

# H.R. 5, THE EQUALITY ACT

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## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

APRIL 2, 2019

**Serial No. 116-13**

Printed for the use of the Committee on the Judiciary



Available <http://judiciary.house.gov> or [www.govinfo.gov](http://www.govinfo.gov)

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2020

41-175

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## H.R. 5, THE EQUALITY ACT

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TUESDAY, APRIL 2, 2019

HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The committee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Johnson of Georgia, Deutch, Bass, Jeffries, Cicilline, Lieu, Raskin, Jayapal, Demings, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Collins, Chabot, Gohmert, Buck, Ratcliffe, Gaetz, Johnson of Louisiana, Biggs, McClintock, Lesko, Reschenthaler, Cline, and Steube.

Staff Present: David Greengrass, Senior Counsel; John Doty, Senior Adviser; Lisette Morton, Director of Policy, Planning, and Member Services; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Adviser; Susan Jensen, Parliamentarian and Senior Counsel; Will Emmons, Professional Staff Member; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director and Chief Counsel; Jon Ferro, Minority Parliamentarian and General Counsel; Paul Taylor, Minority Chief Counsel for Constitution Subcommittee; and Erica Barker, Minority Chief Clerk.

Chairman NADLER. The Judiciary Committee will come to order.

Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to today's hearing on H.R. 5, the Equality Act. I will now recognize myself for an opening statement.

Nearly 50 years after the Stonewall uprising, there is still no Federal law that explicitly prohibits millions of lesbian, gay, bisexual, or transgender Americans from being denied medical care, being fired from their jobs, or thrown out of their homes simply because of who they are. It is time Congress changes that.

Today, the Judiciary considers H.R. 5, the Equality Act. This is long overdue legislation that will explicitly prohibit discrimination against LGBT and gender nonconforming Americans and will strengthen nondiscrimination protections for women and others. Today's hearing also affords us the opportunity to hear about the enduring nature and extent of continuing discrimination faced by LGBT people in various aspects of American life.

In 2015, as part of its decision in *Obergefell v. Hodges*, which recognized the fundamental right of same-sex couples to marry, the

Supreme Court held, “The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons within a lawful realm to define and express their identity.”

The Equality Act will help protect and defend that liberty for LGBT individuals, women, and others. At this moment, we have an opportunity to continue our march towards justice, to enshrine in our Nation’s laws protections from marginalized communities, to ensure that they can fully participate in key areas of life, and to provide them recourse in the face of discrimination.

The act will do so by amending our existing statutes, namely the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Jury Selection and Services Act, and several laws regarding employment with the Federal Government by either adding sex, including sexual orientation and gender identity, as a protected characteristic, or, where sex is already included as a protected characteristic, by explicitly clarifying that sex discrimination includes discrimination on the basis of sexual orientation or gender identity.

It will also expand the Civil Rights Act of 1964 to clarify the definition of public accommodations and to ensure that a broader range of establishments, including retail stores and services such as banking, are included for all classes. All forms of discrimination are tied together, and we must address them together.

If a black lesbian couple is denied housing they are otherwise qualified for, it is nearly impossible to tell if they were turned away because of their race, their gender, or their sexual orientation. It is time we make clear that none of these are acceptable forms of discrimination.

We have already seen the effectiveness of nondiscrimination provisions on the Federal level, and we have seen how sexual orientation and gender identity protections work in the more than 20 States that have them on the books. There is no reason discrimination that is explicitly illegal in one part of the country should not be explicitly illegal in all parts of the country.

The Equality Act builds on these existing protections and provides clear recourse for millions of people, no matter where they live. The Equality Act takes special care to maintain the careful balance long established between individual liberties and our compelling interest in promoting nondiscrimination. Freedom of religion is a fundamental American value, and we do not have to choose between nondiscrimination and religious liberty. We have in our existing civil rights laws a road map on how to advance both.

Religion is no excuse for discrimination as we have long recognized when it comes to race, color, religion, sex, and national origin, and it should not be when it comes to sexual orientation or gender identity. Many of the arguments against the Equality Act are belied by the experience of the States and localities that have protections already.

The scaremongering about potential bathroom predators has not turned out to be true. Protecting the ability for a transgender person to use a facility consistent with their gender identity has not weakened public safety or criminal laws or undermined their enforcement.

Similarly, protections for sexual orientation and gender identity will not force religious hospitals or nonprofits to close. New York has these protections. We have Catholic, Jewish, and Protestant hospitals and adoption agencies. And everyone, regardless of who they are or whom they love, is able to receive medically appropriate care and to be served by publicly funded organizations.

Many States have sexual orientation and gender identity non-discrimination laws, and all of them still have women's sports. Arguments about transgender athletes participating in sports in accordance with their gender identity having competitive advantages have not been borne out.

Sports have positive impacts on physical, social, and emotional well-being, and we should not be denying transgender athletes those opportunities simply because sometimes they may win. Nor should their occasional success be used as a roadblock to advancing civil rights legislation for LGBT people as a whole.

While we are examining the specific provisions of this legislation, the true question before us is much broader and goes to the heart of the country we want this to be. Much of the history of the United States has been expanding the definition of who is understood to be included when the Declaration of Independence says "All men are created equal." When these words were first written, that phrase did not include black and Latino men. It did not include Native Americans. It certainly did not include women, and it did not include LGBT individuals.

But we have, as a nation, aspired to expand the definition and ensure that regardless of race, creed, ethnicity, or sex, everyone is able to participate fully in the American way of life. Each advance has been hard fought, whether in Congress, in the courts, or through regulations, or even in a civil war. And it has happened over the objections of people who argued that we were taking away their freedom to discriminate.

But as a nation, we have long held that we cannot sit by and be tolerant of intolerance that is designed to demean and to exclude communities. That is why I am a proud cosponsor of the Equality Act.

Before I end, I want to take a moment to directly address many of those watching today's hearing who are undoubtedly about to hear their humanity and their right to exist questioned. To the transgender and nonconforming youth, teens, and adults who are about to hear their right to participate in sports and to be themselves in school, work, and in their daily lives challenged; to the same-sex couples who are about to hear suggestions that they just take their business elsewhere, that they adopt children elsewhere, that they exist elsewhere, we see you. We support you. And we believe in you.

If you are feeling unsafe, afraid, or at risk, please reach out for help. You are worth fighting for, and we are here to fight alongside you, which is why we will be passing this bill.

I want to thank the gentleman from Rhode Island, Mr. Cicilline, for introducing this important legislation, and I look forward to hearing from all of our witnesses.

It is now my pleasure to recognize the ranking member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for his opening statement.

Mr. COLLINS. Thank you, Mr. Chairman.

And I look forward today to the really incredibly weighty issue that we do have here in this hearing today, but I also want to note because not just from Republican circles or others, the humanitarian security crisis still at our Southern border rages on, and we have done nothing to address the danger to the migrant children and to the American citizens.

This is not just coming from me. This is from the Washington Post. This is from the New York Times and others. So I do look forward to us getting to that as we go forward, just as we are getting to this incredibly, you know, weighty issue today as we go forward.

Everyone here can agree there is much suffering in our world. Today, we have the opportunity and obligation to listen to people with different perspectives on how to address equity. As we do that, we stand on the shoulders of the civil rights heroes who fought before like us. Like two of my colleagues here, I am from the Atlanta area, and I have watched over my lifetime as our country has recognized and responded to the disadvantages historically borne by racial minorities and women.

We are not here today to betray the Civil Rights Act, but to uphold its ideals. There is no doubt in my mind that men, women, and children who expand their gender dysphoria suffer deeply. Unfortunately, the legislation we are considering would harm countless people who understand themselves to be transgender and would demolish the hard-won rights of women, putting them once again at the mercy of any biological man who identifies at that any moment as a woman.

The biological differences between the sexes remain scientific and certain. Men are physically stronger and faster than women, which has made it necessary for women to access clear legal protection. When any man can enter into a protected space, his status in identifying as a woman, as noted by Women's Liberation Front leader, R.R. 5 nullifies women and girls as a coherent legal category worthy of civil rights protection. The bill privileges the rights of men who identify as women over biological women and girls.

Consider female sports. Last year, two male athletes won the top two spots in Connecticut girls Class S indoor track meet. Female athlete Selina Soule, who finished eighth, missed an opportunity to compete in front of college coaches by two places. In Selina's words, "We all know the outcome of the race before it even starts. It is demoralizing."

Allowing men to compete against women in women's sports isn't demoralizing because female athletes Selina aren't talented. It is demoralizing because it makes their talent irrelevant.

Martina Navratilova explained the threat of H.R. 5 poses to women's sports. "Unless you want to completely remake what women's sports means, there can be no blanket inclusion rule. There is nothing stereotypical about this. It is about fairness, and it is about science."

In fact, H.R. 5 ignores fairness and denies science in order to codify stereotypes and sexism. If a man who adopts the mannerisms associated with women can receive every Federal protection afforded to women, we have reduced womanhood to a set of stereotypes, the same stereotypes some men chronically exploited for social, professional, and political advantage.

H.R. 5 plays into these things that hurt women and girls across every dimension of our society, and it would give these stereotypes the trump card whenever tensions arise between the rights of a transgender person and the rights of a biological woman.

The damage H.R. 5 would inflict on vulnerable Americans isn't limited to women. Administering chemotherapy to a healthy, cancer-free patient is malpractice, but H.R. 5 could compel doctors to prescribe hormones and perform major surgeries on adolescents based on their gender identity rather than the biological gender or medical condition.

Under this bill, adolescents who can't decide what major to pursue in college would be empowered to force doctors bound by anti-discrimination laws to administer hormones that could render these children sterile and conduct irreversible surgeries. Mothers and fathers who have watched their children deteriorate physically and emotionally as they transition away from their biological sex are begging Congress to listen before we leap.

Don't ignore the costs here because they are steep. H.R. 5 erases civil rights protection for biological women. It sets the stage for children to fall victim in permanent and unprecedented ways to the confusion that often characterizes adolescence.

If the Democrats are determined to move this legislation forward anyway, we must acknowledge it automatically privileges the rights of biological men over the rights of biological women. This bill will cause suffering that is far-reaching and, in many cases, enduring.

Though the women and children have historically been uniquely vulnerable, Democrats are condemning people who advocate for their rights and against H.R. 5 as bigoted. The ideology-driven H.R. 5 is content to see women, lesbians, and families become the collateral damage of identity politics with no basis in science.

So I would ask my friends across the aisle not to peddle that notion under H.R. 5 everybody wins. There will be many losers because H.R. 5 bows to the political expediency that silence calls for for fairness, flouts science, and has no compassion for the women and children it marginalizes.

And as an ending to my chairman's comment, there is nobody in this world should be mistreated for how they see themselves or how they portray themselves. I believe that that is a gift that is inherently from God and is a spark of life that is put in there not by any man or woman, or anybody created is by the one that creates.

Understanding that, we can have differences. We can understand things differently. We can understand when it comes to the law, how laws affect some and hurt others. That is not being mean-spirited. That is not being hurtful. That is just being honest.

And they can have discussions today, and we plan on having those discussions. And I appreciate everybody's perspective that is

going to be here. But to challenge the motive of what my disagreement may be as to people that I don't even know and that I could come to love and care is wrong.

For me, this is about looking at a bill and saying what is right or wrong about this bill. And when we understand that, we can have bigger discussions as we go forward. That is where you have true conversations of love. That is where you have true conversations of compassion. And we can disagree on that, but talk about a bill that inherently does have bad effects intended with it.

As we go forward, I look forward to the discussion. I look forward to our side and both sides having this discussion, and I appreciate the chairman's time.

And with that, I yield back.

Chairman NADLER. I thank the gentleman.

I will now introduce today's witnesses. Sunu Chandy—I hope I pronounced that right. Sunu Chandy is the legal director for the National Women's Law Center. She earned a Bachelor of Arts degree from Earlham College, a law degree from Northeastern University School of Law, and a Master of Fine Arts from Queens College.

The Reverend Doctor Dennis Wiley is pastor emeritus of the Covenant Baptist United Church of Christ. He earned a Bachelor of Arts from Harvard, a Master of Divinity from Howard University, and both a Master of Philosophy and a Ph.D. from Union Theological Seminary.

Carter Brown is the founder and executive director of Black Transmen, Inc., a nonprofit organization dedicated to empowering African-American transgender men. Prior to serving in this role, he worked in real estate and mortgage banking for over 10 years.

Julia Beck is a member of the Women's Liberation Front and the former law and policy co-chair of Baltimore City's LGBTQ Commission. She earned her Bachelor of Science degree from Towson University.

Doriane Lambelet Coleman is professor of law at Duke Law School. She earned a Bachelor of Arts from Cornell and a law degree from Georgetown University Law Center.

Jami Contreras is a supervisor at an auto finance company in Michigan. She and her wife encountered difficulty obtaining medical care for their newborn child because of their sexual orientation.

Tia Silas—did I pronounce that right? Tia Silas is vice president and global chief diversity and inclusion officer at IBM. She earned a Bachelor of Science degree from Cornell University and an MBA from NYU Stern School of Business.

Kenji Yoshino is the Chief Justice Earl Warren Professor of Constitutional Law at NYU, that is New York University, School of Law. He earned a Bachelor of Arts from Harvard University, was a Rhodes Scholar at Oxford University, and earned a law degree from Yale Law School.

We welcome all of our distinguished witnesses and thank them for participating in today's hearing.

Now if you would please rise, I will begin by swearing you in. Please raise your right hands.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[Response.]

Chairman NADLER. Thank you. Let the record reflect the witnesses all answered in the affirmative. You may be seated.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals the 5 minutes have expired.

