians.

Overall, this Article argues that, although some gays and lesbians may have achieved insider status through formal inclusion in the traditional institutions of marriage and the military, these victories were made possible, at least in part, through a strategy that intentionally portrayed the gay community as disproportionately white, affluent, and assimilation-oriented, which elides the actual diverse demography of the gay community, leaving poorer, gay communities of color invisible to the mainstream public. This Article further contends that such a limited portrayal of gays and lesbians may deepen, rather than ameliorate, inequality within the gay community by obfuscating the needs of gay communities of color and those who may fall outside of the movement's normative ideal.

Part II of this Article begins by discussing the ways in which interest convergence and the normalized construction of white identity have assisted with the rapid liberalization of gay rights. Part III highlights data that exposes the discrepancy between this white-centric and wealthy gay identity construct and the gay community as it actually exists demographically. Part IV analyzes the ways in which the normalized white gay identity has created insider and outsider status among gays and lesbians, enfranchising some sub-groups of the gay community, such as white, economically privileged gays and lesbians, while marginalizing other sub-groups, such as poorer gays and lesbians of color. Part V argues that gays and lesbians of color occupy a unique position of marginalization in society, largely excluded from the mainstream gay rights community as well as heterosexual communities of color, which creates a dual-outsider status

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12. Eskridge, *supra* note 3, at 276.

and, in many instances, a multi-layered outsider status. Part V contends that the victories of the gay rights movement thus far benefit gay communities of color only to a limited extent. It also identifies some ways in which the gay rights movement's agenda can become more inclusive of gays and lesbians of color going forward. Part VI concludes this Article by arguing that the intersectional issues raised by gays and lesbians of color, including those related to class, demonstrate some of the limitations of formal equality, requiring broader social movement support to attain substantive equality for all gays and lesbians. It also concludes by reiterating the need to avoid declaring victory when limited rights have been attained only for "insider" gays and lesbians.

## II. THE GAY RIGHTS MOVEMENT: RAPID PROGRESS AND THE ROOTS OF INSIDER IDENTITY

Gays and lesbians have made many advances toward achieving formal legal equality in recent years. As William Eskridge has explained:

A generation ago, so-called "homosexuals" cowered in the closet, hated or scorned by most Americans and fearful that any open relationship would lead to loss of employment, social ostracism, loss of professional license (including the license to practice law), police harassment, and possibly even imprisonment and rape within prison.<sup>13</sup>

Beginning in 2003, when the Supreme Court decided *Lawrence v. Texas*, which struck down anti-sodomy statutes as unconstitutional,<sup>14</sup> there has been a major shift in public opinion regarding gay and lesbian rights issues. Today, the majority of Americans now support same-sex marriage, antidiscrimination protections for gay employees, and adoption rights for gay couples.<sup>15</sup>

Nevertheless, the strategies and tactics that movement leaders employed to arrive at this emerging shift in public opinion have not always been the same. Early gay rights activists relied on the rhetoric of outsidership to bring attention to their cause.<sup>16</sup> Chants like

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13. *Id.*

14. 539 U.S. 558 (2003). Gay relationships lacked all legal legitimacy prior to *Lawrence* because the primary form of gay male sexual behavior was criminalized. Anti-sodomy statutes served as a legal proxy for disapproving homosexuality more broadly. See Anthony Michael Kreis, *Gay Gentrification: Whitewashed Fictions of LGBT Privilege and the New Interest-Convergence Dilemma*, 31 L. & INEQUALITY 117, 121-22 (2012). Anti-sodomy statutes undermined and denigrated the legitimacy of gay relationships; however, gay relationships have since gained greater legitimacy through the *Lawrence* opinion, which found these laws unconstitutional. 539 U.S. 558.

15. *Marriage: Gay and Lesbian Rights*, GALLUP, <http://www.gallup.com/poll/1651/gay-lesbian-rights.aspx> (last visited Feb. 17, 2015).

16. "The portraits of lesbians, gays, bisexuals, and transgendered individuals ('sexual others' or 'sexual outsiders') are of people not quite fully human, deviant, and deficient

“We’re here! We’re queer! Get used to it!” signaled the perceived us-versus-them dichotomy.<sup>17</sup> Further, the Supreme Court’s understanding of anti-gay and -lesbian discrimination reinforced the outsider rhetoric employed by early gay rights activists. Courts generally believed that “discrimination was treating similar people differently, not treating different people, the ‘homosexuals,’ differently from ‘normal’ people, the ‘heterosexuals.’”<sup>18</sup>

In contrast to early gay rights rhetoric, whereby the gay community sought to distinguish homosexuality as different or “outside” the mainstream of society, the social and legal strategy to achieve equality for gays and lesbians later shifted to rely on assimilation-orientation.<sup>19</sup> Gay rights proponents abandoned outsider rhetoric to seek inclusion with the traditional institution of marriage and participation in the military by highlighting similarities—by claiming, “We’re just like you.”<sup>20</sup> In other words, rather than seek to disrupt the paradigm of heteronormativity, assimilation-oriented homosexuals sought to fit gay rights into the existing legal and social structure, without threatening to upend the social order.<sup>21</sup>

One of the most effective strategies for transforming homosexuality from a fringe community to an insider group has been the construction of an essentialist, immutable homosexual identity.<sup>22</sup> In addition to immutability, this essentialist identity has been rooted in both whiteness and affluence. Indeed, the popular portrayals of “normalized homosexuality” in the media and society at large are vir-

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morally.” Nancy Levit, *A Different Kind of Sameness: Beyond Formal Equality and Anti-subordination Strategies in Gay Legal Theory*, 61 OHIO ST. L.J. 867, 868 (2000).

17. *Our History*, QUEER NATION NY, <http://queernationny.org/history> (last visited Feb. 17, 2015).

18. Eskridge, *supra* note 3, at 282.

19. “Assimilation is the magic in the American Dream. Just as in our actual dreams, magic permits us to transform into better, more beautiful creatures, so too in the American Dream, assimilation permits us to become not only Americans, but the kind of Americans we seek to be.” Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 771 (2002).

20.

Marriage equality and military service are the main political items right now, both of which serve a mainly white gay community. These political agendas do not address the primary concerns of those within the gay community who are non-white, or poor, or young. Speaking of a single gay community is therefore a rhetorical choice, just as speaking of multiple gay communities is.

Niels Teunis, *Sexual Objectification and the Construction of Whiteness in the Gay Male Community*, 9 CULTURE, HEALTH & SEXUALITY 263, 264 (2007).

21. Although many scholars and commentators endorse the assimilation-based strategy for achieving insiderness, there are some who criticize the strategy as well. See, e.g., Redding, *supra* note 5, at 11.

