

# Removing Barriers to U.S. Public Adoption: The Impact of Equal Legal Rights for Same–Sex Married Couples

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## I. Introduction

Within the last five years, the legal status and rights deemed to same–sex marriage has undergone major changes. Prior to the 2013 ruling of *United States v. Windsor* which found restrictions for same–sex marriage as defined under Section 3 of the Defense of Marriage Act (DOMA) unconstitutional under the Due Process Clause of the Fifth Amendment, only 12 states had legalized same–sex marriage.<sup>1</sup> Beginning Fiscal Year (FY) 2014, the Internal Revenue Service announced that all legally married same–sex couples for federal tax purposes.<sup>2</sup> With the subsequent ruling in the 2015 Supreme Court case of *Obergefell v. Hodges*, all 50 states were required to issue marriage licenses to same–sex couples and to recognize the legal rights of married same–sex couples equally to married heterosexual couples citing the Equal Protection Clause of the Fourteenth Amendment as well as the Due Process Clause.

This study examines how the legal recognition of same–sex marriage and the conferment of federal legal rights to same–sex married couples equal to those of heterosexual married couples has affected U.S. public adoption rates. While the private market for domestic and international adoption has been available for same–sex couples seeking to adopt a child prior to federal same–sex marriage legalization, same–sex couples faced major barriers to publicly adopting a child. In many states, marriage is often a prerequisite to or often married couples receive explicit/implicit preferential treatment during the adoption process. In many cases it was often easier for a gay/lesbian individual to adopt a child as a single parent. However apart from marriage, gay/lesbian individuals were legally banned from adopting a child in several states. Further, while the collection information on public adoptions is federally mandated, the sexual orientation of individuals adopting children adopted is not reported.

Along with federal tax and other benefits, the legal status of marriage for same–sex couples eases the process of adoption by conferring additional parental rights for partners of individuals with children. Prior to legal recognition of same–sex marriage, the presumption of parentage was not granted to individuals for the child of their partner unless a secondary parent adoption was completed. Therefore, using the IRS legal recognition of same–sex married couples for federal tax and benefit purposes beginning in FY 2014 as an exogenous incentive for gay/lesbian couples to legally marry and publicly adopt a child, this study estimates

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<sup>1</sup><http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx#1>

<sup>2</sup><https://www.irs.gov/newsroom/treasury-and-irs-announce-that-all-legal-same-sex-marriages-will-be-recognized-for-federal-tax-purposes-ruling-provides-certainty-benefits-and-protections-under-federal-tax-law-for-same-sex-married>

the effect of legally recognizing same-sex married couples on public adoption rates within a Quasi-Poisson Difference-in-Difference framework.

Preliminary findings suggest that 2014 IRS federal recognition of same-sex married couples has a small but significant effect on the number of children adoption and number of older children publicly adopted since 2014. While this study cannot directly distinguish whether public adoptions by same-sex married couple has increased post-2014, both because of data limitations and changes to federal recognition of same-sex marriage over the study period, it suggests that provision of greater civil rights for same-sex married couples has provided a greater opportunity of adoption for children in the public foster care systems.

## II. Previous Research

Several studies have examined both policies to promote public adoption and the demography of gay and lesbian populations in the United States. Regarding child adoption, many studies have looked at the effect of tax and other family support incentives to promote public adoption. In general, they have found evidence that greater rates of reimbursement increase placement rates with kin and non-kin foster parents and rates of adoption (Doyle Jr and Peters, 2007; Doyle Jr, 2007; Argys and Duncan, 2013; Brehm, 2018).

In terms of demographic studies on the gay/lesbian population and same-couples, several studies have attempted to measure the number of individuals who identify as gay/lesbian in the United States and their demographic characteristics (Black et al., 2000; Black et al., 2017; Black, Sanders, and Taylor, 2007; OConnell and Feliz, 2011). They have found that it is difficult to accurately measure the population of gay/lesbian individuals in the U.S. due to its relatively small size. However they have documented that the gay/lesbian population is more concentrated in urban and coastal cities with more liberal political views towards the gay/lesbian community. Same-sex couples often also face disparities in health coverage among partners and their children (Badgett, Gates, and Maisel, 2008; Gonzales and Blewett, 2013; Gonzales and Blewett, 2014).