Ms. Chandy, you may begin.

**TESTIMONIES OF SUNU CHANDY, LEGAL DIRECTOR, NATIONAL WOMEN'S LAW CENTER; DENNIS WILEY, PASTOR EMERITUS, COVENANT BAPTIST UNITED CHURCH OF CHRIST; CARTER BROWN, FOUNDER AND EXECUTIVE DIRECTOR, BLACK TRANSMEN, INC.; JULIA BECK, FORMER LAW AND POLICY CO-CHAIR, BALTIMORE CITY'S LGBTQ COMMISSION; DORIANE LAMBELET COLEMAN, PROFESSOR OF LAW, DUKE LAW SCHOOL; JAMI CONTRERAS, MICHIGAN RESIDENT; TIA SILAS, VICE PRESIDENT AND GLOBAL CHIEF DIVERSITY AND INCLUSIONS OFFICER, IBM CORPORATION; AND KENJI YOSHINO, CHIEF JUSTICE EARL WARREN PROFESSOR OF CONSTITUTIONAL LAW**

#### **TESTIMONY OF SUNU CHANDY**

Ms. CHANDY. Good morning. Chair Nadler, Ranking Member Collins, and members of the Judiciary Committee, thank you for the opportunity to provide testimony in support of H.R. 5, the Equality Act.

My name is Sunu Chandy. I am the legal director of the National Women's Law Center.

The center has worked for more than 45 years to advance women's equality and to remove barriers created by sex discrimination. Before joining the center, I served in senior leadership roles at Federal and local civil rights agencies. And for 15 years before that, I was a civil rights litigator. I have been active with LGBTQ organizations, including currently as a board member with the Transgender Law Center and in the past as a leader with South Asian LGBTQ organizations.

A few years ago, when my daughter's first grade classmate said to her on the playground, "But wait, you can't have two moms," I am so proud that my daughter went to the principal and got her from the side to help explain that, yes, in fact, she can.

We are urging Congress to pass the Equality Act so that all kids can have legal protections, no matter their family structure. But as with any bill that seeks to amend existing civil rights laws, the Equality Act must be enacted in a way that expands and never retreats from our commitment to existing civil rights protections.

Support of the Equality Act is key to the National Women's Law Center's mission and critical for our collective liberation against

sex discrimination, as outlined here. First, the Equality Act would provide explicit protections for LGBTQ people in employment, housing, credit, education, public spaces and services, federally funded programs, and jury service.

The U.S. Supreme Court has long recognized that discriminating against someone because she does not conform to gender stereotypes is sex discrimination. The Equality Act would make these protections for LGBTQ individuals explicit in Federal statutory law.

Second, the act would ensure that all women, including LGBTQ individuals, would gain protections against sex discrimination in public spaces. This means individuals, including those who are pregnant, who experience sex discrimination, including sex harassment, while in spaces such as restaurants or stores would have a legal remedy through the Equality Act.

Third, the act would ensure that individuals gain new protections against sex discrimination by entities that take Federal dollars—schools, community centers, homeless shelters. The Equality Act would prohibit sex discrimination in these spaces.

Finally, the act ensures additional protections in public spaces, that they extend to all relevant entities. People of color continue to face discrimination regularly in stores or when seeking taxis. The Equality Act would prohibit this kind of discrimination.

The act protects freedom of religion also through existing thoughtful exemptions contained within the Federal civil rights statutes that protect religious actors from Government intrusion.

For example, the current laws exempt private entities that are not open to the public. Churches can hold services, spaghetti dinners, and limit their entry to their members. The current law allows religious entities to limit employment to members of their own faith, and they require religious accommodations for employees.

The current law also provide that religious entities are exempt from fair housing laws if they're being—using a dwelling for a non-commercial purpose or in small buildings where the owner lives on the premises.

In addition to maintaining all these religious exemptions, the Equality Act clarifies that the Religious Freedom Restoration Act cannot be misused to allow violations of Federal civil rights laws. This does not eliminate RFRA but limits its reach, so it can't be used to defend against civil rights claims.

The Equality Act represents a significant advancement for all women and girls, and I want to be clear. The National Women's Law Center supports the act's requirement that transgender women and girls be included with other women and girls in gender-specific spaces, including in sports programs.

Our country has a history of attempting to justify sex discrimination by asserting that it is protecting women. Just as this rationale fell short when excluding women from opportunities, it does not work now. The National Women's Law Center has represented women and girls seeking athletic opportunities, equal employment, and protection from sexual violence for decades, and this includes women and girls who are transgender. We are firmly committed to advancing the Equality Act because it will advance opportunities for all women and girls.

As a woman, a person of color, and a parent in a two mommy family, I need the Equality Act. And as the daughter of a Christian minister and school teacher, immigrants from a small village in Kerala, India, it has been quite a journey towards family acceptance. Gaining explicit Federal law protections provides not only legal rights, but an increased measure of dignity.

Over decades, through the courage of individuals coming forward with claims of discrimination, we have collectively expanded the scope of civil rights protections as one tool in our work for justice. We urge Congress to pass the Equality Act.

Thank you.

[The statement of Ms. Chandy follows:]

**Testimony of Sunu P. Chandy - Legal Director, National Women's Law Center****U.S. House of Representatives - Committee on The Judiciary****Subcommittee on the Constitution, Civil Rights, and Civil Liberties****Hearing on the Equality Act (H.R. 5) - April 2, 2019**

Thank you for the opportunity to submit testimony to the Committee on the Judiciary and the Subcommittee on the Constitution, Civil Rights and Civil Liberties on H.R. 5, the Equality Act. I currently serve as the legal director at the National Women's Law Center. The Center has worked for more than 45 years to advance and protect women's equality and opportunity, and to remove barriers for all who face sex discrimination including at work, in schools or in healthcare. Before joining the National Women's Law Center, I have served in civil rights senior leadership roles at the U.S. Health and Human Services and the D.C. Office of Human Rights and as a senior trial attorney with the U.S. Equal Employment Opportunity Commission. My 20 years of legal experience have included training lawyers and community groups on federal and local civil rights laws, providing guidance for hundreds of civil rights investigations and 15 years in federal civil rights litigation. I have also served on the boards of directors of many LGBTQ organizations including currently with the Transgender Law Center.

In addition to my work as a civil rights attorney I am a member of the LGBTQ community and have spent many years volunteering with South Asian and other Asian American LGBTQ community organizations and have experienced and provided deep support and solidarity to my peers, often in the context of seeking greater family acceptance. It is my dream that my daughter will grow up in a world where such acceptance is more forthcoming by our families and from within this nation's laws. When a few years ago, my daughter's first grade classmate said to her on the playground "but wait, you can't have two moms," I am proud that my daughter brought her principal from the side of the playground to help explain to the other student, that yes, in fact, she can have two moms. And we are urging Congress to pass the Equality Act so that all kids will grow up in a world where we all have fundamental legal protections, no matter our family structure.

The Equality Act would incorporate existing court rulings setting out the scope of sex discrimination protections into federal civil rights statutes by spelling out explicit protections against discrimination based on sexual orientation or gender identity, while also updating our civil rights laws to provide important new protections against discrimination. The Equality Act would provide consistent and explicit non-discrimination protections for LGBTQ people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. Additionally, this Act would ensure that individuals gain new protections against sex discrimination in public spaces and by entities that take

federal dollars or run federal programs. The Act also ensures that protections against discrimination in public spaces, including discrimination on the basis of race and religion, extend to all relevant entities that provide goods and services in the public marketplace. As any bill that seeks to amend existing civil rights laws, this must be enacted in a way that expands – never retreats from – our commitment to civil rights.

My remarks are divided into the following areas. First, I will provide an introduction including the critical social change role of civil rights litigation. Second, I will detail why the Equality Act is a necessary addition to our nation’s civil rights laws. Third, I will outline the legal framework for current federal protections for LGBTQ individuals. Fourth, I will highlight how the Equality Act is a major gain for women’s rights. Fifth, I will focus on how nondiscrimination protections for sexual orientation and gender identity are already tested and successful, and, finally, I will lay out how the Equality Act protects freedom of religion in line with our existing civil rights laws.

#### **I. Introduction**

This nation’s federal civil rights laws have served a critical function since the passage of the Civil Rights Act of 1964 and analogous laws. Through the courage of individuals coming forward with claims of discrimination, often risking retaliation, we have expanded and deepened our understanding of the wrongs against which our civil rights laws protect. When the Civil Rights Act was passed, sexual harassment, pregnancy and same-sex harassment were not explicitly included and broadly recognized as part of sex discrimination but in time, the law has developed to address these kinds of harms in the workplace, schools and other settings. These cases have been brought by advocacy groups, public interest firms, federal civil rights agencies and pro bono attorneys, including for example, by the attorneys currently connected with workers through the TIME’S UP Legal Defense Fund administered by the National Women’s Law Center. Our federal civil rights laws also developed due to the tireless work of career employees within civil rights agencies. Government civil rights agencies have provided a legacy of gains through civil rights investigations, agency litigation and guidance documents that create civil rights policy as part of the work of building a more inclusive society. These efforts to address discrimination through civil rights laws are critical alongside organizing efforts, culture change through the media and other strategies for social change. These efforts to secure civil rights protections rely on our nation’s laws as one source of righting harms and seeking justice.

The federal government’s positions as to LGBTQ equality helps to create legal change and culture change, particularly for those of us with families who may be struggling to accept their LGBTQ family members. When someone is fired from a job because he is transgender, or a baby is turned away by a pediatrician because she has two moms, these are outrageous violations that cannot be acceptable under our federal civil rights. However, as of now, protections

against these harms are not explicitly included in our federal civil rights laws and that is why we must pass the Equality Act to ensure clear legal rights for LGBTQ individuals across the country.

As a woman, a person of color, a member of the LGBTQ community, and a parent in a two-mommy family I myself need these rights to be protected from discrimination. As the daughter of a minister and schoolteacher who were immigrants from a small village in Kerala, India, it has been a difficult journey towards family acceptance. Given this background, having explicit protections in the federal law would serve as a concrete measure of protection and provide an increased measure of dignity. And I know that for so many in the LGBTQ community who may not be accepted by our families, it is all the more important to have legal protections at school, at work and in other public spaces. Our nation must be one where dignity and equality based on who we are as people must be enshrined in federal law.

As the Supreme Court of India concluded in its compelling September 2018 opinion that not only struck down a discriminatory law but also called for greater LGBTQ rights, “Respect for individual choice is the essence of liberty,” Dipak Misra, India’s chief justice, told a packed courtroom. “This freedom can only be fulfilled when each of us realizes that the LGBT community possesses equal rights.”<sup>1</sup> Likewise, we are bringing a new urgency to calls for LGBTQ inclusion in this country and Congress must act. It is not enough for some states to act and for some employers to take voluntary steps to provide such protections. Everyone in this country—especially the LGBTQ people of color who experience multiple and intertwining forms of discrimination, and for LGBTQ folks living in poverty who are facing daily economic pressures<sup>2</sup> alongside civil rights violations—deserve explicit protections in our federal civil rights law. The Equality Act would provide these core protections.

## II. The Equality Act Is a Necessary Addition to Our Nation’s Civil Rights Laws

### A. The Equality Act Is Necessary to Strengthen Our Nation’s Civil Rights Laws

In its simplest form, the Equality Act is a bill that ensures people cannot be unfairly discriminated against because of their sex, including their sexual orientation or gender identity. It affirms the core value that everyone deserves to be treated fairly and equally under the law.

It does this by amending existing civil rights law—including the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, the Jury Selection and Services Act, and several laws regarding employment with the federal government—to explicitly include sexual

<sup>1</sup> Joanna Slater and Vidhi Doshi, *India’s Supreme Court Decriminalizes Gay Sex in Historic Ruling*, WASHINGTON POST, Sept. 6, 2018, [https://www.washingtonpost.com/world/asia\\_pacific/indias-supreme-court-decriminalizes-gay-sex-in-historic-ruling/2018/09/06/d15467b6-b111-11e8-8b53-50116768e499\\_story.html?utm\\_term=.67574abd1291](https://www.washingtonpost.com/world/asia_pacific/indias-supreme-court-decriminalizes-gay-sex-in-historic-ruling/2018/09/06/d15467b6-b111-11e8-8b53-50116768e499_story.html?utm_term=.67574abd1291).

<sup>2</sup> Brad Sears and Lee Badgett, *Beyond Stereotypes: Poverty in the LGBT Community*, TIDES, June 2012, <https://williamsinstitute.law.ucla.edu/williams-in-the-news/beyond-stereotypes-poverty-in-the-lgbt-community/>.

orientation and gender identity as protected characteristics. The legislation also amends the Civil Rights Act of 1964 to prohibit discrimination in public accommodations and federally funded programs on the basis of sex, sexual orientation, and gender identity.

In amending these existing laws, the Equality Act will accomplish what the current patchwork of inconsistent state legislation fails to do: provide clear and unambiguous protections for LGBTQ people against discrimination in significant areas of our lives. The Act will also equip businesses, educators, and service providers with clear guidance so that there is no confusion about their obligations toward protected classes. In short, this Act will expand and clarify the reach of existing civil rights statutes that have already been incorporated into much of our national legal and social fabric.

Having unequivocal and explicit prohibitions of discrimination based on sexual orientation and gender identity in areas including education, employment, housing, credit, and jury service are instrumental to realizing greater equality in this country. Providing LGBTQ Americans, who make up 4.5% of the total U.S. population,<sup>3</sup> with equal opportunity and access means more workers, job-creators, homeowners, and consumers in states that once lacked basic civil rights protections.