22. See Daniel R. Ortiz, *Creating Controversy: Essentialism and Constructivism and the Politics of Gay Identity*, 79 VA. L. REV. 1833, 1853-54 (1993).

tually all the same: white,<sup>23</sup> educated, and socioeconomically privileged.<sup>24</sup> As Russell Robinson has explained:

Business experts and scholars have fostered a conception of gay men as obsessed with commerce, affluence, and self-image. These descriptions of gay consumers focus on white, relatively wealthy men in large cities, with little awareness that there are plenty of MSM [men who have sex with men] (and queer women) who live outside, and cannot relate to, this rarified orbit.<sup>25</sup>

Notably, this strategy of normalizing gay and lesbian identity has brought the gay community closer and closer to achieving formal equality within the past decade. Indeed, by 2012, gay rights issues were no longer seen as outsider issues and had been normalized beyond backlash politics.<sup>26</sup> As William Eskridge indicated, “2012 was

23. Teunis, *supra* note 20, at 269 (“Whiteness in the gay community is visible, palpable, if for no other reason than that images of men of colour are absent.”).

24. The idealized gay archetype is consistently portrayed as the norm within the gay rights movement: “He is respectable. He is accomplished. He is an athlete. He is American. He is white. He is normatively masculine. And he is also gay. . . . [A gay man’s] normative masculinity, which his whiteness helped to intersectionally constitute, rendered him gay like a white heterosexual man.” Devon W. Carbado, *Colorblind Intersectionality*, 38 SIGNS: J. OF WOMEN IN CULTURE & SOC’Y 811, 834 (2013). There is also a socioeconomic component to insider gay identity, which has largely been conflated with race: “Some MSM [men who have sex with men], especially blacks and Latinos, lack the ‘discretionary income’ that is a precondition to this ‘gay lifestyle.’” Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309, 1345 (2011) [hereinafter Robinson, *Masculinity*].

While it is true that gays are more represented in the media now than they have been in the past, it is important to note that the vast majority of the media portrayals of gays and lesbians are white. A study of gay-oriented magazines illustrates this point:

Of the men on *Out’s* cover, 88.9% were white, and 3.7% black. *The Advocate* was more diverse: 72.3% white and 8.5% black.

Film and television images of gay men reflect a similar pattern of marginalization and distortion. The dominant theme is invisibility—whether one watches mainstream media or gay-themed content, black LGBT people are rarely represented. Aside from *The L Word*, the most popular gay-themed series have featured no black regular characters. *Will & Grace*, *Ellen*, *Queer Eye for the Straight Guy*, and *Queer as Folk* reaffirmed the popular notion that LGBT people are affluent whites. The few black LGBT images that do exist tend to be minor or recurring roles or are relegated to independent channels of distribution that reach a tiny audience, such as the movie and TV series *Noah’s Arc*. Specifically, images of black MSM tend to fall into three problematic categories: (1) aggressive, threatening “angry black men;” (2) at the other extreme of the gender spectrum, flamboyant queens; and (3) black men who are in relationships with white men, which seems to imply that black MSM are of interest only when they are paired with a white man. There are occasional exceptions to these trends and even some complex, interesting portrayals, but such performances are all too rare.

Russell K. Robinson, *Racing the Closet*, 61 STAN. L. REV. 1463, 1508-10 (2009) [hereinafter Robinson, *Racing*] (citations omitted).

25. Robinson, *Masculinity*, *supra* note 24, at 1344 (citations omitted).

26. See Ball, *supra* note 3.

the watershed year for the backlash politics against marriage equality. In that year, the issue moved decisively toward normal politics rather than backlash politics for the nation as a whole.”<sup>27</sup> Additionally, not only is there now broad support for gays and lesbians on a range of social issues such as marriage, but there also are an increasing number of state and local laws providing legal protections for gays and lesbians as well as more common representations of gays and lesbians in mainstream media.<sup>28</sup>

Nevertheless, this white-washed image of homosexual identity is at odds with the demography of the LGBT community.<sup>29</sup> African Americans, Latinos, and Asians all identify as homosexual at higher rates than Caucasians.<sup>30</sup> Additionally, the consistent depictions of gays and lesbians as affluent and educated are inaccurate. Gays and lesbians tend to have lower levels of education and income than average Americans,<sup>31</sup> and the largest proportion of gay Americans make less than \$24,000 per year, representing the lowest income bracket on demographic surveys.<sup>32</sup> In fact, gays and lesbians are also often underrepresented in many major industries. Many law firms, for example, have an LGBT population that is far less than the estimated proportion of American adults that identify as LGBT.<sup>33</sup>

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27. Eskridge, *supra* note 3, at 307.

28. See generally GLAAD, WHERE WE ARE ON TV (2013), available at [www.glaad.org/files/2013WWATV.pdf](http://www.glaad.org/files/2013WWATV.pdf) (summarizing gay and lesbian portrayals in television in 2013).

29. Sean Cahill, *The Disproportionate Impact of Antigay Family Policies on Black and Latino Same-Sex Couple Households*, 13 J. AFR. AM. STUD. 219, 247 (2009). Cahill explicated:

Data from the 2000 Census refute common stereotypes that lesbian and gay people are exclusively White, wealthy, do not have children, and are unable to maintain stable, long-term relationships. In fact, there are over 85,000 Black same-sex couple households and 100,000 Hispanic same-sex couple households in the USA; nearly half of them are raising children, a fact which has many implications for the debate over the legal recognition of same-sex couple families.

*Id.*

30. The lower likelihood that a white person would identify as LGBT illustrates the divergence between how the gay community is portrayed for strategic social movement purposes and how the gay community exists in reality. “The survey results show that 4.6% of African-Americans identify as LGBT, along with 4.0% of Hispanics and 4.3% of Asians. The disproportionately higher representation of LGBT status among nonwhite population segments corresponds to the slightly below-average 3.2% of white Americans who identified as LGBT.” Gary J. Gates & Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as LGBT*, GALLUP (Oct. 18, 2012), <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx>.

31. *Id.*

32. *Id.*

33. *LGBT Representation Up in 2012*, NALP (Jan. 2013), [http://www.nalp.org/lgbt\\_representation\\_up\\_in\\_2012](http://www.nalp.org/lgbt_representation_up_in_2012). There are studies that show the percentage of American adults who identify as gay or lesbian ranges between 1.6–3.5% of the American population. See, e.g., Sandhya Somashekhar, *Health Survey Gives Government Its First Large-Scale Data on Gay, Bisexual Population*, WASH. POST, July 15, 2014, at A3, available at <http://www.washingtonpost.com/national/health-science/health-survey-gives-government->



In essence, as gay rights rhetoric has shifted from portraying gays as outsiders to insiders, only a limited, assimilation-oriented, non-minority conception of gay identity has been normalized.<sup>34</sup> In this respect, achieving equality through normalization has been problematic.<sup>35</sup>

In the next Part, this Article highlights the demographic data underlying its critiques of this current normalization strategy within the gay rights movement. Specifically, it details the data that exposes why the current “representative” images of the gay and lesbian community do not reflect actual LGBT demography.

### III. THE DATA: DEBUNKING THE MYTH OF WHITENESS AND EXPOSING INEQUALITIES AMONG GAYS AND LESBIANS

While the construction of the gay community and gay identity in the media would lead a reasonable observer to believe that the gay community is predominantly white, affluent, educated, and Northern, this perception does not align with reality according to various demographic studies.<sup>36</sup> Significant portions of the gay and lesbian community are neither white, affluent, Northern, nor educated.