Legal studies regarding gay/lesbian couples often focus on the differential treatment of presumed parental for their children and the legal barriers to adoption (Bradley, 2007; Washington, 2008; Washington, 2014). Yet while incentives to promote public adoption, the gay/lesbian populations and legal arguments for equal protection under law for the children of same-sex couples have been studied extensively, to the author's knowledge no published study has examined how reducing the barrier to public adoption for same-sex married couples has affected public child adoption rates.

## III. Data

Data used in the analysis was obtained from several sources and merged at the state level for each child adoption from the years 2012 to 2016.

### Adoption Rates

Information Record on public child adoptions was collected from the Adoption and Foster Care Analysis and Reporting System (AFCARS). AFCARS has been maintained by the U.S. Department of Health and Human Services since 1993 when states were mandated to submit all adoption data through public agencies to the Children's Bureau by FY 1995 (Child Welfare Information Gateway, 2016).

Several recent studies have found that changes to whether costs related to adoption services were refundable as tax credits were successful in promoting additional public adoptions during the period 2010-2011 (Buckles, 2013; Brehm, wp). In order to isolate the effect of changes to the legal recognition of same-sex married couples for federal tax and benefits purposes, this study uses information from case-level observations of

child adoption records from the period 2012–2016 publicly available from the National Data Archive on Child Abuse and Neglect (NDACAN). The sample includes all children adoptions aggregated to the state–level of observation.

### Population of Same–Sex Married Couples

Due to the comparatively small population of same–sex married couples relative to the total U.S. population, sample estimates of the number of same–sex married couples can be biased due to mis–classification (Black et al., 2000; OConnell and Feliz, 2011). Therefore in order to estimate the treatment effect of federal recognition of same–sex marriage on adoption rates, this study uses state–level estimated counts of the Internal Revenue Services’ (IRS) reported number of U.S. same–sex married joint tax file population for FY 2015 by Fisher, Gee, and Looney (2018). Information on the number of same–sex married couples should be more accurately reported in IRS tax information since tax filing a joint tax return is required in order to obtain federal tax and marriage benefits.

### Demographics

Additional geographic variation which may be associated with adoption rates as well as higher rates of gay/lesbian populations are estimated using the 1 year U.S. American Community Survey (ACS) from the Integrated Public Use Microdata. Demographic characteristics controlled for include state–level total population, median age, race, unemployment rate, per capita income, and poverty rate.

## IV. Empirical Strategy

This study examines two outcomes of interest: the total number of children publicly adopted and the total number of older children, defined as 8 or older, publicly adopted. To quantify the caseload effect of same–sex marriage legalization on adoption rates, first this study uses a Quasi–Poisson regression framework to estimate the following equation:

$$Y_{it} = \exp(x'_{it}\beta) = \exp(\alpha_i + \tau_t + \lambda SSMC_{it} + \beta X_{it} + \epsilon_{it}) \quad t = 2006, 2007, \dots, 2016 \quad (1)$$

where  $Y_{it}$  are the outcomes of interest expressed as the total count of public adoptions.  $\alpha_i$  and  $\tau_t$  are geographic and year fixed–effects, respectively,  $SSMC_{it}$  is the estimated count of same–sex married couple joint tax filers in 2015, and  $X_{it}$  is the vector of demographic controls. Taking the natural logarithm, the estimated regression:

$$\ln(Y_{it}) = \alpha_i + \tau_t + \lambda SSMC_{it} + \beta X_{it} + \epsilon_{it} \quad t = 2006, 2007, \dots, 2016 \quad (2)$$