The Equality Act would also provide greater security for LGBTQ people. Across state lines, LGBTQ individuals will feel more secure knowing that their livelihoods are protected no matter where they live or work. As a result, their families will also feel safer in the knowledge that their loved ones would have the explicit legal right to be treated with fairness and equality. The Equality Act would make it illegal to fire, refuse service to, or deny a loan to their loved one just because of who they are. Passing the Equality Act is essential to creating this safer reality.

For many Americans, that reality is long overdue. The Equality Act reflects the consensus of the American public, who support nondiscrimination legislation for LGBTQ citizens in overwhelmingly large numbers. According to recent polling, around 70% of Americans favor nondiscrimination laws protecting individuals on the basis of sexual orientation and gender identity. This includes a majority of Democrats, Republicans, and independents, members of all major religious groups, and residents of every state.<sup>4</sup> Despite vast support in nearly all demographics and regions, only 20 states provide their citizens explicit protection against anti-LGBTQ discrimination.<sup>5</sup> An individual working in the private sector in the District of Columbia who transfers just several miles away to Virginia may suddenly find themselves at risk should

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<sup>3</sup> *LGBT Demographic Data Interactive*, THE WILLIAMS INSTITUTE, UCLA SCHOOL OF LAW, Jan. 2019.

<sup>4</sup> Daniel Greenberg et al., *Americans Show Broad Support for LGBT Nondiscrimination Protections*. PRRI. <https://www.prii.org/research/americans-support-protections-lgbt-people/>.

<sup>5</sup> *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, June 11, 2018, <https://www.hrc.org/state-maps/public-accommodations>.

they be terminated as a result of their sexual orientation or gender identity. LGBTQ individuals looking to rent will have a decidedly more difficult time making a home in the many states where same-sex couples and transgender individuals continue to have no state or local remedies or protections against housing discrimination.

The Equality Act also modernizes federal public accommodations law under Title II of the 1964 Civil Rights Act to provide important protections that are missing from current law. The 1964 Civil Rights Act only covers lodging, restaurants and other facilities serving food including gas stations, and entertainment spaces including movie theaters or sports arenas. The Equality Act includes additional important protections for all protected characteristics similar to state laws around the country and the protections provided under the Americans with Disabilities Act.

In addition to the places of public accommodation included in the original Civil Rights Act of 1964, the Equality Act includes providers of goods and services like stores, accountants, and hospitals as places of public accommodation. Transportation providers including trains, taxis, and airlines are also included within the Act as places of public accommodation. In addition, the Equality Act would prohibit sex discrimination under Title II for the first time. LGBTQ people and women, particularly ones who are pregnant and breastfeeding, experience discrimination while accessing public accommodations across a wide range of contexts – including restaurants, stores, theaters, and transportation. People of color continue to face persistent discrimination on a daily basis in stores, and when accessing transportation including car services and taxis. Whether denied service or experiencing unfair treatment or harassment, this discrimination impedes individuals from fully participating in social and public spaces and creates immense dignitary and other harms.

In the absence of federal protections, women experience discrimination while accessing public accommodations across a wide range of contexts—including in restaurants, stores, theaters, and transportation. The Equality Act would ensure that breastfeeding individuals are not harassed or excluded from public spaces, for example, and would prohibit pharmacies from refusing to fill a woman’s birth control prescription. Under current federal law, women can still be charged more for goods and services. For example, studies have shown that women are charged arbitrarily higher prices including in services such as car repairs when there aren’t fixed prices.<sup>6</sup> Under the Equality Act this would be illegal.

The Equality Act would also protect individuals from discrimination on the basis of perceived membership in a protected class. An employer, landlord, or business owner’s perception—rather than the individual’s actual identity—will often drive discrimination. The explicit

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<sup>6</sup> Meghan R. Busse et al., *Repairing the Damage: The Effect of Price Expectations on Auto-Repair Price Quotes*, NATIONAL BUREAU OF ECONOMIC RESEARCH, 2013, <https://www.nber.org/papers/w19154>.

protection against discrimination based on “perceived” membership in a protected class will ensure, for example, that a woman is not discriminated against because someone misperceives her ethnicity or religion based on her married name, or mistakenly assumes she is a lesbian, or incorrectly identifies her as pregnant. Without this explicit protection, employers have sometimes successfully defended Title VII charges of discrimination because the individual was not actually a member of a protected class. This can leave individuals who experience discrimination with little recourse.

Federal funding touches the lives of people in every state and county in America— from schools and community centers to homeless shelters and substance abuse rehabilitation facilities. Taxpayers fund critical social and community services including disaster relief, mortgage assistance, law enforcement, and health care. By adding sex to the list of protected characteristics under Title VI of the Civil Rights Act of 1964, the Equality Act would prohibit sex discrimination, including pregnancy discrimination and sexual harassment, in federally assisted programs or services. It would also make denying people access to federally-funded benefits or excluding them from a federally assisted program on the basis of their sex or pregnancy unlawful.

The Equality Act also updates civil rights laws to clearly cover claims of associational discrimination— meaning protections for people who may face discrimination because of their relationships to others. This would provide civil rights protections, for example, to children who’ve been turned away from a pediatrician’s office because they have two parents of the same gender or a worker who is denied insurance benefits because they have a transgender child. A person should not lose opportunities or be mistreated because of their friendship, romantic relationship, or familial connection to a person of a different race, religion, gender identity, or sexual orientation.

### **III. Legal Framework for Existing Federal Protections for LGBTQ Individuals**

#### **A. Sex Stereotyping Is Unlawful Sex Discrimination**

A range of federal laws—including Title VII of the 1964 Civil Rights Act, Title IX of the Educational Amendments of 1972, and the Fair Housing Act—prohibit discrimination on the basis of sex. Federal courts, including the Supreme Court, have long recognized that these protections are not limited to discrimination based on male or female physical characteristics. A decades-long body of case law affirms that sex discrimination includes a wide range of other forms of discrimination, including discrimination because a person does not conform to gender-related

stereotypes or traditional gender roles, because of pregnancy and related conditions, and because of a person's sexual orientation or gender identity.<sup>7</sup>

Courts consistently have interpreted the plain meaning of Title VII's prohibition against sex discrimination to cover a wide range of employer assumptions about women and men alike.<sup>8</sup> The half-century of precedent interpreting "sex discrimination" has dismantled not just discrimination that drew distinctions *between* men and women, but also discrimination that draws distinctions *among* men and *among* women in such a way as to confine individuals to strict sex roles at work, and in society.

Specifically, in 1989, in the landmark case of *Price Waterhouse v. Hopkins*, the Supreme Court considered and rejected the argument that the term "sex" in Title VII refers only to differences between men and women.<sup>9</sup> Ann Hopkins was a successful senior manager who was pivotal to securing a \$25 million government contract, and yet she was denied a partnership in an accounting firm in part because her demeanor, appearance, and personality was deemed insufficiently "feminine." Colleagues described her as "macho" and advised that she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry" and take "a course at charm school" if she wanted to become a partner. Ms. Hopkins was not rejected from partnership because she happened to be a woman; she was rejected from partnership because she was not the kind of woman that the firm's partners felt she ought to be. The Supreme Court held that when an employer relies on sex stereotypes to deny employment opportunities, it unquestionably acts "because of sex."

That case was not the only instance in which an employer's stereotype-based decision-making was found to violate Title VII. In fact, some of the earliest Title VII cases addressed and disapproved of the exclusion of women from employment opportunities because of the assumptions that women were not suited physically, emotionally, and temperamentally for some jobs due to "protective laws" restricting women from male-dominated fields and cultural attitudes about what jobs were appropriate for women.<sup>10</sup> A few years following these decisions, the Supreme Court ruled that the use of physical criteria that disproportionately exclude women applicants violates Title VII if they are premised on the flawed assumption that "bigger is better" when it comes to dangerous jobs.<sup>11</sup>

<sup>7</sup> See e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Wort v. Vierling*, 778 F.2d 1233 (7th Cir. 1985) (Title IX); *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (Title VII).

<sup>8</sup> See *City of L.A. Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 (1978).

<sup>9</sup> *Price Waterhouse*, 490 U.S. 228.

<sup>10</sup> See e.g., *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971) (women-only rule for flight attendants); *Weeks v. S. Bell Tel. & Tel. Co.*, 408 F.2d 228 (5th Cir. 1969) (policy against women working as switchmen on grounds that job required heavy lifting).

<sup>11</sup> See *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

Title VII additionally prohibits discrimination against men<sup>12</sup> and against subsets of employees of a particular gender—for example, an employer violates Title VII when it discriminates against women with children, even if it is happy to employ childless women.<sup>13</sup>

#### B. Discrimination on the Basis of Gender Identity Is Unlawful Sex Discrimination

Over the last two decades, an overwhelming majority of federal courts addressing the issue have held that discrimination because a person is transgender constitutes unlawful sex discrimination under a variety of federal laws. Applying the logic of Supreme Court precedents in *Price Waterhouse* and *Oncale*, five circuit courts of appeals and dozens of district courts have held that anti-transgender bias violates federal sex nondiscrimination laws, including Title VII of the 1964 Civil Rights Act, Title IX of the Educational Amendments of 1972, Section 1557 of the Affordable Care Act, the Fair Housing Act, and the Equal Credit Opportunity Act. For example, in *Schwenk v. Hartford*, the Ninth Circuit relied on *Price Waterhouse* and *Oncale* in concluding that transgender people must be protected under the federal Gender Motivated Violence Act.<sup>14</sup> The plaintiff in the case, Crystal Schwenk, a transgender prisoner, alleged that a guard targeted her for a physical assault because she was transgender. On appeal, the guard argued that sex nondiscrimination laws do not protect transgender people, relying on the Ninth Circuit’s 1977 decision in *Holloway v. Arthur Anderson*, where the court rejected a claim by a transgender plaintiff.<sup>15</sup> The *Schwenk* court, however, stated that:

The initial judicial approach taken in cases such as *Holloway* has been overruled by the logic and language of *Price Waterhouse*. In *Price Waterhouse*..., the Supreme Court held that Title VII barred not just discrimination based on the fact that Hopkins was a woman, but also discrimination based on the fact that she failed “to act like a woman”—that is, to conform to socially-constructed gender expectations. Thus, under *Price Waterhouse*, “sex” under Title VII encompasses both sex—that is, the biological differences between men and women—and gender. ... Indeed, for purposes of [Title VII and similar laws], the terms “sex” and “gender” have become interchangeable.<sup>16</sup>

Similarly, in a series of cases beginning in 2004, the Sixth Circuit held that a firefighter, police officer, and funeral home employee each stated Title VII claims by alleging they were terminated because of being transgender.<sup>17</sup> As in *Schwenk*, the Sixth Circuit in *Smith v. City of*

<sup>12</sup> See *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 681 (1983).

<sup>13</sup> See, e.g., *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (*per curiam*) (mothers of preschool-aged children); *Jefferies v. Harris Cty. Cmty. Action Ass’n*, 693 F.2d 589 (5th Cir. 1982) (Black women); *Sprogis v. United Air Lines, Inc.*, 444 F.2d 1194 (7th Cir. 1971) (unmarried female flight attendants).

<sup>14</sup> 204 F.3d 1187 (9th Cir. 2000).

<sup>15</sup> See 566 F.2d 659 (9th Cir. 1977).

<sup>16</sup> *Id.* at 1201–02.

<sup>17</sup> *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *EEOC v. Harris Funeral Homes*, 884 F.3d 560, 566 (6th Cir. 2018). See also *Dodds v. U.S. Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016) (denying stay pending appeal and pointing to “settled law” that anti-transgender discrimination is prohibited under sex discrimination law).

*Salem* held that “[t]he Supreme Court made clear that in the context of Title VII, discrimination because of ‘sex’ includes gender discrimination.”<sup>18</sup> The court explained:

By holding that Title VII protected a woman who failed to conform to social expectations concerning how a woman should look and behave, the Supreme Court established that Title VII’s reference to “sex” encompasses both the biological differences between men and women, and gender discrimination, that is, discrimination based on a failure to conform to stereotypical gender norms. ...

As such, discrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender [as assigned at birth]—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman. Sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as “transsexual,” is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.<sup>19</sup>

The Sixth Circuit affirmed this holding a year later in *Barnes v. City of Cincinnati*,<sup>20</sup> and again a decade later in *Dodds v. Department of Education*.<sup>21</sup>

In its most recent ruling on the subject this year, the Sixth Circuit explained further:

First, it is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex.... Second, discrimination against transgender persons necessarily implicates Title VII’s proscriptions against sex stereotyping.... An employer cannot discriminate on the basis of transgender status without imposing its stereotypical notions of how sexual organs and gender identity ought to align. There is no way to disaggregate discrimination on the basis of transgender status from discrimination on the basis of gender non-conformity, and we see no reason to try.... Title VII protects transgender persons because of their transgender or transitioning status, because transgender or transitioning status constitutes an inherently gender non-conforming trait.<sup>22</sup>

The Eleventh Circuit likewise recognized *Price Waterhouse* as holding that “Title VII barred not just discrimination because of biological sex, but also gender stereotyping — failing to act and appear according to expectations defined by gender.”<sup>23</sup> Further, it held in that discrimination based on failure to conform to sex stereotypes is sex-based discrimination, and that this necessarily meant that anti-transgender discrimination is inherently sex discrimination, since “a

<sup>18</sup> *Smith*, 378 F.3d at 572.

<sup>19</sup> *Id.* at 573, 575.

<sup>20</sup> 401 F.3d at 737.

<sup>21</sup> 845 F.3d at 221.