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its-first-large-scale-data-on-gay-bisexual-population/2014/07/14/2db9f4b0-092f-11e4-bbf1-cc51275e7f8f\_story.html.

34. Assimilation orientation has meant framing gays and lesbians as conforming to heteronormative ideals, meaning:

demonstrating the ways in which sexual outsiders look very much like the “ideal model”—the heterosexual norm—as loving parents, and caring, committed partners. Equality theorists accept for the most part the given identity categories of homosexuals and heterosexuals, but try to show that sexual differences should not make a difference, socially or legally. . . . Equality-seeking political activists must be prepared to argue that to the extent an ideal model of family life exists, gays and lesbians conform to that snapshot. Thus, equality theory does not depend on acceptance of the model as an ideal, but equality seeking, as a practical matter, does.

Levit, *supra* note 16, at 880.

35. Teunis, *supra* note 20, at 264 (citations omitted) (“[The gay rights movement has promoted] homogeneity rather than diversity. Today’s national political climate, whereby there is a sustained assault on LGBT rights, gives the whiteness of the gay community increased political force as whiteness constitutes a major part of the LGBT strategy. That is to say, the LGBT political struggle relies for its effectiveness on the unproblematic assumption of the whiteness of its goals and constituents. Gay men and lesbians who want to serve in the military are perceived as white; gay marriage is often portrayed as the extension of white privilege to the gay community.”).

36. See generally ALAIN DANG & SOMJEN FRAZER, NAT’L GAY & LESBIAN TASK FORCE POLICY INST. & NAT’L BLACK JUSTICE COAL., BLACK SAME-SEX HOUSEHOLDS IN THE UNITED STATES (2d ed. 2005) (analyzing census data on black same-sex couples); GARY J. GATES, THE WILLIAMS INST., SAME-SEX COUPLES IN CENSUS 2010: RACE AND ETHNICITY (2012) (analyzing census data on same-sex couples, generally, for race and ethnicity patterns); ANGELIKI KASTANIS & GARY J. GATES, THE WILLIAMS INST., LGBT AFRICAN-AMERICAN INDIVIDUALS AND AFRICAN-AMERICAN SAME-SEX COUPLES (2013) (compiling data on black same-sex couples); U.S. CENSUS BUREAU, CHARACTERISTICS OF SAME-SEX COUPLE HOUSEHOLDS (2012), available at <http://www.census.gov/hhes/samesex/data/acs.html> (fol-

First, people of color make up a meaningful percentage of both married and unmarried gay and lesbian couples. In fact, of all same-sex couples reporting in the 2012 American Community Survey (ACS) as spouses, 9.2% of lesbian couples and 6.8% of gay male couples were African American.<sup>37</sup> The ACS survey also noted that 11.3% of gay male couples reporting as spouses were Latino/Latino, as were 9.4% of lesbian couples. The percentage of gay couples identifying as spouses who were white (non-Latino) was 75.9% for male couples and 75.6% for lesbian couples.<sup>38</sup> Thus, nearly one-quarter of same-sex marriages contained at least one minority partner, demonstrating that the diverse demography of the gay community is at odds with its portrayal as nearly exclusively white.<sup>39</sup> Further, 10.7% of unmarried male same-sex couples and 10% of unmarried female same-sex couples identified as Latino.<sup>40</sup>

Additionally, despite the stereotype of an affluent gay community, gays and lesbians are more likely to fall into poverty than heterosexuals.<sup>41</sup> In fact, economists have demonstrated that gay men earn between 13% and 32% less than their heterosexual counterparts.<sup>42</sup> Although lesbian women earn the same, if not slightly more, than heterosexual women, the pay gap between men and women means that a female same-sex couple earns less than a heterosexual couple on average.<sup>43</sup>

On top of the general disparity in pay between gays and lesbians and heterosexuals, there is a severe disparity between what white gays and lesbians and gays and lesbians of color earn. For example, black same-sex couples are not only “economically disadvantaged compared to Black married opposite-sex couples, [but also are] as compared to White same-sex couples.”<sup>44</sup> The median household income for black, female same-sex couples is \$21,000 less than for

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low “2012” hyperlink) (including the original hard data on the race and ethnicity of same-sex couples).

37. U.S. CENSUS BUREAU, *supra* note 36, at tbl.2.

38. *Id.*

39. *Id.* at tbls.1-2. The proportion of married couples categorized as white was similar for homosexual and heterosexual married couples: 83.8% for male same-sex couples, 81.7% for lesbian couples, and 82.6% for heterosexual married couples. *Id.*

40. *Id.*

41. Gates & Newport, *supra* note 30, at 4-5. Gays and lesbians also report lower levels of satisfaction with quality of life in general. *Id.* at 4.

42. JASON CIANCOTTO, NAT’L GAY & LESBIAN TASK FORCE POLICY INST., NAT’L LATINO/A COAL. FOR JUSTICE, HISPANIC AND LATINO SAME-SEX COUPLE HOUSEHOLDS IN THE UNITED STATES: A REPORT FROM THE 2000 CENSUS 38 (2005).

43. *Id.*

44. DANG & FRAZER, *supra* note 36, at 5.

white female same-sex couples, and for black male same-sex couples, it is \$23,000 less than for white male same-sex couples.<sup>45</sup>

Latino same-sex couples, too, are economically disadvantaged relative to white same-sex couples, at least as reflected in metrics such as income and homeownership. As one scholar revealed:

Female same-sex couple households in which both partners are Hispanic earn over \$24,000 less in median annual household income than white non-Hispanic female same-sex couple households and over \$30,000 less than white non-Hispanic male same-sex couple households.

. . . .

The median annual household income of male same-sex couple households in which both partners are Hispanic is over \$21,000 less than that of white non-Hispanic female same-sex couple households and over \$27,000 less than that of white non-Hispanic male same-sex couple households.

. . . .

Seventy-two percent of white non-Hispanic same-sex couple households report owning their own homes, compared to only 48 percent of Hispanic same-sex couple households.<sup>46</sup>

Interestingly, this wealth disparity largely diminishes for interracial couples, with interracial black couples making only \$3,000 less than white same-sex couples, for example.<sup>47</sup>

Furthermore, contrary to stereotype, not all gays and lesbians reside in Northern cities or suburbs or other purportedly gay-friendly regions. Indeed, African American gays and lesbians are more likely to live in cities or states that are hostile to same-sex marriage and that offer no protections against sexuality-based discrimination. Research reveals:

The top ten metropolitan areas with the highest proportion of Black same-sex households *among all same-sex households* are in the South. They include Macon and Albany, Georgia; Sumter,

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45. *Id.*

46. CIANCOTTO, *supra* note 42, at 5 (citations omitted). The economic challenges faced by non-white gays and lesbians are partially explained by differences in employment among gays and lesbians on the basis of race. Both African American men and women in same-sex households are about twenty-five percent more likely than white gays and lesbians to hold jobs in the public sector. DANG & FRAZER, *supra* note 36, at 6. Further, black same-sex couples have a higher likelihood than white same-sex couples of using public sector health insurance, which is problematic in states with same-sex marriage bans. *Id.* It is also important to note that among African American same-sex couples, it is far less common that both partners are insured as in African American heterosexual couples, sixty-three percent for same-sex couples and seventy-nine percent for heterosexual couples. KASTANIS & GATES, *supra* note 36, at 6.

