



## **Stranded at the Altar**

***The New York State Senate's Willful Inaction on  
Post-Marriage Equality LGBT Legislation***



**New York State Senator Brad Hoylman**

## Introduction

In June 2011, the New York State Legislature took the monumental step of legalizing same-sex marriage, becoming the most populous state in the country at the time to embrace the cause of marriage equality. New York helped set the standard for the rest of the country, leading to the Supreme Court's decision in *Obergefell v. Hodges* just four years later, legalizing same-sex marriage throughout the United States.

Unfortunately, as this report demonstrates, the New York State Legislature's leadership on LGBT issues came to a standstill after the passage of the Marriage Equality Act in 2011. **One body in particular - the New York State Senate - has failed to act on a single piece of legislation outside the State budget that advances the civil rights of LGBT New Yorkers in the past four legislative sessions.** By failing to pass any bills aimed specifically at the unique and pressing needs of the LGBT community since the passage of marriage equality, the Senate has demonstrated its willingness to effectively ignore the over 570,000 LGBT individuals who call New York State home.

The Senate's inaction on LGBT issues is starkly contrasted by the New York State Assembly, which has reliably passed a number of the crucially important bills discussed in this report. It is also out of touch with the views of everyday New Yorkers. A 2008 poll by Global Strategy Group found that 78% of New York voters support protections for transgender people, including two-thirds of the Republicans surveyed. The intransigency of the Senate becomes even more baffling and disappointing when viewed in the context of the bills that the Republican leadership actually allows to come to the Senate floor for a vote.

**In the 2015 legislative session alone, the Senate passed 1,637 pieces of legislation. Not a single passed bill specifically addressed the unique needs of the LGBT community.** Instead, we voted on 19 bills creating distinctive license plates; 33 "personalized" bills mostly affecting a single individual; 30 bills renaming roads and highways across the state; 32 bills expanding hunting and fishing in the state; and 11 ceremonial recognition bills including S.4103, naming the wood frog the official amphibian of New York State.

The dearth of substantive legislation protecting LGBT New Yorkers moving through the Senate since 2011 is no coincidence, and is not for a lack of important bills awaiting a vote. **As this report demonstrates, over the last four years the Republican majority in the Senate has killed every piece of legislation making reference to sexual orientation or gender identity - even when such legislation has bipartisan support.** Legislation as "minor" as a bill making technical corrections to the Domestic Relations Law in the

wake of marriage equality to legislation as “major” as the Gender Expression Non-Discrimination Act (GENDA) has been blocked from consideration, even while the Assembly routinely passes them.

This past October, Governor Cuomo cited the Senate’s inaction on GENDA as a reason he was forced to take the matter of anti-discrimination protections for transgender New Yorkers into his own hands, announcing that his administration would develop regulations interpreting the Human Rights Law to include gender identity. While Governor Cuomo’s announcement is to be applauded, it is unfortunate that advancing LGBT rights in New York State requires extraordinary actions outside of the State Legislature.

Meanwhile, state legislatures across the country have filled the leadership vacuum on LGBT issues that New York has abandoned, passing comprehensive anti-discrimination protections, banning harmful conversion therapy for LGBT minors, and banning so-called “gay panic” or “trans panic” defenses to violent crimes. While the federal government and other states race ahead to advance LGBT rights, the New York State Senate has left our state’s LGBT residents stranded at the altar.

## **2015 Legislative Session Analysis**

The New York State Senate’s legislative session runs from January through June, giving legislators six months to debate and pass laws. An analysis by the New York Public Interest Research Group found that the 2015 legislative session was the busiest since 2008, and the fourth-busiest in two decades for the State Senate, which passed 1,637 bills.

However, as the results of this past session make clear, the number of bills passed is not a reliable indicator of their importance to New Yorkers’ lives. Dozens of pieces of legislation passed by the Senate during the 2015 legislative session were frivolous, purely ceremonial, or applied to only a single individual (for example, bills granting retroactive pension credits to a specific person). Meanwhile, for the fourth year in a row since the passage of the Marriage Equality Act, not a single bill protecting LGBT New Yorkers passed the Senate. Below are several categories of bills that the Republican leadership of the Senate evidently found more pressing than legislation protecting LGBT New Yorkers:

### **Bills Directed at Specific Individuals – 33 bills**

The Senate passed 33 bills directed at specific individuals (such as pension sweeteners) in 2015, accounting for 2.0% of the bills passed in this legislative session.