<sup>22</sup> *Harris Funeral Homes*, 884 F.3d at 575–77. See also *Parker v. Strawser Construction, Inc.*, 307 F. Supp. 3d 744 (S.D. Ohio 2018) (holding that termination of employee based on transgender status violates Title VII); *Mickens v. Gen. Elec. Co.*, No. 16-603 (W.D. Ky. Nov. 28, 2016) (same).

<sup>23</sup> *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes.”<sup>24</sup>

The Seventh Circuit concurred when ruling in favor of a student who faced discrimination because of being transgender, holding that school policies that require a student to be treated in a manner “that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX.”<sup>25</sup> Likewise, the First Circuit followed the logic of *Price Waterhouse* in reaching the conclusion that discriminating against a person because they are transgender or do not conform to gender stereotypes is unlawful under sex discrimination laws.<sup>26</sup> Dozens of federal courts across the country have followed these precedents in affirming that federal sex discrimination laws—including Title VII of the Civil Rights Act, Title IX of the Educational Amendments of 1972, Section 1557 of the Affordable Care Act, and the Equal Protection Clause of the Constitution—prohibit anti-transgender discrimination.<sup>27</sup>

### C. Sexual Orientation Discrimination Is Unlawful Sex Discrimination

Applying a similar analysis to sexual orientation claims, federal and state courts and administrative agencies have affirmed that discrimination on the basis of sexual orientation is a form of sex discrimination. While the majority of cases to date involve employment claims under Title VII, a legal understanding that prohibitions on sex discrimination also prohibit discrimination on the basis of sexual orientation is transferable to all civil rights laws that prohibit sex discrimination, including the Fair Housing Act, the Jury Selection and Service Act, Title IX of the Education Amendments of 1972, and the Equal Credit Opportunity Act.

#### i. The EEOC Has Concluded That Sexual Orientation Discrimination Is Unlawful Sex Discrimination Under Title VII

In its 2015 decision in *Baldwin v. Foxx*, the EEOC ruled that a claim of sexual orientation discrimination is “necessarily” a claim of sex discrimination for the purposes of Title VII.<sup>28</sup> In *Baldwin*, the Commission found that an employer had unlawfully relied on “sex-based-

<sup>24</sup> *Id.*

<sup>25</sup> *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1049 (7th Cir. 2017), *cert. dismissed sub nom. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260 (2018).

<sup>26</sup> *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000).

<sup>27</sup> See e.g., *Smith v. City of Salem, Ohio*, 378 F.3d 566, 568 (6th Cir. 2004) (holding that a transgender fire department lieutenant who was fired for “expressing a more feminine appearance” could sue for sex discrimination under Title VII); *Whitaker*, 858 F.3d at 1049 (holding that discrimination against transgender student constitutes sex discrimination under Title IX and violates the Equal Protection Clause of the Constitution); *Boyd v. Conlin*, No. 17-cv-264-WMC, 2018 (W.D. Wis. Sept. 18, 2018) (holding that state employee health plan refusal to cover transition-related care constitutes sex discrimination in violation of Title VII, Section 1557 of the ACA, and the Equal Protection Clause of the Constitution).

<sup>28</sup> *Baldwin v. Foxx*, E.E.O.C. Appeal No. 0120133080, 2015 WL 4397641, at \*5 (July 16, 2015).

considerations” when denying an employee a promotion based on his sexual orientation. The Commission recognized that “‘sexual orientation’ as a concept cannot be defined or understood without reference to sex.”<sup>29</sup> Because of the inextricable way in which sexual orientation and sex are tied, they must be looked at through the same legal lens. In its holding, the EEOC outlined three theories through which sexual orientation discrimination can be seen as sex discrimination: the comparative, associational, and gender stereotyping theories.

The comparative method of evaluating a Title VII sexual-orientation-as-sex discrimination claim requires courts to consider whether the treatment of a person “but for that person’s sex would be different.”<sup>30</sup> For example, if an employer treats a female employee who dates women differently than a male employee who dates women, the employer is engaging in disparate treatment because of the sex of the employee. This analysis considers whether an employee would receive different, better treatment “but for” his or her sex. If the answer is yes, under Title VII, this gives rise to a claim of unlawful sex discrimination.

Through the associational theory of sexual-orientation-as-sex discrimination, the Commission ruled that plaintiffs could be unlawfully discriminated against based on the sex of their intimate partner. The associational argument was originally used successfully to pursue claims of racial discrimination under Title VII for persons in interracial relationships.<sup>31</sup> Employers were found to be in violation of Title VII prohibition on racial discrimination where they discriminated against an employee not just on the basis of the employee’s own race, but on the basis of the race of the employee’s intimate partner. Similarly, the EEOC found that “treating female employees with male partners more favorably than male employees with male partners” is done “because of sex” and therefore is sex discrimination prohibited by Title VII.<sup>32</sup>

Finally, the EEOC adopted the gender stereotype theory of sexual-orientation-as-sex discrimination, building off a body of cases following the Supreme Court’s ruling in *Price Waterhouse v. Hopkins*.<sup>33</sup> Specifically, the Commission found that the expectation of heterosexuality, i.e., the expectation that men will only date women and women will only date men, is itself a sex stereotype, and to rely on it in employment decisions is evidence of sex discrimination.<sup>34</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* (quoting *Los Angeles Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 711 (1978)).

<sup>31</sup> See, e.g., *Parr v. Woodmen of World Life Ins. Co.*, 791 F.2d 888 (11th Cir. 1986).

<sup>32</sup> *Baldwin* at \*6.

<sup>33</sup> 490 U.S. 228 (1989).

<sup>34</sup> *Baldwin* at \*8.

## ii. Federal Case Law Supports the EEOC's Interpretation of Title VII

A few federal district courts had begun to acknowledge that sexual orientation discrimination could give rise to a sex discrimination claim under Title VII prior to *Baldwin*,<sup>35</sup> and since that decision many more have concluded that Title VII provides protections against sexual orientation discrimination.<sup>36</sup> In addition, both the Second<sup>37</sup> and Seventh<sup>38</sup> Circuits have ruled *en banc* that sexual orientation discrimination is covered by Title VII's prohibition on sex discrimination.

In 2017, the Seventh Circuit agreed to rehear *en banc* the case on Kimberly Hively, a lesbian woman who claimed she was denied full-time employment because of her sexual orientation. Hively brought a claim of sex discrimination against her employer under Title VII, but her claims in district court were ultimately dismissed on the grounds that Seventh Circuit precedent did not acknowledge sexual orientation as a protected classification under Title VII. In its *en banc* decision, the circuit court relied on the EEOC's decision in *Baldwin* as well as recent shifts in the Supreme Court Title VII jurisprudence to overturn its own precedent and rule in Hively's favor.

The Seventh Circuit used all three theories affirmed in *Baldwin* to validate Hively's claim: the comparative method, the gender stereotype method, and the associational method. First, under the comparative method, the circuit court compared Hively's treatment to a similarly-situated male (one who also dates women) and found that the logical explanation for the disparity in treatment was that "Ivy Tech is disadvantaging [Hively] because she is a woman."<sup>39</sup> The court then examined Hively's claim "through the lens of the gender nonconformity line of cases," and found that she "represents the ultimate case of failure to conform to the female stereotype ... which views heterosexuality as the norm."<sup>40</sup> The court then concluded that "the line between a gender nonconformity claim and one based on sexual orientation ... does not exist at all."<sup>41</sup> Finally, under the associational theory, the court found that "to the extent that the statute prohibits discrimination on the basis of the race of someone with whom the plaintiff

<sup>35</sup> See, e.g., *Koren v. Ohio Bell Telephone Co.*, 894 F. Supp. 2d 1032, 1038 (N.D. Ohio 2012) (holding that an employer's discrimination against man because he took his husband's last name upon marriage could be considered sex discrimination in violation of Title VII); see also *Terveer v. Billington*, 34 F. Supp. 3d 100 (D.D.C. 2014) (holding that pleading a claim of termination because of "nonconformity with male sex stereotypes" such as heterosexuality was enough to survive a Motion to Dismiss under Title VII).

<sup>36</sup> See *Isaacs v. Felder Servs., LLC*, 143 F. Supp. 3d 1190 (M.D. Ala. 2015); *Boutillier v. Hartford Pub. Sch.*, 221 F. Supp. 3d 255 (D. Conn. 2016); *Winstead v. Lafayette Cty. Bd. of Cty. Comm'r*, 197 F. Supp. 3d 1334 (N.D. Fla. 2016); *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834 (W.D. Pa. 2016).

<sup>37</sup> *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018).

<sup>38</sup> *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017).

<sup>39</sup> 853 F.3d at 345.

<sup>40</sup> *Id.* at 346.

<sup>41</sup> *Id.*

associates, it also prohibits discrimination on the basis of ... the sex of the associate.”<sup>42</sup> Because each theory led the court to determine that Hively’s negative treatment was in some way because of her sex, the Seventh Circuit ruled that her sexual orientation claim was actionable under Title VII.

The Second Circuit took a similar approach months later when it overturned its own precedent and ruled in favor of plaintiff Donald Zarda, a gay man who alleged he was fired because of his sexual orientation. The circuit court found that the comparative, gender stereotyping, and associational methods were different ways of reaching the same conclusion: that “sexual orientation is a function of sex.”<sup>43</sup> The court found that each of these theories illustrated how one’s sexual orientation is always defined in relation to one’s own sex. Because the two traits could not be separated in common understanding, it made no sense to draw such a distinction under the law. Therefore, the court found that to ignore the “sex-dependent nature of sexual orientation” was to evade the natural protections of Title VII.<sup>44</sup>

### iii. Statutory Codification of These Protections Is Essential

Although our federal courts have repeatedly affirmed that discrimination based on sexual orientation and gender identity are forms of sex discrimination, it is essential that Congress codify these in our nation’s civil rights statutes. Clear, explicit protections incorporated into the U.S. Code would ensure that the public is aware that discrimination against LGBTQ people is prohibited and empower individuals experiencing discrimination by providing them with stronger legal recourse. It would also serve as notice for entities covered under the Act so they can take proactive steps to avoid engaging in unlawful discrimination. This concrete clarification is also necessitated by confusion about the state of the law that has led to a narrow interpretation of sex discrimination across the federal government. Actions taken as a result of this narrow interpretation have undermined the health and well-being of our nation’s most vulnerable members and run counter to legal analysis and existing Supreme Court precedent regarding the interpretation of the scope of prohibited sex discrimination. The Equality Act is a critical tool to countering this dangerous and misguided narrative once and for all.

### IV. The Equality Act Represents a Major Step Forward for Women’s Rights

Support of the Equality Act is key to the National Women’s Law Center’s mission as a women’s rights organization. First, the protections the Equality Act would provide are vital for LGBTQ women. For example, over one third of transgender women report losing a job because of their gender identity or expression, and studies have found that lesbian, bisexual, and queer women

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<sup>42</sup> *Id.* at 349.

<sup>43</sup> *Zarda*, 883 F.3d at 113.

<sup>44</sup> *Id.* at 114.

are 30 percent less likely to receive invitations to interview for jobs than their straight counterparts.<sup>45</sup> Lesbian and bisexual women are more likely to live in poverty than heterosexual women, and female same-sex couples typically have lower incomes than married different-sex couples.<sup>46</sup> Transgender women of color also face discrimination in many contexts including experience pervasive housing discrimination--with 31 percent of Black transgender women and 27% of Native transgender women reporting being denied a home or apartment in the past year because they were transgender.<sup>47</sup> Making clear that protections against sex discrimination on the job, in housing, and elsewhere include protections against sexual orientation or gender identity discrimination will be transformative for LGBTQ women specifically. These protections also help ensure that women who depart from gender stereotypes and gendered expectations will not face discrimination or harassment based on, for example, a perception that they are part of the LGBTQ community, regardless of their gender orientation or sexual orientation. It can be difficult or impossible to definitively parse whether harassment or other discrimination is motivated by gender stereotypes or by perceived sexual orientation or gender identity; the Equality Act will provide broad protections against such discrimination without the need for such determinations.

Moreover, the Equality Act would provide groundbreaking new civil rights protections for all women, regardless of sexual orientation or transgender status, by closing longstanding gaps in federal law and amending Titles II and VI of the Civil Rights Act of 1964 to for the first time prohibit discrimination on the basis of sex (including pregnancy) in public spaces and services and in all federally-funded programs and activities. These protections against sex discrimination are long overdue.

#### **A. Prohibition of Sex Discrimination in Public Accommodations**

By amending Title II to add a prohibition of discrimination on the basis of sex, the Equality Act would ensure that for the first time federal law reaches discrimination against women in hotels, restaurants, theaters and sports arenas, stores, hair salons, taxi services, airline services, to name only a few examples. For example, under the Equality Act, women would have new legal protections against sex-based harassment in hotels or restaurants, or on trains, airplanes, and subways, and purveyors of these establishments and services would be on notice that they must institute policies and systems in place to address sex-based harassment of customers. These protections are sorely needed. For example, a 2017 survey of flight attendants found

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<sup>45</sup> See *Paying an Unfair Price: The Financial Penalty for LGBT Women in America*, MOVEMENT ADVANCEMENT PROJECT AND CENTER FOR AMERICAN PROGRESS, March 2015, <http://www.lgbtmap.org/policy-and-issue-analysis/unfair-price-lgbt-women>.

<sup>46</sup> *Id.* at 5, 14.

<sup>47</sup> S.E. James et al., *The Report of the 2015 U.S. Transgender Survey*, NATIONAL CENTER FOR TRANSGENDER EQUALITY, 2016.

that 20 percent had received a report of passenger-on-passenger sexual assault while working on a flight, but that flight attendants typically have no training on how to respond in such situations.<sup>48</sup> In addition, female solo travelers, of all sexual orientations and gender identities, frequently confront harassment, but do not consistently have access to security measures or experience responsiveness from tourism industry employees.<sup>49</sup> The Equality Act would help change this by prohibiting discrimination on the basis of sex in these spaces.