47. See DANG & FRAZER, *supra* note 36, at 16.

South Carolina; Rocky Mount and Goldsboro, North Carolina; Montgomery, Alabama; Jackson, Mississippi; Pine Bluff, Arkansas; Danville, Virginia; and Monroe, Louisiana. This pattern mirrors that of the nation overall, where, according to the 2000 Census, 54% of the Black population lives in the South.<sup>48</sup>

More so, such residential patterns by black gays and lesbians are consistent with the idea that “African-American individuals in same-sex couples tend to live in areas where there are higher proportions of African-Americans, as opposed to areas with higher proportions of the broader [LGBT] population.”<sup>49</sup>

Similarly, a study by the Williams Institute, relying on data from Gallup, found results that were similar to the patterns described above, but that demonstrated some demographic variation. That study found that the ten states with the largest African American LGBT populations are the District of Columbia, Louisiana, Georgia, North Carolina, Mississippi, New Jersey, Maryland, Alabama, Michigan and New York,<sup>50</sup> four of which do not recognize same-sex marriages.<sup>51</sup>

Moreover, gays and lesbians of color are not only economically disenfranchised relative to white homosexuals and more likely to live in less-gay friendly states than white homosexuals, but they also tend to have fewer years of education than white homosexuals. In general, black gay and lesbian couples report lower levels of education than white same-sex couples.<sup>52</sup> Furthermore, while approximately forty percent of African American homosexuals report having attained any level of postsecondary education, a far higher percentage of white homosexuals, sixty-seven percent, report having attained the same level of education or higher.<sup>53</sup> Additionally, Latinos in same-sex couples report even lower levels of education. A mere twenty-three percent of Latino same-sex households report completing any education beyond high school.<sup>54</sup>

Finally, and somewhat related to the disparities in wealth between white homosexuals and homosexuals of color, same-sex couples of color are more likely than white, same-sex couples to be parents of

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48. *Id.* at 22.

49. KASTANIS & GATES, *supra* note 36, at 1.

50. *Id.* at 3.

51. Of this list, Alabama, North Carolina, New York, New Jersey, Maryland, and the District of Columbia recognize same-sex marriage. *States*, FREEDOM TO MARRY, <http://www.freedomtomarry.org/states/> (last updated February 6, 2015).

52. DANG & FRAZER, *supra* note 36, at 28.

53. *Id.* Interracial couples, on the other hand, tend to report very high levels of education. *Id.* Interracial couples, moreover, represent the most educated group, on average, with seventy-one percent reporting postsecondary education. *Id.*

54. CIANCOTTO, *supra* note 42, at 34. Seventy-two percent of Hispanics in interracial, same-sex relationships report having completed at least some college, on the other hand. *Id.*

children.<sup>55</sup> As one scholar explicated, “[s]ame-sex couples with children include a larger portion of racial/ethnic minorities than different-sex married couples.”<sup>56</sup> Black male same-sex couples also parent at much higher rates than white same-sex male couples. Specifically, “[b]lack male same-sex households in the U.S. are parenting at twice the rate reported by White male same-sex households, 36% versus 18% respectively.”<sup>57</sup> Likewise, black lesbian couples parent at considerably higher rates than white lesbian couples, “raising children under 18 at nearly twice the rate reported by White female same-sex couples, 52% versus 32% respectively.”<sup>58</sup>

All of these differences between the various subgroups of the gay and lesbian community are not mere distinctions without consequence. Indeed, the fact that the normalization strategy ignores each of these differences has an enormous, negative impact on those who fall outside of the presented, normative ideal. In the next Part, this Article details not only how this strategy marks gays and lesbians of color as outsiders, but also how it heightens the likelihood of widening disparities between white gays and lesbians and gays and lesbians of color in terms of social acceptance, wealth, education, and freedom from employment discrimination.

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55.

Most US states permit adoptions by single individuals, including gay men, lesbians, and bisexuals. However, a few states explicitly prohibit or regularly deny adoptions and foster parenting by gay people. Many states deny lesbian and gay couples the ability to jointly adopt a child, or for one parent to adopt a child that already has a legal bond to the other parent. In contrast, married couples are free to pursue joint adoption, and stepparent adoption by a spouse tends to be a simple process.

At least seven states limit, in some fashion, the ability of gay men, lesbians, or same-sex couples to adopt or foster parent. Four states have express restrictions on gay adoption: Florida, Mississippi, Nebraska, and Oklahoma. Thanks in part to Anita Bryant’s “Save Our Children” campaign that overthrew Miami-Dade County’s sexual orientation nondiscrimination law in 1977, Florida has explicitly banned adoptions by “homosexuals” for more than a quarter century. In 1995 the director of Nebraska’s Department of Social Services issued a directive banning “known” homosexuals and unmarried couples from adopting. Mississippi bans “same-sex couples” from adopting. Oklahoma passed an antigay adoption law in May 2004.

Cahill, *supra* note 29, at 229. “Because Black people in same-sex relationships are more likely to be parenting and work in the public sector than White gay people, they have more at stake when anti-gay family amendments are on the ballot.” DANG & FRAZER, *supra* note 36, at 7.

56. GATES, *supra* note 36, at 2.

57. DANG & FRAZER, *supra* note 36, at 6.

58. *Id.* Black women in same-sex households parent at almost the same rate as Black married opposite-sex couples (forty-five versus fifty-one percent), while Black men in same-sex relationships parent at about two-thirds the rate of married opposite-sex couples (thirty-two versus fifty-one percent). *Id.* Additionally, thirty-three percent of Hispanic same-sex couples have children. GATES, *supra* note 36, at 3.

IV. THE “WHITENESS IDEAL”:  
REIFYING RACIAL HIERARCHIES WITHIN THE GAY COMMUNITY

The movement’s portrayal of gay identity as white, wealthy, and educated has created a race-based insider identity for white homosexuals in mainstream society and within the gay community. The construction of gay identity has rendered whiteness the racial default, implicitly privileging white homosexuals over gays of color.<sup>59</sup> This construct has served political as well as social purposes.

In particular, this narrow, normalized gay identity has confined those who do not conform to this construction of homosexuality to outsider status among gays as well as from the heterosexual majority. For, if whiteness is part of the normalized gay identity, then homosexuals of color face immediate barriers to performing gay identity because it requires self-whitewashing in order to establish belonging or insiderness within the gay community. Or, if literally construed, the primacy of whiteness can erect a permanent impediment to gays and lesbians of color, preventing them from ever accessing insider status.