### **Sportsman Bills (Hunting/Fishing/Trapping) – 32 bills**

The Senate passed 32 sportsman bills in 2015, accounting for 1.9% of the bills passed in this legislative session.

### **Highway and Road Renaming Bills – 30 bills**

The Senate passed 30 highway and road renaming bills in 2015, accounting for 1.8% of the bills passed in this legislative session.

### **Distinctive License Plate Bills – 19 bills**

The Senate passed 19 distinctive license plate bills in 2015, accounting for 1.2% of the bills passed in this legislative session.

### **Ceremonial Recognition Bills – 11 bills**

The Senate passed 11 ceremonial recognition bills in 2015, accounting for 0.7% of the bills passed in this legislative session.

### **Bills Protecting LGBT New Yorkers – 0 bills**

The Senate passed 0 bills protecting LGBT New Yorkers in 2015, accounting for 0% of the bills passed in this legislative session.

## **Stalled LGBT Legislation in New York**

The New York State Senate's failure to pass laws protecting LGBT New Yorkers has not been for want of LGBT-friendly legislation under consideration. Indeed, the Assembly has passed a number of bills enhancing LGBT rights over the past four years. Similar bills introduced in the Senate have been blocked year after year by the Republican leadership.

A list of LGBT legislation that has been held up by the State Senate is below.

**S.39: (Hoylman)** Revokes tax-exempt status for non-religious groups that discriminate based on sexual orientation or gender identity or expression.

**S.54 (Hoylman):** Provides for the collection of demographic information on sexual orientation and gender identity by state agencies. Has been passed by the Assembly every year since 2014.

**S.61-A (Squadron):** The Gender Expression Non-Discrimination Act (GENDA). Prohibits discrimination based on gender identity or expression (*as of October 2015, will be implemented by executive reinterpretation of the Human Rights Law*) and includes violent crimes committed based on the victim's gender identity or expression under the hate crimes statute. Has been passed by the Assembly every year since 2008.

**S.62 (Hoylman):** Requires LGBT-specific training for runaway and homeless youth facility employees.

**S.64 (Hoylman):** The Michael Sandy Act. Establishes that evidence that a defendant and victim belong to the same protected category is inadmissible in hate crime cases.

**S.102 (Hoylman):** Makes technical amendments to the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act to reflect to the provisions of the Marriage Equality Act. Has been passed by the Assembly every year since 2013.

**S.121 (Hoylman):** Prohibits licensed mental health professionals from conducting so-called "conversion therapy" on LGBT minors. Has been passed by the Assembly every year since 2014.

**S.499 (Hoylman):** Prohibits so-called "gay panic" or "trans panic" being cited as a defense to certain violent crimes.

**S.506 (Hoylman):** Prevents a parent's gender reassignment from being a factor in making a determination in a child custody case.

**S.507 (Hoylman):** The Modern Family Birth Certificate Act. Requires that parents have the option of appearing on their children's birth certificates as either "father," "mother," or "parent."

**S.2765 (Hoylman):** The Child-Parent Security Act. Allows establishment of a child's legal relationship with his or her parents for children born via in-vitro fertilization or gestational surrogacy.

**S.4805 (Hoylman):** Requires public buildings and public places of accommodation to provide equal access to diaper changing tables to parents of either gender.

**S.5528 (Hoylman):** Requires insurers to cover pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) to prevent HIV infections.

**S.5534 (Hoylman):** Establishes a single point of access to benefits and services for people living with HIV/AIDS in each local Department of Social Services.

## **LGBT Legislation Passed in New York Before 2011**

Even prior to the passage of the Marriage Equality Act in 2011, New York had a strong tradition of adopting LGBT-friendly legislation. **At least one bill supporting the rights of LGBT New Yorkers was signed into law almost every year from 2000 to 2011, with five landmark bills passed in 2010 alone** (the only year listed below in which the Democratic Conference controlled the State Senate). A summary of each of those laws is presented in the timeline below (source: Empire State Pride Agenda).

**2000:** Passage of a hate crimes law in New York State that imposes stiff penalties for hate-motivated crimes, including crimes motivated by anti-gay hate. The hate crimes law is the first-ever state law to specifically mention the words "sexual orientation."

**2000:** Repeal of the consensual sodomy statute in New York State, and a legislative commitment to eliminate the terms "sodomy" and "deviate sexual intercourse" from the state's criminal laws.