By prohibiting sex discrimination in public places and services, the Equality Act would also prohibit sex-based price discrimination. For example, studies have shown that car dealers typically quote lower prices to male customers than female customers for the same cars,<sup>50</sup> as do auto mechanics when customers do not indicate an expected price.<sup>51</sup> Under the Equality Act, service providers and retailers such as contractors, mechanics, and car dealerships would not be permitted to charge women more for the same work or the same product simply because of their sex.

The Equality Act's prohibition of sex discrimination in Title II would also provide new protection against breastfeeding parents being excluded from public spaces, which remains a persistent problem.<sup>52</sup> Harassment and discrimination based on lactation constitutes sex discrimination and would not be permissible in covered public places.<sup>53</sup> The Act would also provide additional protections for women who confront a pharmacy's refusal to fill prescriptions for contraception. When pharmacies provide other medications but refuse to provide prescription

<sup>48</sup> Karl Paul, *After man is arrested for groping passenger, women speak about #MeToo at 35,000 Feet*, MARKETWATCH, Oct. 25, 2018, <https://www.marketwatch.com/story/the-metoo-movement-has-now-reached-35000-feet-2018-05-23>.

<sup>49</sup> See generally Lucy Vlahakis, *Fly? #MeToo? Two out of Five Women Report Sexual Harassment When Traveling Solo*, MOWER, Feb. 8, 2018, <https://www.mower.com/insights/fly-metoo-two-out-of-five-women-report-sexual-harassment-when-traveling-solo/>; Alex Temblador, *Travel Safety Expert Shares Her Best Safety Tips for Women Travelers*, TRAVEL PULSE, March 5, 2019, <https://www.travelpulse.com/news/features/travel-safety-expert-shares-her-best-safety-tips-for-women-travelers.html>.

<sup>50</sup> Ian Ayres, *Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause*, FACULTY SCHOLARSHIP SERIES, 1995, [https://digitalcommons.law.yale.edu/fss\\_papers/1523/](https://digitalcommons.law.yale.edu/fss_papers/1523/).

<sup>51</sup> Meghan R. Busse et al., *Repairing the Damage: The Effect of Price Expectations on Auto-Repair Price Quotes*, NATIONAL BUREAU OF ECONOMIC RESEARCH, 2013, <https://www.nber.org/papers/w19154>.

<sup>52</sup> See e.g., Trishna Doroski, *Nursing Mother Asked to Leave a Hospital Waiting Room for Breastfeeding*, BABYGAGA, March 29, 2019, <https://www.babygaga.com/mom-kicked-out-hospital-waiting-room-breastfeeding/>; *Breastfeeding Mother Asked To Leave Chick-Fil-A Restaurant*, WNEM, Jan. 15, 2018, [https://www.wnem.com/news/breastfeeding-mother-asked-to-leave-chick-fil-a-restaurant/article\\_dc4e9ba4-709f-5a03-921d-7195c6be1363.html](https://www.wnem.com/news/breastfeeding-mother-asked-to-leave-chick-fil-a-restaurant/article_dc4e9ba4-709f-5a03-921d-7195c6be1363.html); Amber Jayanth, *Water Park Staff Told Breastfeeding Mom to Cover Up or Leave*, WOMAN SAYS, FOX 19, Jul. 6, 2018, <http://www.fox19.com/story/38586977/silverlake-water-park-in-erlanger-tells-breastfeeding-mom-to-cover-up-or-leave/>.

<sup>53</sup> See generally, e.g., *EEOC v. Houston Funding II, Ltd.*, 717 F.3d 425 (5th Cir. 2013) (lactation is a related medical condition of pregnancy for purposes of Title VII, and an adverse employment action motivated by the fact that a woman is lactating constitutes sex discrimination).

birth control or emergency contraception, that is sex discrimination.<sup>54</sup> There have been instances in at least 26 states of women being refused birth control at the pharmacy, with some pharmacists even refusing to transfer a prescription to another pharmacist or to refer her to another pharmacy.<sup>55</sup>

### **B. Prohibition of Sex Discrimination in Federally Funded Programs and Activities**

While current federal law prohibits sex discrimination in particular types of federally funded programs--most significantly, education programs and activities<sup>56</sup> and health care programs and activities<sup>57</sup>--no comprehensive protection exists against sex discrimination in federally funded programs. The Equality Act would change this, recognizing that federal dollars should never support sex discrimination.

For example, under the Equality Act, recipients of federal funding would be prohibited from discriminating against women or women-owned businesses in making contracting decisions.<sup>58</sup> Expanding Title VI's protections to reach discrimination on the basis of sex would also ensure new protections against sex discrimination and sex-based harassment are available for individuals who perform work in federally funded programs or activities as independent contractors rather than as employees. While Title VII prohibits sex-based harassment and other forms of sex discrimination against employees, workers who are not properly classified as employees frequently lack any such protections under current law. The Equality Act would change this in federally funded programs and activities, ensuring that, for example, a consultant

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<sup>54</sup> See generally, e.g., Commission Decision on Coverage of Contraception (Dec. 14, 2000) (because prescription contraceptives are available only for women, employer's refusal to offer insurance coverage for them is a sex-based exclusion), available at <https://www.eeoc.gov/policy/docs/decision-contraception.html>; *Cooley v. DaimlerChrysler Corp.*, 281 F. Supp. 2d 979, 984 (E.D. Mo. 2003) ("[A]s only women have the potential to become pregnant, denying a prescription medication that allows women to control their reproductive capacity is necessarily a sex-based exclusion."); *Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266, 1271-72 (W.D. Wash. 2001) (exclusion of prescription contraceptives from employer's generally comprehensive prescription drug plan violated PDA).

<sup>55</sup> *Pharmacy Refusals 101*, NWLC, Dec. 28, 2017, <https://nwc.org/resources/pharmacy-refusals-101/>.

<sup>56</sup> 20 U.S.C. § 1681 *et seq.*

<sup>57</sup> 42 U.S.C. § 18116.

<sup>58</sup> See, e.g., *Carnell Const. Corp. v. Danville Redev. and Hous. Auth.*, 745 F.3d 703, 715 (4th Cir. 2014) (contractor has Title VI standing because its president and sole shareholder is African-American, it was eligible for consideration as a contractor on a federally funded public project, and it alleged that defendants discriminated against it based on race); *Jacobson v. Delta Airlines*, 742 F.2d 1202, 1209 (9th Cir. 1984) (holding a contractor, corporate or individual, may be deemed a "person" and covered by Title VI); U.S. Department of Justice, Title VI Legal Manual, at <https://www.justice.gov/crt/fcs/T6manual5> ("Once an entity receives federal financial assistance, jurisdiction under Title VI attaches and if the recipient's program includes selection of contractors to carry out its various functions, then Title VI covers that selection process.").

on a federally funded project who was sexually harassed by the director of that project would have a meaningful legal remedy.<sup>59</sup>

Broadly prohibiting sex discrimination in federally funded programs would also provide new tools to address systematically inadequate responses to sexual assault or intimate partner violence by federally funded law enforcement agencies. For example, the Equality Act would provide new protection against a federally funded police department's systematic failure to test rape kits.<sup>60</sup>

In protecting against sex discrimination, including discrimination on the basis of pregnancy, childbirth, and related medical conditions, the Equality Act would also ensure that federally funded entities making other forms of healthcare and health information available could not discriminate by refusing to provide individuals with reproductive health care or information.<sup>61</sup> For example, the Equality Act would prohibit an organization that received federal funding to provide services to trafficking victims, including health care services, from refusing to provide trafficking victims access to reproductive health care. This would help eliminate barriers to comprehensive health care for those in the care of or seeking assistance from a federally-funded program.

### C. The Equality Act Promotes Safety and Opportunity for Women and Girls

For all the reasons set out above, the Equality Act represents a major step forward for safety, equity, and dignity for all women and girls. Its requirement that transgender women and girls be included in gender-specific spaces and programs forwards these values, and the National Women's Law Center rejects any suggestion that cisgender women and girls are served by the exclusion of transgender women and girls, whether from bathrooms and locker rooms, from women's sports programs, or otherwise from our public and civic life. Our country has a long and unfortunate history of justifying sex discrimination and curtailment of women's liberty to make their own decisions about their lives through assertions that such actions are necessary to protect women and girls.<sup>62</sup> Just as this stereotype-driven rationale falls short as a legal or moral

<sup>59</sup> See *United States v. Harris Methodist Ft. Worth*, 970 F.2d 94, 97 (5th Cir. 1992) (holding that physicians who were neither beneficiaries nor employees of a federally funded hospital were protected by Title VI from race discrimination in admitting privileges by the hospital).

<sup>60</sup> See generally Meaghan Ybos, *No Backlog: Why The Epidemic of Untested Rape Kits is not a Symbol of Insufficient Police Budgets But Instead a Failure to Investigate Rape*, THE APPEAL, Oct. 11, 2017, <https://theappeal.org/no-backlog-why-the-epidemic-of-untested-rape-kits-is-not-a-symbol-of-insufficient-police-budgets-but-instead-a-failure-to-investigate-rape/>.

<sup>61</sup> Thus, for example, Title VII's protection against sex discrimination requires employers to make maternity care coverage available on the same terms as they make other health coverage available. 29 C.F.R. § 1604.10(b).

<sup>62</sup> See generally *Muller v. Oregon*, 208 U.S. 412 (1908) (justifying law limiting women's ability to work overtime by holding that State had a valid and overriding interest in women-protective laws); *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948) (upholding law prohibiting women from working in bars based on conclusion that such laws were

justification for excluding women from opportunities or restricting their autonomy, it also fails as a rationale for justifying exclusion of and discrimination against transgender women and girls in sports<sup>63</sup> or any other context.

Allowing discrimination and exclusion based on a determination that an individual is insufficiently feminine threatens harm to any woman or girl who departs from traditional gender stereotypes.<sup>64</sup> By rejecting such gender policing, the Equality Act protects the rights of all women and girls.

Moreover, nondiscrimination laws and policies protecting transgender people have existed for years in many states and localities around the country, and experience has shown they have protected transgender people from discrimination without harming anyone else.<sup>65</sup>

While some people have more recently become aware of transgender people and the issues they face, there is nothing “novel” or “untested” about the protections the Equality Act creates for this vulnerable population. Over the past two decades, states and municipalities have successfully implemented prohibitions on gender identity discrimination and trans inclusive protections, ensuring that all residents are treated equally under the law.

Twenty-one states, the District of Columbia, and nearly 200 local governments, large and small, already prohibit employment and housing discrimination based on gender identity. Twenty states prohibit discrimination in public accommodations on the basis of gender identity.<sup>66</sup> Many of these laws have been around for years, or even decades – Minnesota adopted its

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protective), *disapproved of by Craig v. Boren*, 429 U.S. 190 (1976). In *Frontiero v. Richardson*, 411 U.S. 677 (1973) (plurality opinion), the Court addressed these protective pretexts: “Traditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.” *Id.* at 684; see also *Dothard v. Rawlinson*, 433 U.S. 321, 335 (1977) (“[T]he argument that a particular job is too dangerous for women may appropriately be met by the rejoinder that it is the purpose of Title VII to allow the individual woman to make that choice for herself.”); *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2316 (2016) (holding that abortion laws pretextually justified as protections for women’s health and safety violated women’s liberty).

<sup>63</sup> Notably, the National Women’s Law Center, the Women’s Sports Foundation and other women’s rights organizations have indicated their strong and public support for the full inclusion of transgender people in athletics and have rejected the suggestion that cisgender women and girls benefit from the exclusion of women and girls who happen to be transgender.

<sup>64</sup> See *generally Price Waterhouse*, 490 U.S. 228.

<sup>65</sup> For example, in 2016, after North Carolina passed HB2 barring transgender people from single-sex spaces like restrooms, over 250 domestic violence and sexual assault organizations signed onto a statement rejecting the premise that transgender people’s presence in restrooms threatens the safety of others. The organizations explained of non-discrimination laws, “These laws have protected people from discrimination without creating harm.” See [https://www.lambdalegal.org/blog/20160421\\_sadv](https://www.lambdalegal.org/blog/20160421_sadv).

<sup>66</sup> *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, June 11, 2018, <https://www.hrc.org/state-maps/public-accomodations>.

protections for transgender people more than 25 years ago.<sup>67</sup> The Equality Act's definition of gender identity closely tracks these many state and local laws.

**V. Freedom of Religion Is Protected Under the Equality Act**

**A. Protections Within Existing Civil Rights Laws**

Freedom of religion is already protected by the Constitution and through existing federal civil rights statutes. Currently religious organizations and people of faith benefit from a set of thoughtful exemptions from federal civil rights law that amply protect religious actors from government intrusion. The Equality Act amends existing civil rights law, including the Civil Rights Act of 1964 and the Fair Housing Act, so the protections provided by the Equality Act would retain the exact same religious exemptions that already exist for every other protected characteristic. The Equality Act does not alter these exemptions, as described further below.

**i. Title II**

Businesses open to the public are expected to provide services on equal terms to all patrons. The Equality Act would ensure that businesses may not discriminate on the basis of race, religion, sex, sexual orientation, or gender identity, just as they may not discriminate on the basis of disability. Current law provides an exemption for private clubs and other establishments that are not actually open to the general public. Churches and other places of worship providing spaces and services exclusively to their congregations, including meetings spaces or for example, spaghetti dinners, would not be considered places of public accommodation. Further, clergy operating in their ministerial capacity would never be compelled to perform a religious ceremony in conflict with their beliefs – including any marriage ceremony.