Furthermore, the construction of gay identity as an extension of whiteness not only creates perceptual problems for non-gay people with respect to who composes the gay community, but it also serves as a powerful designation within the gay community, entrenching in and out group identities. The reliance of the gay rights movement on whiteness to further its strategic aims is itself *prima facie* evidence of a recognized racial hierarchy, both within the gay community and in society at large. Among the most salient examples of racial hierarchies within the gay community are the demonstrated racial preferences for dating. One study, using data from OKCupid, for example, empirically demonstrates this preference. It provided:

[W]hen asked about same-race preferences for dating, whites, again, exhibited a significantly greater preference for other whites. Minority gay, lesbian, and bisexual preferences for same-race dating ranged from 6 percent to 21 percent, with black gay men at 6 percent and Middle Eastern gay men at 21 percent. White gay, lesbian, and bisexual preferences for same-race dating, however, far exceeded both the highest same-race preference rate and aver-

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Whites have a race, men have a gender, “straights” have a sexual orientation, and “middle-class” status is a class identity. What tends to hide those particular identities from careful inspection is the fact that each is defined as the norm in the United States. Consequently, those whose identities are the norm are often unaware they are privileged.

Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 863 (2006) (citations omitted).

age same-race preference rate for minorities, with white gay men at 43 percent; white, bisexual men at 27 percent; white lesbians at 31 percent; and white, bisexual women at 32 percent. On average, only 15 percent of nonwhite gays, lesbians, and bisexuals preferred to date someone of the same race compared to 35 percent of white gays, lesbians, and bisexuals.<sup>60</sup>

Additionally, a study conducted by Russell Robinson found patterns consistent with the results from the OKCupid study. As Robinson detailed, his “study revealed that the black and Asian profiles received significantly fewer e-mails than the white and Latino profiles. Moreover, the interest in black men correlated with the stereotype of black sexual aggression/masculinity. The black bottom profiles received, by far, the fewest number of e-mails in the entire study.”<sup>61</sup>

Moreover, racism within the marriage equality movement<sup>62</sup> has created internal rifts in the gay community and is noted by black homosexuals in particular. In one survey, half of black gay and lesbian respondents reported experiencing racism from white gays and lesbians.<sup>63</sup> That survey:

of nearly 2,700 Black LGBT people conducted at Black Pride events in 2000 found that Black LGBT people faced high rates of discrimination based on racial and ethnic identity (53%) and sexual orientation (42%; Battle et al. 2002). They experienced racism at mostly White gay events and venues; and experienced homophobia in Black heterosexual organizations, from their families of origin, from straight friends, and also in churches and religious organizations.<sup>64</sup>

Such racism reifies the current racial hierarchies within the gay community and larger society. Additionally, such racism discourages black homosexuals from participating in the mainstream gay rights movement because it causes them to feel excluded from the images strategically presented as representations of the community. In es-

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60. ANGELA ONWUACHI-WILLIG, *ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY* 151 (2013).

61. Robinson, *Racing*, *supra* note 24, at 1510 (citations omitted). For a discussion of race, preference, and online dating, see RALPH RICHARD BANKS, *IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE* 124-28 (2011). Albeit related to heterosexual online dating patterns and preferences, Banks discusses some of the factors that contribute to the observed pattern that black dating profiles tend to receive less interest than white dating profiles. Based on the abovementioned data, it is highly likely that the role that racism plays within the overall movement structure normalizes exclusionary dating within the gay community, whereby participants perceive that it is “normal,” not “racist,” to seek a same race partner. *Id.*

62. “Racism within the gay, lesbian, bisexual and transgender community is also a concern, as it is with the general population.” Cahill, *supra* note 29, at 225 (citation omitted).

63. Gregory B. Lewis, *Black-White Differences in Attitudes Toward Homosexuality and Gay Rights*, 67 PUB. OP. Q. 59, 61 (2003).

64. Cahill, *supra* note 29, at 237.

sence, the construction of homosexuality as whiteness not only misinforms the public about the gay community's composition, but also alienates gays of color by excluding them from public representation and leadership in the movement. Additionally, it repels heterosexual communities of color by perpetuating the myth that gay issues are white issues.

Finally, predicated the gay rights movement on a racialized conception of gay identity limits the transformative potential of this social justice cause because it does nothing to challenge racial hierarchies both within and outside the community. The fact is that the gay rights movement cannot undertake to overcome homophobia and promote equality by reinforcing other systems of oppression, namely racism. White supremacy is reinforced by the reliance of the gay rights movement on whiteness to ingratiate the need for protections for gays and lesbians to the American public. This strategy for establishing legal protection and social equality for gays and lesbians, through the use of whiteness, marginalizes gays and lesbians of color and normalizes white gay identity without accounting for the substantial portion of the gay community that is non-white. It also results in the gay community's having no real legitimacy in heterosexual communities of color because of the intentional erasure of gay people of color in representation, which ultimately prevents the gay rights movement from building coalitions with natural allies, such as race-based civil rights organizations.

#### V. GAY COMMUNITIES OF COLOR AND DUAL-OUTSIDER STATUS

Moreover, the converging interests between gays and political elites, which have resulted in greater legal and social acceptance of gay communities, have enabled (white) gays to attain insider status in mainstream society at the expense of their counterparts of color, who in turn, get labeled as outsiders. After all, the perception that homosexuals broadly have attained insider status, or will soon attain insider status, is based on a misconception of who composes the gay community—here, the notion that gays are predominantly white, educated, and affluent despite statistics that demonstrate that there are higher rates of “coming out” among non-white, lesser-educated, and socioeconomically disadvantaged homosexuals.<sup>65</sup> This misperception is particularly damaging when looking to strengthen support for gay rights issues in heterosexual communities of color<sup>66</sup> and amelio-

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65. Gates & Newport, *supra* note 30.

66.

One aspect of the same-sex marriage issue that mainstream LGBT groups are unable or unwilling to address is the perception of the subject as a white is-



rate the inequalities between white gay communities and gay communities of color. Not only have gay communities of color not reached insider status in “white America” or even the gay community, but gay communities of color continue to face challenges in heterosexual communities of color as well,<sup>67</sup> relegating homosexual individuals and couples of color to outsider status in multiple contexts. Supporters and opponents of gay rights alike have relied on connecting whiteness and homosexuality, an image that has also been internalized by communities of color. As Catherine Smith has explained:

Both the Right and the LGBT mainstream portray the LGBT movement as white, and blacks and whites often view it as such. This portrayal allows racism to serve as a weapon of homophobia and sexism. Racism marginalizes the diversity of individuals that make up the LGBT community by making the face of the community predominately white, ignoring or glossing over the reality that a significant number of LGBT people in black communities are also being denied basic rights.<sup>68</sup>

Relatedly, using whiteness to normalize homosexuality leaves racial hierarchies intact by trading on the preferred status of whiteness to advance gay rights issues, which had previously been decidedly disfavored issues. It also overlooks the broader challenges facing factions of the gay community, including racial minorities and poor gays and lesbians. The inequality between white gay couples and same-sex couples of color is readily apparent, and the erasure of gay communities of color from the gay rights movement leaves gay communities of color susceptible to discrimination on the basis of either race or sexual orientation, as well as based on the combination of sexual orientation and race.<sup>69</sup>

Notably, intersectional discrimination is difficult to remedy through formal equality alone, which is all that the current normali-

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sue, especially by Blacks. The continued use of the argument that gay is “the same as” Black only serves to produce an angry backlash in Black communities. Cultural blindness, and the arrogance of privilege allows white gays to assume that something is owed to them and that people of color, particularly Blacks, are to blame for the passage of Prop. 8. This is actualized when Black organizations are labeled as being especially or uniquely homophobic, or as bigots. White organizational leadership’s blindness to white privilege renders invisible to them the reality that Blacks, whether gay or straight, perceive or understand that when whites are advantaged, Blacks are disadvantaged. When whites get, Blacks give. Thus, if full marriage rights are won, the perception is whites, with the attendant white privilege, win; and Blacks, once again, lose.