**2001:** Passage of the Sexual Orientation Non-Discrimination Act (SONDA) in New York State, which outlaws anti-gay discrimination in housing, employment, public accommodation, education and credit throughout the state.

**2001:** Passage of a bill granting same-sex domestic partners of 9/11 victims the same workers compensation death benefits provided to spouses under New York State law.

**2001:** Passage of a bill making same-sex domestic partners of 9/11 victims and their children eligible for New York State's World Trade Center memorial scholarship program.

**2001:** Passage of "The September 11th Victims and Families Relief Act" in New York State, which includes language in the legislative intent section of the bill specifying that it is the legislature's desire that domestic partners be eligible for federal fund awards. This provision is included to provide Special Master Kenneth Feinberg an additional basis in state law to award federal fund compensation to same-sex partners of 9/11 victims.

**2003:** Passage of legislation making New York State colleges and universities safer for all students, including gay and lesbian students, by requiring all institutions to inform every incoming student about hate crimes and the policies in place to prevent hate crimes.

**2003:** Passage of legislation that removes the last vestiges of New York's history of stigmatizing homosexuality by eliminating terms like "sodomy" and "deviate sexual intercourse" that are used in the state's penal code to describe forms of sexual assault.

**2003:** Passage of a bill extending membership in state-chartered credit unions to same-sex domestic partners of credit union members.

**2004:** Passage of statewide legislation guaranteeing domestic partners the same access rights as spouses and next-of-kin when taking care of loved ones in hospitals, nursing homes and health care facilities.

**2005:** Passage of legislation giving same-sex partners the same authority as spouses in making burial decisions for a deceased partner.

**2006:** Passage of legislation allowing domestic partners control of their deceased partner's remains with an improved definition of "domestic partner," making it uniform with the rest of state law.

**2008:** Passage of legislation allowing same-sex domestic partners access to Family Court and the domestic violence protections it provides.

**2010:** Passage of legislation providing medical decision-making authority to same-sex partners.

**2010:** Passage of legislation requiring that same-sex partners be treated the same as spouses for bereavement leave from their job.

**2010:** Passage of legislation allowing same-sex couples to adopt a child together.

**2010:** Passage of legislation that expands and increases access to services for LGBT seniors.

**2010:** Passage of the Dignity for All Students Act (Dignity), which combats bias-based bullying, harassment and discrimination in the state's public schools. In addition to including protections based on sexual orientation, Dignity is the first-ever state law that includes protections based on gender identity and expression.

**2011:** Passage of the Marriage Equality Act.

## **LGBT Legislation Passed in Other States Since June 2011**

During the almost five-year period that the New York Senate has gone without passing any new LGBT-friendly bills, other states across the country have adopted a range of

measures to protect and support LGBT people and their families (source: Human Rights Campaign).

Examples include:

**July 2011:** Connecticut passes gender identity and expression anti-discrimination (all employment, public accommodations, housing, and credit) bill.

**July 2011:** California passes bill compelling the inclusion of the political, economic, and social contributions of LGBT people into educational textbooks and the social studies curricula in California public schools.

**September 2011:** California passes bill requiring local educational agencies to prohibit discrimination, harassment, intimidation, and bullying based on actual or perceived sexual orientation or gender identity.

**November 2011:** Massachusetts passes gender identity and expression anti-discrimination (all employment, housing, K-12 public education, and credit) bill.

**February 2012:** Washington passes marriage equality bill.

**March 2012:** Maryland passes marriage equality bill.

**March 2012:** Utah passes resolution instructing its Legislative Management Committee to study employment discrimination on the basis of sexual orientation and gender identity.

**May 2012:** Rhode Island adds gender identity to its hate crimes data collection requirements.

**July 2012:** Delaware amends its anti-bullying law to add enumerated categories for the purposes of reporting and tracking that include sexual orientation and gender identity.

**September 2012:** California bans conversion therapy on minors.

**September 2012:** California establishes the Model Act Governing Assisted Reproductive Technology, which governs the provisions of assisted reproduction.

**September 2012:** California requires its Department of General Services to report on contracting activity information regarding the level of participation of LGBT-owned businesses in specified contracts.



**September 2012:** California requires LGBT-specific training for group home facility administrators, licensed foster parents, and extended family member caregivers.

**March 2013:** Colorado broadens the data being collected by the state on the health needs of its residents to include sexual orientation and gender identity or expression.

**April 2013:** Tennessee allows an intended parent or parents to be the presumed legal parent(s) of a child provided that the intended parent(s) and the party or parties relinquishing their legal interest in a gamete donation have entered into a contract.