**ii. Title VII**

Title VII of the Civil Rights Act contains an exemption for religious entities with regard to expressing a religious preference in employment. Title VII's limited exemption allows religious corporations, associations, or societies to limit employment to members of their own faith, or co-religionists. This exemption extends to schools, colleges, and universities that are supported, owned, controlled or managed by a religious organization.<sup>68</sup>

Title VII also requires businesses to provide accommodations to employees provided it does not present an undue hardship. Employees will continue to be able to seek religious

<sup>67</sup> Emma Margolin, *How Minneapolis became the first city in the country to pass trans protections*, MSNBC, June 3, 2016, <http://www.msnbc.com/msnbc/how-minneapolis-became-the-first-city-the-country-pass-trans-protections>.

<sup>68</sup> 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2).

accommodations in the workplace, such as seeking time off to attend religious service, receive breaks for daily prayers, or wear a religious head covering.<sup>69</sup> Religious employees may also be reassigned to different tasks when an assigned task conflicts with religious principles such as production of weapons of war.<sup>70</sup> The Equality Act would maintain these protections.

### iii. Fair Housing Act

Religious entities are exempt from the 1968 Fair Housing Act with regard to the sale, rental, or occupancy of a dwelling owned by the organization for non-commercial purposes.<sup>71</sup> In addition, the law exempts single family homes sold or rented by the owner as well as rooms or units for rent where there are no more than four units and the owner lives on the premises.<sup>72</sup> While the latter provision is not explicitly or only a religious exemption, it effectively allows people of faith to take into consideration the religious beliefs of individuals with whom they will be sharing close living quarters. The Equality Act would maintain these existing exemptions.

### B. The Religious Freedom Restoration Act

In addition to maintaining existing religious exemptions in civil rights laws, the Equality Act includes a provision clarifying that the Religious Freedom Restoration Act (RFRA) cannot be misused to allow entities to violate federal civil rights laws. This does not eliminate RFRA, but rather limits its reach to ensure that it cannot be used as a defense to civil rights law violations.

When passed into law more than two decades ago, RFRA was designed to protect minority religious groups' constitutional right to freely exercise their religious beliefs. RFRA prohibits the federal government from "substantially burden[ing]" a person's religious exercise unless doing so is the least restrictive means of furthering a compelling governmental interest.<sup>73</sup> RFRA was supported by a broad coalition of organizations including many in the civil rights community, who welcomed the law as an important shield for people of faith from majority rule.

Despite this intent, individuals and businesses have worked to distort RFRA into a blank check to discriminate or as a way to impose their religious beliefs on others. In the 2014 case *Burwell v. Hobby Lobby Stores*, a narrow majority of the U.S. Supreme Court allowed RFRA to be used to

<sup>69</sup> See e.g., *EEOC v. Alamo Rent -A-Car, LLC; ANC Rental Corporation*, CIV 02 1908 PHX ROS available at <https://www.eeoc.gov/eeoc/newsroom/release/5-30-06.cfm>; See generally *What You Should Know About Workplace Religious Accommodation*, EEOC, [https://www.eeoc.gov/eeoc/newsroom/wysk/workplace\\_religious\\_accommodation.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/workplace_religious_accommodation.cfm).

<sup>70</sup> See e.g., *EEOC v. Dresser Rand Co.*, 04-CV-6300, W.D.N.Y. available at <https://www.eeoc.gov/eeoc/newsroom/release/11-8-11b.cfm>; See generally *What You Should Know About Workplace Religious Accommodation*, EEOC, [https://www.eeoc.gov/eeoc/newsroom/wysk/workplace\\_religious\\_accommodation.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/workplace_religious_accommodation.cfm).

<sup>71</sup> 42 U.S.C. § 3607 (a).

<sup>72</sup> 42 U.S.C. § 3603 (b).

<sup>73</sup> 42 U.S.C. § 2000bb-1 (b).

discriminate against others and take insurance coverage of contraceptives away from women.<sup>74</sup> In dissent, Justice Ginsburg expressed her concern that decision could be taken still further, and lead to RFRA being used to permit discrimination. In August 2016, this concern materialized in a court decision by a federal judge in Michigan in the case *EEOC v. R.G. & G.R. Harris Funeral Homes*. In the decision, the judge ruled in favor of a Detroit-based funeral home who fired a transgender employee due to her gender identity, stating that RFRA could be used as a defense in a sex discrimination claim under Title VII—exempting the employer from Title VII's non-discrimination requirements. The Judge specifically relied upon *Hobby Lobby* in his decision.<sup>75</sup>

Although the Sixth Circuit overturned the district court decision in *Harris Funeral Homes* in favor of the transgender employee, the case has been appealed to the Supreme Court. While RFRA, if applied as originally intended, should not be able to be used as a defense to discriminate, the district court decision in *EEOC v. R.G. & G.R. Harris Funeral Homes* illustrates the importance of making this intention explicit. The federal government has a well-settled compelling interest in eradicating discrimination through robust enforcement of our non-discrimination laws. The Equality Act would prohibit the use of RFRA as a defense for, challenge to the application of, or enforcement of the civil rights laws amended by the Equality Act, restoring the intention of RFRA to protect religious freedom without allowing harm to others. This would not limit the use of RFRA in contexts outside of federal nondiscrimination laws.

### **C. The Equality Act Strengthens Protections for People of Faith**

By ensuring RFRA cannot be misused as a defense for, challenge to the application of, or enforcement of any of the civil rights laws amended by the Equality Act, the Equality Act strengthens nondiscrimination protections for all protected communities, including people of faith. Additionally, the Equality Act would update the public spaces and services covered in current law to include retail stores, services such as banks and legal services, and transportation services. These important updates would strengthen existing protections for everyone currently covered by these laws, including people of faith.

### **VI. Conclusion**

For all the reasons outlined above, we urge Congress to pass the Equality Act.

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<sup>74</sup> The Justices were asked to decide whether requiring a corporation to provide insurance coverage that includes contraception under the Affordable Care Act (ACA) is a “substantial burden” on the corporation with religious objections, and whether corporations are covered by RFRA. The Court ruled that closely held for-profit corporations are exempt from complying with the ACA contraception mandate based on the company’s religious belief under RFRA. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

<sup>75</sup> *EEOC v. R.G. & G.R. Harris Funeral Homes*, 884 F.3d 560 (6th Cir. 2018).

Chairman NADLER. Thank you.  
 Reverend Brown—Reverend Wiley, rather. I am sorry.

**TESTIMONY OF REVEREND DOCTOR DENNIS WILEY**

Rev. WILEY. Good morning. My name is the Reverend Doctor Dennis W. Wiley, pastor emeritus of the Covenant Baptist United Church of Christ in Washington, D.C., which I pastored along with my wife, the Reverend Doctor Christine Y. Wiley, for 32 years. I am a liberation theologian, a community activist, and a social justice advocate.

As a religious leader, I am here today to express my full, unequivocal support of the Equality Act. My support is based on my religious upbringing, my personal experience, and the influence of prophetic trailblazers like the Reverend Doctor Martin Luther King Jr.

In a speech titled “The American Dream” delivered at Lincoln University in 1961, King observed that while morality cannot be legislated, behavior can be regulated. In other words, according to King, “It may be true that the law can’t make a person love me, but it can keep that person from lynching me.”

Born and raised in Winston-Salem, North Carolina, until the age of 14 during the 1950s and ’60s, I never witnessed the horror of lynching, but I did experience the injustice of racial segregation. Because of the color of my skin, I lived in a segregated neighborhood, attended segregated schools, shopped at segregated stores, ate at segregated restaurants, drank from segregated water fountains, used segregated restrooms, rode segregated buses, and sat in the balcony of a segregated movie theater after entering the side door and climbing 14 flights of stairs.

And while I was constantly surrounded by the love of family, neighbors, church members, teachers, and friends, I could not help but notice that there was a sharp line of division, primarily between the black world in which I lived and the white world to which I was exposed only through television and in the movies.

And so to add insult to injury, courts and the public framed laws enforcing segregation and banning interracial marriage as morally sound and founded in Christian heritage. And so it was not until I moved to the Nation’s capital in the same year that the 1964 Civil Rights Act was passed that I experienced white teachers, white classmates, and integrated public facilities for the very first time.

And it was from that vantage point that my soul was able to look back and find solace in the slow and usually begrudging American evolution from a country in which systemic racism permeated our laws to one with comprehensive civil rights protections in employment, public accommodations, and at the ballot box.

All too often the racist laws that reinforced racism were justified and maintained by arguments purportedly rooted in religion, and the same is true for laws that failed to protect our LGBTQ brothers and sisters from those who would condemn them for who they are and who they love.

When my wife and I accepted the challenge to leave Covenant to become a beloved community that welcomes and affirms all, including LGBTQ persons, I was reminded that King once said, “Cow-

ardice asked the question, ‘Is it safe?’ Expediency asked the question, ‘Is it politic?’ And vanity comes along and asks the question, ‘Is it popular? But conscience asked the question, ‘Is it right?’”

Well, we did what we did at Covenant not because it was safe, politic, or popular, but because we believed it was right. And I feel the same way today about supporting the Equality Act. As our LGBTQ brothers and sisters move around this Nation, they should never have to fear losing a job, being evicted from a house or apartment, refused service at a restaurant, denied approval for a loan, or rejected admission to a school because of their sexual orientation or gender identity.

And so, in closing, I am reminded that a couple of years after we agreed to perform union ceremonies at our church, we went to New York to see our younger daughter act in a play toward the end of her second year at Julliard. Shortly after we arrived in the city, she stopped by our hotel room for a visit because she said she wanted to share something with us.

It was then that she came out to us as a lesbian. We were shocked because we did not see this coming. However, I immediately got up, went over to her, gave her a big hug, and told her how much I love her. My wife was a little slower responding, not because she was disappointed or upset, but because being a mother, she was afraid of what danger our daughter might face.

Well, I am happy to tell you today that my daughter, Samira Wiley, is doing just fine as a successful, Emmy Award-winning actress who is happily married to the love of her life, Lauren Morelli. Not every LGBTQ kid is as lucky as Samira. But when I told Samira that I would be giving this testimony today, she wanted me to be sure to tell you that if we, her parents, had not accepted her for who she is, she would not have the courage, the confidence, or the self-esteem to be not only a successful actress, but also a positive role model for other LGBTQ persons.

So let us make sure that the Equality Act becomes law so that all of our beautiful, promising, gifted LGBTQ citizens just like my daughter and daughter-in-law can live their lives free of fear, free of bigotry, and free of discrimination.

[The statement of Rev. Wiley follows:]

U.S. House of Representatives  
Committee on the Judiciary  
Hearing on the Equality Act  
April 2, 2019

Testimony of the Rev. Dennis W. Wiley, Ph.D.  
Pastor Emeritus, Covenant Baptist United Church of Christ

**Who I Am**

Good morning. My name is The Reverend Dr. Dennis W. Wiley, Pastor Emeritus of the Covenant Baptist United Church of Christ in Washington, DC, which I pastored along with my wife, The Reverend Dr. Christine Y. Wiley, for 32 years. I am also a liberation theologian, a community activist, and a social justice advocate. As a religious leader, I am here today to express my full, unequivocal support of the Equality Act.

**What I Believe**

My support is based on my religious upbringing, my personal experience, and the influence of prophetic trailblazers like the Rev. Dr. Martin Luther King Jr. In a speech titled “The American Dream,” delivered at Lincoln University in 1961, King observed that while morality cannot be legislated, “behavior can be regulated.” In other words, according to King, “It may be true that the law can’t make a [person] love me, but it can keep [that person] from lynching me . . .” Born and raised in Winston-Salem, NC until the age of 14 during the 1950’s and early 1960’s, I never witnessed the horror of lynching, but I did experience the injustice of racial segregation. Because of the color of my skin, I lived in a segregated neighborhood, attended segregated schools, shopped at segregated stores, ate at segregated restaurants, drank from segregated water fountains, used segregated restrooms, rode segregated buses, and sat in the balcony of a segregated movie theater after entering the side door and climbing 14 flights of stairs. And while I was constantly surrounded by the love of family, neighbors, church members, teachers, and friends, I could not help but notice that there was a sharp line of division between the black world in which I lived and the white world to which I was exposed primarily on television and in movies. But, as demonstrated in the landmark 1954 “Brown v. Board of Education” Supreme Court school desegregation decision, the intrinsic injustice of segregation is not racial *separation*, but racial *inequality*. Consequently, the so-called

“separate but equal” doctrine of the 1896 “Plessy v. Ferguson” Supreme Court decision proved to be little more than a 58 year old farce. And, to add insult to injury, courts and the public framed laws enforcing segregation and banning interracial marriage as morally sound and founded in Christian heritage.

And so it was not until I moved to the nation’s capital in the same year that the 1964 Civil Rights Act was passed that I experienced white teachers, white classmates, and integrated public facilities for the very first time. And it was from that vantage point that my soul was able to look back and find some solace in the slow, and usually begrudging, American evolution from a country in which systemic racism permeated our laws to one with comprehensive civil rights protections in employment, public accommodations, and at the ballot box. All too often the racist laws that reinforced racism were justified and maintained by arguments purportedly rooted in religion. And the same is true for laws that fail to protect our LGBTQ brothers and sisters from those who would condemn them for who they are and who they love.