Adele M. Morrison, *It’s [Not] a Black Thing: The Black/Gay Split over Same-Sex Marriage—A Critical [Race] Perspective*, 22 TUL. J.L. & SEXUALITY 1, 42 (2013) (citations omitted).

67. See Cahill, *supra* note 29, at 237.

68. Catherine Smith, *Queer as Black Folk?*, 2007 WIS. L. REV. 379, 402-03 (citation omitted).

69. See, e.g., *id.* at 387.

zation strategy is likely to achieve.<sup>70</sup> However, the gay rights movement has the opportunity to become more attentive to the needs of gay communities of color by redefining priorities and reshaping strategies for the gay rights movement going forward. These changes could help to curb intersectional discrimination in the future. Additionally, more prominent coalitions with heterosexual communities of color can further advance the gay rights movement and can be beneficial to both gay and straight communities of color.<sup>71</sup>

Although statistics demonstrate the inequality between white same-sex couples and same-sex couples of color, data also suggests that same-sex couples of color and heterosexual couples of color have many similarities. As scholars have noted, “[b]lack same-sex couples in the U.S. are not so different from other Black couples.”<sup>72</sup> African Americans compose thirteen percent of the U.S. population, and African American gay households account for fourteen percent of all U.S. same-sex households.<sup>73</sup> The income differential between black opposite-sex couples and black same-sex couples is not as extreme as the difference between black and white same-sex couples. “Black female same-sex households report a median income of \$10,000 less than Black married couples, while Black male same-sex households report a median income equal to Black married opposite-sex couple households.”<sup>74</sup>

The patterns in residence among black heterosexual and homosexual couples are also strikingly similar. For one, African American homosexual and heterosexual couples are equally as likely to be living in the same home as five years ago, which is an indicator of family stability.<sup>75</sup> There is also a strong sense of community membership among African American homosexual individuals and couples in black culture and communities. As one scholar articulated, African American gays and lesbians feel that they “are no less a part of the

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70. “The formal equality model will fail to transform the status of sexual others as long as they are perceived as ‘different’ from straights, while the outsider or antisubordination model tends to feed perceptions of difference.” Levit, *supra* note 16, at 868-69.

71. Economic inequality is one example of how both gay and straight black men could benefit from a collaborative agenda:

According to the National Urban League, Black Americans, regardless of sexual orientation or gender identity, are significantly disadvantaged in terms of education, wealth and income, health, and other measures. . . . Black men and women earn less, on average, than [sic] White men and women. Black men earn 70% of the income of White men, and Black women earn 83% of the income of White women.

Cahill, *supra* note 29, at 236 (citation omitted).

72. DANG & FRAZER, *supra* note 3, at 2.

73. *Id.*

74. *Id.* at 16.

75. *Id.* at 2, 30.

African-American community because [they] are also a part of the gay community.”<sup>76</sup> One measure of this sentiment is the fact that African American same-sex couples are more likely to live in areas highly concentrated with other African Americans, rather than other gays and lesbians.<sup>77</sup> This suggests that affinity for race, or perhaps even less freedom to move because of fewer financial resources, heavily influences where black gays and lesbians live.<sup>78</sup> African American homosexuals also look to African American heterosexuals for approval and communal acceptance at higher rates than white homosexuals look to white heterosexuals,<sup>79</sup> suggesting as strong of a desire to be a part of the African American community as the gay community. Given the outsider status African American homosexuals have been relegated to from heterosexual African American communities in many instances, however, there may be some barriers to acceptance within this community. To remedy this limitation on community participation, a push toward continuing to improve relations between the gay community and black heterosexual communities must be made, and the broader conception of who composes the gay community, through a more inclusively constructive normalized identity, can only help to lessen any existing tensions.

Latino same-sex couples also demonstrate many similarities with heterosexual Latino couples:

Data from the 2000 Census show that Hispanic same-sex couple households are in many respects similar to other Hispanic households. For example, they are raising adopted or foster children at similar rates, work in the public sector at similar rates, and report similar rates of living in the same home for the previous five years, which is an indicator of relationship and family stability. Hispanic same-sex couples live where most Hispanic couples live, and they are part of their respective communities, sending their children to local schools and dealing with the same issues other Hispanic couples face.<sup>80</sup>

The preference of lesbians and gays of color to live near other couples of the same race, rather than sexual orientation, has tangible implications given the persistence of racial segregation in residential patterns.<sup>81</sup> Because gays and lesbians of color have established pat-

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76. *Id.* at 2.

77. Timothy J. Biblarz & Evren Savci, *Lesbian, Gay, Bisexual, and Transgender Families*, 72 J. MARRIAGE & FAM. 480, 483 (2010).

78. *See id.* at 483.

79. Gregory B. Lewis, *Black-White Differences in Attitudes Toward Homosexuality and Gay Rights*, 67 PUB. OP. Q. 59, 59-75 (2003).

80. CIANCOTTO, *supra* note 42, at 66-67.

81. ONWUACHI-WILLIG, *supra* note 60, at 188 (citations omitted) (“More than forty years after the enactment of the Fair Housing Act, Title VIII of the Civil Rights Act, we, as a society, continue to live in very segregated residential spaces. Blacks, especially, remain

terns of residence focused primarily on grouping by race, rather than sexual orientation, gay outsider status from heterosexual communities of color becomes even more problematic.

Further, gay urban bias ignores the large group of homosexuals, both white and of color, that reside outside the cosmopolitan hubs of homosexuality. As Luke Boso has highlighted:

Because it is so firmly anchored to the social understanding of where gay people live, so too has the city come to operate as the cultural referent for how to be gay. Of course, it seems obvious to point out that there is no single way to perform gay identity, nor does a uniform gay culture exist. Yet, in modern society, depictions of gay people almost exclusively revolve around cities, and attendant cultural tropes have emerged, become dominant, and do tremendous work in validating and reinforcing well-known stereotypes about gay people. Like the geographic tenet of urban bias, this cultural component has profound negative effects for all sexual minorities, and especially for those who exist on the economic and geographic margins.<sup>82</sup>

However, one should not have to choose one community for inclusion to the exclusion of another. Rather, a more expansive understanding of who composes the gay community must be adopted; additionally, the movement must recognize how overlapping membership in multiple minority communities necessitates a broader conception of who gays and lesbians are in order to normalize homosexuality beyond its association with whiteness. The case of housing segregation and the residential preferences of gays and lesbians to live among their race, rather than sexual orientation, provides just one example of one area where interests of black and lesbian gays and heterosexuals converge. Housing discrimination and segregation issues facing heterosexual communities of color also impact gays and lesbians of color, thus revealing how mutual efforts to address these problems would benefit both communities and work to build a collaborative relationship between gay and straight communities of color.<sup>83</sup>

Overall, despite perceptions of discord between communities of color and gay communities,<sup>84</sup> the interests of these marginalized

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highly segregated compared with other racial minority groups. In fact, almost a third of all blacks live in neighborhoods identified as “hyper-segregated,” which means “reflecting extreme isolation.”).