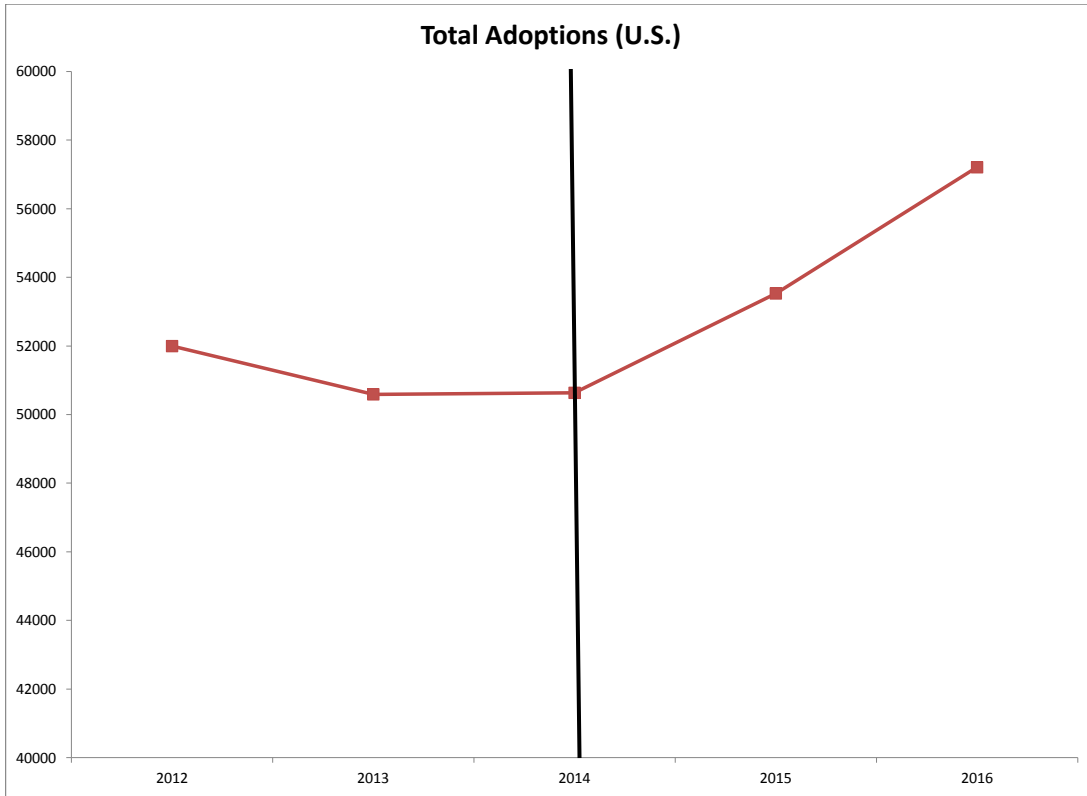
While the Quasi–Poisson regression (2) may provide insight into how state heterogeneity in gay/lesbian populations affect public adoption rates using 2015 state–level counts of same–sex married couples, it does not account for the legal recognition of same–sex marriage along with the tax and other benefits that marriage extends to both individuals and their (potential) dependents announced by the IRS to begin in FY 2014. Further, estimates using (2) only accounting for the 2015 same–sex married within states may be inconsistent with gay/lesbian population dynamics within and across states over the study period.

Therefore, using the federal recognition by the IRS of same–sex couples in FY 2014 as an exogenous change to the supply of potential parents seeking to publicly adopt within a difference–in–differences framework, this study also estimates the causal effect of legally recognizing same–sex married couples on public child adoption rates. In order to determine whether the legal recognition of same–sex couples increase public child adoptions, equation (3) is estimated:

$$\ln(Y_{it}) = \alpha_i + \tau_t + \delta_0 Treat_i + \delta_1 (Post_t \times Treat_i) + \beta X_{it} + \epsilon_{it} \quad t = 2006, 2007, \dots, 2016 \quad (3)$$

where  $Treat_i$  is the state–level count of 2015 IRS same–sex married couple joint tax filers, which serves as a heterogeneous measure of the potential for public adoptions by same–sex married couples within a

state. Since federal recognition of same-sex marriage conferred these benefits to individuals beginning in FY 2014,  $Post_t$  is an indicator for post-2014 since both the social and legal procedures for marriage and public adoption of a child incur a significant amount of time – public adoption ranging from 9–18 months alone. As robustness checks, an event study and alternative specifications of (3) varying the timing of  $Post_t$  are also examined.



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