#### **How I Practice What I Believe**

This is why, in our tenure as pastors of Covenant Church, my wife and I have unashamedly and unapologetically strived to build a “Beloved Community” where blacks and whites, men and women, gay, lesbian, bisexual, transgender, and “queer” persons are not rejected but welcomed, not tolerated but celebrated, not excluded but included, not denigrated but elevated, and not discouraged but encouraged to be their true selves as they seek to realize their full, God-given potential. So when any of these precious human beings joined our church, we opened our doors, our arms, and our hearts so that they might become members with all the rights, responsibilities, and privileges that any other member enjoyed. This is why our black members have been encouraged to celebrate their heritage just as white members celebrate theirs. This is why women are eligible and able to serve in any and every position open to men, including pastor, deacon, and trustee. And this is why my wife and I successfully co-chaired DC Clergy United for Marriage Equality ten years ago, after conducting Holy Union Ceremonies for lesbian and gay couples years before Marriage Equality was legalized.

When my wife and I accepted the challenge to lead Covenant to become a “Beloved Community” that welcomes and affirms all, including LGBTQ persons, I was reminded that King once said, “Cowardice asks the question, ‘Is it safe?’ Expediency asks the question, ‘Is it politic?’ and Vanity comes along and asks the question, ‘Is it popular?’ But Conscience asks the question, ‘Is it right?’” Well, we did what we did at Covenant, not because it was safe, politic, or popular, but because we believed it was right. And I feel the same way today about supporting the Equality Act. As our LGBTQ brothers and sisters move around this nation, they should never have to fear losing a job, being evicted from a house or apartment, refused service at a restaurant, denied approval for a loan, or rejected admission to a school because of their sexual orientation or gender identity.

#### **A Personal Story**

In closing, I am reminded that a couple of years after we agreed to perform Union Ceremonies at our church, we went to New York to see our younger daughter act in a play toward the end of her second year at Juilliard. Shortly after we arrived in the city, she stopped by our hotel room for a visit because she said she wanted to share something with us. It was then that she came out to us as a lesbian. We were shocked because we did not see this coming. However, I immediately got up, went over to her, gave her a big hug, and told her how much I loved her. My wife was a little slower responding, not because she was disappointed or upset, but because, being a mother, she was afraid of what danger our daughter might face in this heterosexist, homophobic, transphobic society in which we live. Well, I am happy to tell you today that my daughter--who’s name is Samira Wiley—is doing just fine as a successful, Emmy Award winning actress who is happily married to the love of her life, Lauren Morelli. And, of course, her mom and I were proud to perform the wedding ceremony. And when I told Samira that I would be giving this testimony today, she wanted me to be sure to tell you that if we had not accepted her for whom she is, she would not have the courage, the confidence, or the self-esteem to be not only a successful actress, but also a positive role model for other LGBTQ persons. So let’s make sure that the Equality Act becomes law so that all of our beautiful, promising, gifted LGBTQ citizens, like my daughter and daughter-in-law, can live their lives free of fear, free of bigotry, and free of discrimination.

Chairman NADLER. Thank you very much.  
Mr. Brown.

#### TESTIMONY OF CARTER BROWN

Mr. BROWN. My name is Carter Brown, and I am honored to submit this testimony in support of the Equality Act and in support of the millions of hard-working Americans whose livelihoods have been threatened by the lack of clear, permanent workplace protections.

Each day, workers across the country are subject to anti-LGBTQ discrimination and harassment that denies them the fair chance to earn a living. I know this because it happened to me.

I once believed that I was the embodiment of the American dream. My early days were spent in a family that lived paycheck to paycheck, struggling to keep food on the table. I had even briefly experienced homelessness at the age of 14 while a student in high school. Determined to break the cycle of poverty, I fought hard to earn my diploma and was the first in my family to go to college.

I learned I had a penchant for real estate and entered the field determined to be a success story. In the following years, I married my best friend, and we welcomed our daughter into the world. I felt a responsibility, as many new husbands and fathers do, to provide for my family. So I continued to work hard and established myself in my career. I earned 3 promotions in only 2 years, enabling me to purchase our first home.

These visual markers of success were proof that the American dream had not eluded me, but that it was clutched firmly in my hand. And then one day, I arrived to work and discovered that a coworker had outed me as a transgender man. Everything around me shattered.

In the months that followed, I was the subject of cruel office gossip and forced to endure invasive and defensive questioning from colleagues on the subject of my identity. When they weren't asking me to use other bathrooms or questioning me about my private life, my coworkers excluded me from work lunches and avoided me in the halls. I was suddenly isolated in a field where communication and teamwork was essential to doing my job.

To my coworkers, being transgender eclipsed everything. I began to dread coming into work and often spent lunch breaks alone, crying in my car. I was fired shortly after, and despite my previous achievements and excellent work performance, my termination from work was lawful.

In my home State of Texas, there are no explicit State statutes prohibiting discrimination on the basis of sexual orientation or gender identity. In fact, 30 States in total—that is more than half of the country—have no statutory protections whatsoever for LGBTQ workers who do experience discrimination in the workplace.

How can the American dream be realized when a majority of States have failed to extend equal access and equal opportunity to its citizens? My experience left me embarrassed and vulnerable. I was overwhelmed trying to cope with the crushing lack of financial security.

As a result of being fired, I was forced to cash out my 401K and defer auto loans and mortgage payments just to keep my family

afloat. We lost our health insurance and had to depend on Medicaid to care for my daughter's special health needs. It would be an understatement to say that the loss of my job caused my family significant economic and emotional turmoil.

And my experience is not uncommon. LGBTQ Americans rightfully fear being outed at work will cause them to lose their jobs, be passed over for promotions, or suffer lost wages. It should come as no surprise that more than half of LGBTQ workers hide their LGBTQ identity at work.

The Equality Act is simple. It amends existing civil rights law to include sexual orientation and gender identity as protected characteristics to provide consistent and explicit nondiscrimination—I am sorry, explicit nondiscrimination protections for LGBTQ people across key areas of life.

In addition to these changes, the Equality Act updates the Civil Rights Act to more fully reflect the way we live our lives today. This amendment to the Civil Rights Act simply modernizes protections that will not only protect me as a transgender man, but my family and many people who I love.

Texas is one of the only five States in the country that has no State-level public accommodation statute. This means that my family can still be denied service at a store or by a public car service because of my race without any legal recourse, for example.

All Americans, regardless of sexual orientation or gender identity, need permanent and explicit nondiscrimination laws to protect them in the workplace. If the Equality Act had been in place during my employment, it would have been illegal for my employer to engage in harassment and fire me because I was transgender. My family would not have had to shoulder the burden of my loss of income and worry about my emotional health.

I understand that not everyone shares my values, and I may never change their minds. But we can change the law. A person's sexual orientation or gender identity has nothing to do with their ability to do their job. But now because there are no clear Federal protections in place for LGBTQ workers, passing this historic piece of legislation has everything to do with our survival.

Thank you.

[The statement of Mr. Brown follows:]

## Testimony of Carter Brown

U.S. House of Representatives - Committee on The Judiciary  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Hearing on The Equality Act (H.R. 5) - April 2, 2019

My name is Carter Brown and I am honored to submit this testimony in support of the Equality Act and in support of the millions of hard-working Americans whose livelihoods have been threatened by a lack of clear, permanent workplace protections. Each day, workers across the country are subject to anti-LGBTQ discrimination and harassment that denies them a fair chance to earn a living. I know this, because it happened to me.

I once believed I was the embodiment of the American Dream. My early days were spent in a family that lived paycheck to paycheck, struggling to keep food on the table. I had even briefly experienced homelessness at the age of fourteen while a student in high school. Determined to break the cycle of poverty, I fought hard to earn my diploma and was the first in my family to go to college. I learned I had a penchant for real estate and entered the field determined to be a success story.

In the following years I married my best friend and welcomed our daughter into the world. I felt a responsibility, as many new husbands and fathers do, to provide for my family. So I continued to work hard and establish myself in my career. I earned three promotions in two years, enabling me to purchase my very first home. These visual markers of success were proof that the American Dream had not eluded me, but that it was clutched firmly in my hand.

And then one day, I arrived to work and discovered that a coworker had outed me as a transgender man. Everything around me shattered.

In the months that followed, I was the subject of cruel office gossip and forced to endure invasive and offensive questioning from colleagues on the subject of my identity. On one occasion, I was cornered in a meeting room by several coworkers who told me I was really a woman, because I had a vagina. Another coworker asked if I “had already had the surgery at the bottom,” while looking me up and down.

When they weren’t asking me to use other bathrooms or questioning me about my private life, my coworkers excluded me from work lunches and avoided me in the halls. I was suddenly isolated in a field where communication and teamwork was essential to doing my job. To my

coworkers, being transgender eclipsed everything. I began to dread coming into work and spent lunch breaks alone, crying in my car.

I was fired shortly after, and despite my previous achievements and excellent work performance, the termination from work was lawful. In my home state of Texas, there are no explicit state statutes prohibiting discrimination on the basis of sexual orientation or gender identity. In fact, 30 states in total – that is more than half of the country – have no statutory protections whatsoever for LGBTQ workers who experience discrimination in the workplace. How can the American Dream be realized when a majority of states have failed to extend equal access and equal opportunity to its citizens?

My experience left me embarrassed and vulnerable. I was overwhelmed trying to cope with a crushing lack of financial security. As a result of being fired, I was forced to cash out my 401k and defer auto loans and mortgage payments to keep my family afloat. We lost our health insurance and had to depend on Medicaid to care for my daughter's special health needs. It would be an understatement to say that the loss of my job caused my family significant economic and emotional turmoil. And my experience is not uncommon.

LGBTQ Americans rightfully fear being outed at work will cause them to lose their jobs, be passed over for promotions, or suffer lost wages. It should come as no surprise that more than half of all LGBTQ workers hide their LGBTQ identity at work.[1]

The Equality Act is simple. It amends existing civil rights law to include sexual orientation and gender identity as protected characteristics to provide consistent and explicit non-discrimination protections for LGBTQ people across key areas of life, including employment, housing, credit, education, public spaces and services, federally funded programs, and jury service. The legislation also amends the Civil Rights Act of 1964 to prohibit discrimination in public spaces and services and federally funded programs on the basis of sex, sexual orientation, and gender identity.

In addition to these changes, the Equality Act updates the Civil Rights Act to more fully reflect the way we live our lives today. Specifically, Title II of the Civil Rights Act is amended to strengthen the list of covered places to include providers of goods and services like stores, accountants, and banks, as well as transportation providers like taxis, as places of public accommodation. These modernized protections would not only protect me as a transgender man, but my family and many people who I love. Texas is one of only five states in the country that has no state level public accommodations statute. This means that my family can still be denied service at a store or by a taxi or car service because of my race without any legal recourse.

All Americans, regardless of sexual orientation or gender identity, need permanent and explicit nondiscrimination laws to protect them in the workplace. If the Equality Act had been in place during my employment, it would have been illegal for my employer to engage in harassment and fire me because I was transgender. My family would not have had to shoulder the burden of my loss of income and worry about my emotional health. I understand that not everyone shares my values, and I may never change their minds. But we can change the law. A person's sexual orientation or gender identity has nothing to do with their ability to do their job. But now, because there are no clear federal protections in place for LGBTQ workers, passing this historic piece of legislation has everything to do with our survival.

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[1] Human Rights Campaign Foundation. 2018. *Degrees of Equality: A National Study Examining Workplace Climate for LGBT Employees*. Washington, D.C.: Human Rights Campaign.

Chairman NADLER. Thank you.  
Ms. Beck.

#### TESTIMONY OF JULIA BECK

Ms. BECK. Thank you to Chair Nadler, Vice Chair Scanlon, and Ranking Member Collins for welcoming my testimony in consideration of the Equality Act.

If the act passes in its current form as H.R. 5, then every right that women have fought for will cease to exist. H.R. 5 is a human rights violation. Every person in this country will lose their right to single-sex sports, shelters, grants, and loans. The law will forbid ever distinguishing between women and men.

To be clear, I do support the general goal of the Equality Act, to protect people on the basis of sex, a physical and immutable biological reality; to protect sexual orientation, which is based on biological sex. I object to the inclusion of gender identity. People who call themselves transgender, nonbinary, and everything in between still deserve the same basic human rights that we all do, but treating someone as if they are a member of the opposite sex is not a civil right. In fact, this violates the rights of others.

People cannot change sex, no matter how many legal documents they alter. No matter how many dangerous surgeries they endure. This myth of changing sex has gained considerable traction not only because of the synonymous use of the words “sex” and “gender,” but also because trans activism is extremely well funded, with billionaire donors and a very deep sea of lobbyists.

Sex is a vital characteristic. Gender and identity are not. Sex can never be changed, but gender changes all the time. One hundred years ago, pink was a color for boys. Now pink is a girl’s color. This is an example of gender, social expectations of appearance, and behavior.

These expectations are based on sex stereotypes that prevent people from being their authentic selves. Unfortunately, gender identity forces people back into these stereotypical sex roles. This bill defines gender identity as “actual or perceived gender-related characteristics.” This is a circular definition, a logical fallacy.

There is no way to protect a person on the basis of their gender identity without a legitimate definition. Lawmakers across the country will have to consider which mannerisms, hair styles, occupations, and clothing choices make up one gender identity or another. How is this any different from the sex stereotypes women have been fighting to break free from? How is this not regressive?

The concept of gender identity suggests that there is an essentially female personality or feeling that a person can have, but no such thing as a female body. Making gender identity the law will, in fact, mandate a belief in a female penis or female testes.

The concept of—excuse me, deep down, deep down I believe that you have good intentions, but gender identity only does harm. Let me tell you what happens if H.R. 5 passes.