**May 2013:** Connecticut passes a law ensuring that if the federal government acts to reinstate eligibility for benefits for veterans discharged under Don't Ask, Don't Tell, regardless of their discharge classification, the state shall reinstate eligibility for any state benefits such veterans were or otherwise would have been denied.

**May 2013:** Delaware passes marriage equality bill.

**May 2013:** Minnesota passes marriage equality bill.

**May 2013:** Nevada adopts provisions of the law regarding parentage, assisted reproduction, and gestational agreements based on the Uniform Parentage Act.

**May 2013:** Nevada adds gender identity as a protected category for the purposes of its hate crimes law.

**May 2013:** Rhode Island passes marriage equality bill.

**June 2013:** Delaware passes gender identity and expression anti-discrimination (all employment, public works contracting, housing, public accommodations, and insurance) bill.

**June 2013:** Delaware passes bill enhancing penalties under hate crimes law for targeting someone based on gender identity.

**June 2013:** Nevada establishes an HIV/AIDS drug donation program.

**July 2013:** Delaware allows for gestational surrogacy and makes consent to assisted reproduction gender neutral with regards to the second parent.

**August 2013:** California passes bill requiring equal access to public school facilities and activities based on gender identity.

**August 2013:** New Jersey bans conversion therapy on minors.

**September 2013:** California requires judges, court-appointed special advocates, and appointed counsel to receive training on cultural competency and sensitivity relating to providing adequate care to LGBT youth.

**October 2013:** California passes bill removing court requirement/fee for changing identity documents and removing the public notification requirement.

**October 2013:** California provides that in limited circumstances a court may adjudicate more than two individuals to be the legal parent of a child if the court finds that recognizing only two parents would be detrimental to the child.

**November 2013:** Hawaii passes marriage equality bill

**November 2013:** Illinois passes marriage equality bill.

**February 2014:** Washington, D.C. provides for studies to calculate the population of homeless youth in the District who are LGBT or questioning and tasks its Interagency Council on Homelessness and the Office of Gay, Lesbian, Bisexual, and Transgender Affairs to develop and outline policies to reduce the rate of youth homelessness in the LGBT community.

**April 2014:** Massachusetts amends their anti-bullying law to add specific protections for sexual orientation and gender identity.

**May 2014:** Maryland prohibits discrimination on the basis of gender identity in employment, housing, public accommodations and credit.

**August 2014:** Illinois clarifies parentage laws to ensure that parentage is recognized in the case of civil unions, gestational surrogacy, and second and step-parent adoptions.

**September 2014:** California requires a person completing a certificate of death to record the decedent's sex to reflect their gender identity, as identified through relevant documentation.

**September 2014:** California provides statutory forms for assisted reproduction to provide clarity regarding a person's intent to be a legal parent if he or she is using assisted reproduction at the time of conception.

**September 2014:** California requires local medical societies to develop and distribute a survey for LGBT and intersex patients to measure the degree of satisfaction with physicians who have taken educational classes on cultural competency.

**September 2014:** California bans gay and trans “panic” defenses in murder cases.

**September 2014:** California requires public institutions of higher education to compile and report records of specific types of crimes that occur on campus, including hate crimes on bases such as sexual orientation and gender identity.

**December 2014:** Washington, D.C. bans conversion therapy on minors.

**March 2015:** Utah passes sexual orientation and gender identity and expression anti-discrimination (all employment, except religious organizations and the Boy Scouts of America) bill.

**May 2015:** Oregon bans conversion therapy on minors.

**October 2015:** California provides that no health insurance plan available through its state exchange shall employ marketing practices or benefit designs that discriminate on the basis of sexual orientation or gender identity.

## **Conclusion**

The past four legislative sessions have revealed nothing short of a blacklist of the LGBT community by the New York State Senate and its Republican leadership. As of June 26, 2015, marriage equality is now the law of the land across the United States. The New York Legislature – the Senate, in particular – can no longer ride on the coattails of the 2011 Marriage Equality Act and continue to believe that our state is a national leader on LGBT issues. It is unacceptable that as the federal government and other states move forward with greater protections for the LGBT community, a group of Senate Republicans continue to block progress in New York. The State Senate should act quickly in January 2016 to pass LGBT-friendly legislation that has been stalled for years if we truly want to be considered a state that supports and protects all of its residents.

*Cover photo: by Mike Groll, Associated Press*