82. Luke A. Boso, *Urban Bias, Rural Sexual Minorities, and the Courts*, 60 UCLA L. REV. 562, 586 (2013) (citations omitted).

83. Support of gay rights efforts by race-based affinity groups, such as the NAACP, has become much more common in the past few years. See, e.g., Michael Barbaro, *In Largely Symbolic Move, N.A.A.C.P. Votes to Endorse Same-Sex Marriage*, N.Y. TIMES, May 20, 2012, at A15, available at [http://www.nytimes.com/2012/05/20/us/politics/naacp-endorses-same-sex-marriage.html?\\_r=0](http://www.nytimes.com/2012/05/20/us/politics/naacp-endorses-same-sex-marriage.html?_r=0).

84. See, e.g., CIANCOTTO, *supra* note 42, at 9-13.

groups would be best advanced through mutual support of overlapping concerns and intersectional issues.<sup>85</sup> Failure to recognize the overlapping interests between these groups has been called intersectional blindness; as Professor Adele Morrison describes:

Intersectional blindness describes how, on certain issues, including same-sex marriage, Black communities fail to see that their interests do not converge with whites but may converge with other Blacks—in this case, those who are LGBT. Whereas blind intersec-

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85. To effectuate meaningful change, the gay rights movement should address systems of oppression broadly, in addition to the homophobia and heteronormativity that directly impact the gay community to create real structural social change.

Superordinate goals do not require sameness, but rather permit group members to retain their group identities and at the same time challenge their shared subjugation. LGBT folks should reframe the debate to achieve gay rights in ways that are relevant to the overarching structures of oppression. These types of arguments may not be foolproof in convincing black people that gay rights warrant their support, but they are likely to be more successful than sameness arguments.

Smith, *supra* note 68, at 402.

This is evident from the ways in which white supremacy functions within LGBT communities and the ways in which heterosupremacy operates within communities of color. Additionally, each form of oppression targets the communities themselves in that racism targets people of color and heterosexism and homophobia target the LGBT community. Failure to work against one helps ensure the other's continued strength. Thus, a failure to adhere to an anti-heterosupremacy principle serves to help maintain white supremacy.

. . . .

Racism, heterosexism, and homophobia connect (along with classism, sexism, and other subordinating ideologies) to form the base of Euroheteropatriarchal elitism that maintains the white supremacy that continues to exist today.

Adele M. Morrison, *Same-Sex Loving: Subverting White Supremacy Through Same-Sex Marriage*, 13 MICH. J. RACE & L. 177, 206-07 (2007) (citation omitted).

This undeserved privilege, that is deployed repeatedly, creates between white queers and others marginalized by race or class, a social contract. At a minimum, the social contract requires an appreciation of the intersectionality of oppression and also requires support for issues that may not explicitly be challenging our own identity, but nevertheless, exploit or oppress based on some other identity characteristic. Obvious, but by no means exclusive, examples include affirmative action, the criminalization of immigration, and the limiting of reproductive options. Linkages and alliances are essential to the liberation of all queers. Of course marriage is a piece of that liberation. The politics of oppression, insult, and shame are a legacy that we have inherited and that all who live at the margins of what is culturally approved have inherited.

There is a promise in the Fourteenth Amendment, a promise that assures that we are all entitled to justice and fairness under law. That promise remains unfulfilled. Not just for queers, and not just when it comes to the right to marry. Realizing the promise for ourselves will require fighting for the promise for all.

Kate Kendell, *Race, Same-Sex Marriage, and White Privilege: The Problem with Civil Rights Analogies*, 17 YALE J.L. & FEMINISM 133, 137 (2005).

tionality means that individuals in one disadvantaged group presume commonality with another subordinated group, intersectional blindness explains the unwillingness or inability to recognize subordinated traits other than the one shared by the members within the group. For example, when relating to gay Blacks, straight Blacks identify with Black identity but ignore gay identity. What transpires in these cases of intersectional blindness is that one subordinated trait or identity obscures another and, consequently, obscures any common interests.<sup>86</sup>

#### VI. THE PATH FORWARD: CONSIDERING RACIAL DIVERSITY AND INCLUDING INTERSECTIONAL ANALYSIS IN GAY RIGHTS MOVEMENT PRIORITIES AND STRATEGIES

Continuing to reinforce whiteness as the ideal or standard among gays embeds discrimination into the fabric of the gay rights movement by communicating an archetype, which is necessarily unattainable for many gays and lesbians. The gay rights movement cannot plausibly seek to change paradigms of discrimination while perpetuating racial idealism, particularly when this strategy will lead to intersectional discrimination in the future.

To achieve equality and combat discrimination for all gays and lesbians, the movement must move beyond relying on whiteness to achieve progress. Necessary steps for moving forward include more diverse representation and leadership within the gay rights movement and a more diverse representation of the gay community and gay identity to the mainstream public.<sup>87</sup> As we discuss in a forthcoming companion piece, there should also be a critical reexamination of the use of the race analogy.<sup>88</sup> While it will not be possible to eliminate use of the race analogy in litigation and social movement rhetoric, it

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86. Morrison, *supra* note 66, at 43 (citation omitted).

87. Other scholars have advocated for a multidimensional approach such as this:

Thus, pro- and anti-gay discourses and antiracist theory collectively contribute to a white-normative construction of gay, lesbian, bisexual, and transgendered identity—a narrow, racialized construct that hinders gay and lesbian equality efforts. In order to counter this harmful trend, law and sexuality scholars should adopt a multidimensional lens to analyze sexual subordination claims and to portray gay and lesbian experience. A multidimensional analysis of heterosexism and homophobia—one that examines the various racial, class, gender, and other dimensions of gay, lesbian, bisexual, and transgendered identity and the diverse effects of heterosexism—can destabilize the “gay as white and privileged” stereotype and offer a more productive approach to secure gay and lesbian equality.

Darren Lenard Hutchinson, “Gay Rights” for “Gay Whites”? *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358, 1361 (2000).

88. Angela Onwuachi-Willig & Alexander Nourafshan, *Rethinking the ‘Race Analogy’: Why Gay Cannot Be the New Black*, 48 U.C. DAVIS L. REV. *passim* (forthcoming 2015) (manuscript on file with authors).

is necessary to take active steps to overcome the presumption that arises when gay communities are juxtaposed against communities of color, implying no overlap between the two and encouraging the resentment generated by false equivalences between gay rights and civil rights history and experiences.

Movement representatives and political leaders who reflect the diverse demography of the lesbian and gay community should be sought out for involvement, not only to portray a more inclusive image of homosexuality, but also to help bring intersectional issues and issues facing gay communities of color to the fore. This includes seeking more diverse representation in the leadership of prominent gay and lesbian organizations. As Anthony Varona has highlighted:

A persistent impediment to winning more support for LGBT equality among communities of color is the failure of the LGBT movement itself to incorporate racial and ethnic diversity in its leadership and thus become a part of, instead of apart from, communities of color. An underreported fact surrounding the defeat in California is that the leadership of the movement organizations that were most involved in the “No on 8” effort included little or no racial or ethnic diversity. Although the twenty-member Executive Committee of the “No on 8” campaign (“Equality for All”) was racially and ethnically diverse, there is no disputing that the three principal coalition organizations at the helm of the “No on 8” efforts were headed by non-Latino/a whites. The venerable California-based Williams Institute at UCLA School of Law, a think tank devoted to studying and sharing research concerning sexual orientation law and public policy, as of December 2009, had an all-white, non-Latino/a senior staff. The Gill Foundation, a premier source of funding and technical resources for the LGBT movement (and a key player in the California marriage battle), also has an all-white, non-Latino senior staff. And the five-member leadership team—the president and two sets of board co-chairs—of the largest LGBT civil rights organization in the nation, the Human Rights Campaign (HRC), which played an active tactical and funding role in opposing all of the Election Day 2008 and 2009 anti-gay ballot initiatives, is entirely white, non-Latino/a.<sup>89</sup>

Furthermore, there also must be more diversity in the construction of gay identity in popular culture. This can be achieved by portraying gay people of color in media as representations of, not anomalies within, the gay community. Film is one area where the portrayal of gays and lesbians, in general, and gays and lesbians of color espe-

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89. Anthony E. Varona, *Taking Initiatives: Reconciling Race, Religion, Media and Democracy in the Quest for Marriage Equality*, 19 COLUM. J. GENDER & L. 805, 829-30 (2010) (citations omitted).

cially, is very poor. For example, in 2012, gays and lesbians were only featured in 14 out of the 101 of films released by major studios.<sup>90</sup>

Diversity in the construction of gay identity, however, should include more than race. Socioeconomic status is another dividing line in the construct of mainstream gay culture. Those who are not affluent, the largest group among the LGBT construct, can feel isolated from “gay culture.” After all,

[t]he focus on the most economically privileged gay urbanites and exclusive gay scene spaces, in turn, makes it difficult for sexual minorities who are poor or rural to connect with gay culture and identity. For sexual minorities in small towns, especially those who live in economically disadvantaged areas with low concentrations of self-identified gay people, the notion of a gay community complete with gay amenities has little salience.<sup>91</sup>

In the end, removing racial and socioeconomic prerequisites to participation in the gay community and in the gay rights movement is necessary for moving towards true equality and insider status for all lesbians and gays, not the narrow subgroup that fits within the restrictive, normalized gay identity. In pursuing formal equality in the areas of marriage, adoption, housing, and employment, both the strategy and policy goals should be analyzed critically to determine whether all gays or only a narrow subset thereof will benefit from a particular legal protection. As suggested above, there is still considerable work to be done to achieve full marriage equality across the country, particularly in the South, where higher concentrations of gays and lesbians of color live.

To couple legal equality with social equality, gay rights organizations and advocates should seek to accurately portray the demography of the gay community in order to engender support from the various constituencies who may otherwise write off gay rights issues as “white people problems.”

## VII. CONCLUSION

Now that the federal Defense of Marriage Act has been struck down by the Supreme Court and that gay marriage is widely believed to be a legal inevitability, it is likely that the myopic focus of the gay rights movement on marriage will shift to other issues.<sup>92</sup> The ques-

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90. GLAAD, 2013 STUDIO RESPONSIBILITY INDEX 6 (2013), *available at* [http://www.glaad.org/files/GLAAD\\_2013\\_SRI.pdf](http://www.glaad.org/files/GLAAD_2013_SRI.pdf). “Of the 31 different characters counted (some of whom were onscreen for no more than a few seconds), 26 were white (83.9%) while only 4 were Black/African-American (12.9%) and 1 was Latino (3.2%).” *Id.*

91. Boso, *supra* note 82, at 587 (citation omitted).

92. Jane S. Schacter, *The Other Same-Sex Marriage Debate*, 84 CHI.-KENT. L. REV. 379, 381 (2009).



tion remains open as to what the gay rights movement will prioritize moving forward. Gays and lesbians lack uniform legal protections in the areas of employment, adoption, housing, and in the majority of states, marriage. Will the national gay rights movement continue to fight for marriage equality for all, or will the defeat of DOMA and legalization of gay marriage in states like California and New York cause the attention of the movement to shift in the direction of other issues? The remaining questions are not only what policy items the gay rights community will advocate for in the immediate future, but also what methods will be used to do so. Will the movement continue to perpetuate a white-centric image in an attempt to normalize gay rights issues? Or will the movement become more inclusive of lesbians and gays of color, to both reflect the diversity of the lesbian and gay communities as well as build bridges between gay rights and heterosexual communities of color?

It is crucial that the gay rights movement reject colorblindness as a solution to the racialized problems that need to be addressed within the community, particularly given the unspoken role that white privilege or interest convergence is acknowledged as playing in the movement's successes.

The failure to challenge the gay rights movement strategy that relies on whiteness to achieve insider status reinforces the persistent operation of white supremacy. "Though *de jure* white supremacy may have diminished in our culture, *de facto* white supremacy has not. In fact, it remains tenaciously intact and helps to maintain a system of subordination of which heterosupremacy is also a part."<sup>93</sup> The mutually-reinforcing relationship between heterosupremacy and white supremacy helps to highlight why the gay rights movement must challenge social hierarchies broadly, and not conceive of movement objectives so narrowly that only injustices based purely on sexual orientation are addressed. While gay rights advocates may be getting closer to overcoming the hurdle of "otherness" in mainstream identity construction, the gay rights movement still falls readily into "us" and "them" dialectics, often antagonizing other minority groups or even

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Whether measured by quantity of major law-reform litigation, column inches in newspapers, number of ballot measures, or any number of other possible indicia, same-sex marriage has dominated all other gay-rights issue since 1993, and by a wide margin. The decade and a half since the initial Hawaii decision has produced dramatic victories, widespread backlash, and plenty of attention. Given this high profile, it is not surprising that the same-sex marriage issue now rivals abortion as a principal focus of the "culture wars," for it has become a flashpoint for debate not only about sexual orientation, but about gender and normative visions of family life, as well.

*Id.*

93. Morrison, *supra* note 85, at 198 (citations omitted).

sub-groups of the gay community itself. Whether the hostility is towards heterosexual communities of color, faith communities, or homosexuals of color, notions of “otherness” and “outsiderness” remain fixtures of the mainstream gay rights movement. Promoting true equality for gays and lesbians cannot result from a strategy that undermines equality for other marginalized groups. This form of equality movement at best achieves limited equality for only some members of the marginalized group; by seeking such limited equality, gay rights groups are trading on racial hierarchies, namely the primacy of whiteness, to advance a consistent, yet contradictory, agenda.