Male rapists will go to women’s prisons and will likely assault female inmates, as has already happened in the UK. Female survivors of rape will be unable to contest male presence in women’s shelters. Men will dominate women’s sports. Girls who would have taken first place will be denied scholastic opportunity. Women who

use male pronouns to talk about men may be arrested, fined, and banned from social media platforms.

Girls will stay home from school when they have their periods to avoid harassment by boys in mixed sex toilets. Girls and women will no longer have a right to ask for female medical staff or intimate care providers, including elderly or disabled women who are at serious risk of sexual abuse.

Female security officers will no longer have the right to refuse to perform pat down or intimate searches of males who say they are female. And women undergoing security checks will no longer have the right to refuse having those searches performed by men claiming a feminine identity.

For a good look at how lesbians are impacted by gender ideology and legislation, please read "Lesbians at Ground Zero," a survey from the UK about the harassment of lesbians in clear spaces, which I request to be placed in the hearing record. Everything I just listed is already happening, and it is only going to get worse if gender identity is recognized in Federal law. The authors of this bill have done a lot of work to make it sound like gender identity is well understood and has been around for a long time. But it is a new concept that can only ever refer to stereotypes and unverifiable claims.

The witnesses for the majority will talk about medical conditions and desperate unhappiness that everyone is surely sympathetic to, but this bill doesn't reference any medical condition. And unhappiness isn't a sex class, nor is it a reasonable category of civil rights protection. Everyone experiences unhappiness.

So I would ask the Members to strike the gender identity provisions of this bill and instead consider protecting all forms of self-expression and loving relationships under stronger sex stereotype discrimination provisions. Sex stereotype nondiscrimination could equally cover both Rupaul and Caitlyn Jenner in their rights to housing and employment, but only if we accurately recognize everyone's biological sex.

I thank the Republicans who invited me here, and I urge my fellow Democrats to wake up. Please acknowledge biological reality.

Thank you for your time.

[The statement of Ms. Beck follows:]



**Julia Beck**

**Women's Liberation Front**

**April 2, 2019**

**Equality Act (H.R. 5)**

Thank you for inviting me to speak in consideration of the Equality Act. Thank you to Chair Nadler, Vice Chair Scanlon, and Ranking Member Collins of the House Judiciary Committee for welcoming my testimony. If the Equality Act passes in its current form as HR 5, then women's rights will be abolished, and every right that women have fought for will cease to exist.

The Equality Act is a human rights violation. Every person in this country will lose our right to single sex sports, shelters, grants and loans. We will be unable to provide or deny intimate services to people of the opposite sex. We will no longer be able to distinguish between women and men.

To be clear, I do support the general goal of the Equality Act—to protect people on the basis of sex, a physical and immutable biological reality. To protect sexual orientation, which is based on biological sex. I object to the inclusion of “gender identity.”

People who call themselves transgender, nonbinary, and everything in between still deserve the same basic human rights that we all do. But treating someone as if they are a member of the opposite sex is not a civil right. In fact, this violates the rights of others.

People cannot change sex, no matter how many legal documents they alter, no matter how many dangerous surgeries they endure. This myth of changing sex has gained considerable traction, not only because of the synonymous use of the words ‘sex’ and ‘gender’, but also because trans activism is extremely well-funded, with billionaire donors and a very deep sea of lobbyists.

Sex is a vital characteristic. “Gender” and “identity” are not. Sex can never be changed, but gender changes all the time. One hundred years ago, pink was a color for boys. Now pink is a girl's color. This is an example of gender: social expectations of appearance and behavior. These expectations are based on sex stereotypes that prevent people from being their authentic selves. Unfortunately, “gender identity” forces people back into these stereotypical sex roles.

This bill defines “gender identity” as “actual or perceived gender-related characteristics.” This is a circular definition, a logical fallacy. There is no way to protect a person on the basis of their “gender identity” without a legitimate definition. Lawmakers across the country will have to consider which mannerisms, hairstyles, occupations, and clothing choices make up one “gender identity” or another. How is this any different from the sex stereotypes that women have been fighting to break free from? How is this not regressive?

The concept of gender identity suggests that there's an essentially female personality or feeling that a person can have, but no such thing as a female body. Making gender identity the law will in fact mandate a belief in a “female penis,” or “female testes.”

Deep down, I believe you have good intentions. But “gender identity” only does harm. Let me tell you what happens if HR5 passes:

- Male rapists will go to women's prisons and will likely assault female inmates, as already happened in the UK.
- Female survivors of rape will be unable to contest male presence in women's shelters.
- Men will dominate women's sports; girls who would have taken first place will be denied scholastic opportunity.
- Women who use male pronouns to talk about men may be arrested, fined, and banned from social media platforms.
- Girls will stay home from school when they have their periods to avoid harassment by boys in mixed-sex toilets.
- Girls and women will no longer have a right to ask for female medical staff or intimate care providers, including elderly or disabled women who are at serious risk of sexual abuse.
- Female security officers will no longer have the right to refuse to perform pat-down or intimate searches of males who say they're female, and women undergoing security checks will no longer have the right to refuse having those searches performed by men claiming a feminine identity.

For a good look at how lesbians are impacted by gender ideology and legislation, please read "Lesbians at Ground Zero", a survey from the UK about the harassment of lesbians in queer spaces, which is included in my written testimony. Everything I just listed is *already* happening, and it's only going to get worse if "gender identity" is recognized in federal law.

The authors of this bill have done a lot of work to make it sound like gender identity is well understood and has been around a long time. Yet it's a new concept with a circular definition that can only ever refer to stereotypes and unverifiable claims.

The witnesses for the majority will talk about medical conditions, and desperate unhappiness that everyone is surely sympathetic to. But this bill doesn't reference any medical condition, and unhappiness isn't a sex class, nor is it a reasonable category of civil rights protection. Everyone experiences unhappiness.

So I would ask the members to strike the gender identity provisions of this bill, and instead to consider protecting all forms of self-expression and loving relationships under stronger sex stereotype discrimination provisions. Sex stereotype nondiscrimination could equally cover both RuPaul and Caitlyn Jenner, in their rights to housing and employment, but only if we accurately recognize everyone's biological sex.

I thank the Republicans who invited me here, and I urge my fellow Democrats to wake up.  
Please acknowledge biological reality. Thank you for your time.

Sincerely,

Julia Beck

Julia Beck Testimony Attachment: <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-Wstate-BeckJ-20190402.pdf>

Chairman NADLER. Thank you.  
Professor Coleman.

**TESTIMONY OF DORIANE LAMBELET COLEMAN**

Ms. COLEMAN. Good morning. Thank you for inviting me to testify today.

My name is Doriane Coleman. I am a professor of law at Duke Law School, and I support equality.

As Chairman Nadler noted, the legal history of our country is in part a chronology of efforts designed to give meaning and effect to the original commitment in 1776, “All men are created equal.” The work is ongoing for those of us who weren’t originally meant to be its beneficiaries.

As the milestones reflect, the lesson is that different groups experience inequality for different reasons at the hands of different people and in different ways so that tailoring an effective remedy requires attention to those differences. Although the Nation benefits as equality expands, in fact, only some of us needed the Emancipation Proclamation and *Brown v. Board of Education*. Only some of us need Title IX and the Violence Against Women Act.

Approaches to equality that elide relevant differences are not only ineffective, they actually serve as cover for ongoing inequality. I have recently encountered advocacy that exemplifies this problem. The argument is that because some males identify as women, some women have testes. From this, it follows that sex and sex-linked traits can’t be the grounds for distinctions on the basis of sex because this excludes women with testes. This leaves gender identity as the only legitimate basis for classifying someone into, for example, girls- and women-only spaces and opportunities.

I support equality, including for the LGBTQ community, but I don’t support the current version of H.R. 5 because I say this with—because, and I say this with enormous respect for everyone who is working on the bill, it elides sex, sexual orientation, and gender identity. It is all sex discrimination, and at least impliedly, we are all the same. In opting for what is in effect a sex-blind approach to sex discrimination law, the legislation would serve as cover for disparities on the basis of sex. Sex is not just a concept. Females have and continue to be treated differently precisely because of our reproductive biology and stereotypes about that biology. The legal fiction that females and women with testes are the same for all purposes will take us backward, not forward.

I was asked to testify today because I have longed worked in the one area where this is most clear, Title IX and opportunities for girls and women in sport. Title IX, which requires schools to invest in male and female athletes equally, undoubtedly powers invaluable outcomes not only for the many individuals who are benefitted by its terms, but also for society in general.

Those of us who are athletes know that separation on the basis of sex is necessary to achieve equality in this space. Among scientific experts, it is accepted beyond dispute that males and females are materially different with respect to the main physical attributes that contribute to athletic performance. They agree that the primary reason for sex differences in these attributes is expo-

sure in gonadal males to much higher levels of testosterone during growth and development and throughout the athletic career.

This literally builds the male body in the respects that matter for sport. The first figure in my statement shows what we mean by much higher levels of testosterone. The second demonstrates how sex differences in athletic performance emerge coinciding with the onset of puberty, and the third illustrates the effects of those differences, again starting in adolescence.

The third marks the individual lifetime bests of three female Olympic champions in the 400 meters, including Team USA's Sanya Richards-Ross and Allyson Felix in the sea of male body performances run in a single year, 2017. It shows that the very best women in the world would lose to literally thousands of boys and men, including to thousands who would be considered second tier in the men's category.

And because it only takes three male-bodied athletes to preclude the best females from the medal stand, it doesn't matter if only a handful turn out to be gender nonconforming. If U.S. law changes so that we can no longer distinguish females from women with testes for any purpose, we risk not knowing the next Sanya Richards-Ross or the next Allyson Felix. We risk losing the extraordinary value that comes from having women like Serena Williams, Aly Raisman, and Ibtihaj Muhammad in our lives and on the medal stand.

If they bother to compete, they would be relegated to participants in the game. One prominent trans activist has said that we shouldn't be concerned that the victories would belong to trans girls and women going forward because what matters is their liberty to self-identify and their right to be treated equally throughout society. Others, including some in the Title IX advocacy community, have embraced this evolution, arguing that what we should care about is participation.

These advocates are right to seek avenues for transgender inclusion. But listen carefully to the particular bargain they are willing to strike. In effect, it is that we don't need parity of competitive opportunity. They are wrong about this.

Participation contributes to equality for females, but the real power of sport isn't in gym class. It is in teams, competitions, and victories. It is in the same numbers of athletic scholarships and of spots in finals and on podiums. It is in the fact that Brandi Chastain can win Worlds, celebrate like the guys, and get a whole generation of little girls to play soccer because she did.

It is in the fact that Simone Manuel can win Olympic gold in the 100-meter free with millions watching on primetime television and from there can lead a generation of African-American kids to the pool who didn't believe that swimming was for them.

I encourage you to consider revisions to H.R. 5 that provide protections for sexual orientation and gender identity that don't risk these invaluable goods and that are otherwise thoughtful about the circumstances in which sex still matters.

Thank you.

[The statement of Ms. Coleman follows:]

Professor Doriane Lambelet Coleman  
Oral Testimony re: H.R. 5  
U.S. House of Representatives, Committee on the Judiciary  
April 2, 2019

My name is Doriane Coleman, I am a Professor of Law at Duke Law School, and I support equality.

Supporting equality is always just the beginning, however. The legal history of our country is in part a chronology of efforts designed to give meaning and effect to the original commitment in 1776, "All men are created equal." The work is ongoing for those of us who weren't originally meant to be its beneficiaries.

As the milestones reflect, the lesson is that different groups experience inequality for different reasons, at the hands of different people, and in different ways, so that tailoring an effective remedy requires careful attention to those differences.

Although the Nation benefits as equality expands, in fact only some amongst us needed the Emancipation Proclamation and Brown v. Board of Education. Only some of us need Title IX and the Violence Against Women Act.

Approaches to addressing equality that elide relevant differences are not only ineffective; they can actually serve as cover for ongoing inequality.

I've recently encountered advocacy that exemplifies this problem:

The argument is that because some males identify as women some women have testes. From this, it follows that sex and sex-linked traits can't be the grounds for distinctions "on the basis of sex" because this excludes women with testes. Thus, gender identity is the only legitimate basis for classifying someone into and out of, for example, girls' and women's only spaces and opportunities.

I support equality including for the LGBTQ community. But I don't support the current version of H.R. 5 because – and I say this with enormous respect for everyone who cares about and is working on the bill – it elides sex, sexual orientation, and gender identity: It's all sex discrimination, and, at least impliedly, we're all the same. In opting for what is in effect a sex blind approach to sex discrimination law, the legislation would serve as cover for disparities on the basis of sex.

Females have and continue to be treated differently precisely because of our reproductive biology and stereotypes about that biology. Pretending that biological females and women with testes are the same for all purposes will take us backward not forward.

I was asked to testify today because I have long worked in the one area where this is most clear: Title IX and opportunities for girls and women in sport.

I was a Title IX baby, one of the first two girls to get a track scholarship to Villanova in 1978. I was a national collegiate champion in 1982 and went on to have a career in the sport before I turned to law practice and academia. For various reasons, without Title IX, it's unlikely that my life as it is would have been possible. Mine is just one of innumerable similar stories.

Title IX, which "requires [schools] to invest in male and female athletes equally" has and continues to power extraordinarily valuable outcomes:

"Since the passage of Title IX . . . , female participation in sport has increased more than 900%." (Schnell, 2016)

Tens of thousands of girls and women are now eligible for college scholarships, ensuring educational opportunities that for many wouldn't be realistic otherwise.

"Girls who play sport stay in school longer, suffer fewer health problems, enter the labor force at higher rates, and are more likely to land better jobs. They are also more likely to lead." (Brooke-Marciniak and de Varona, 2017)

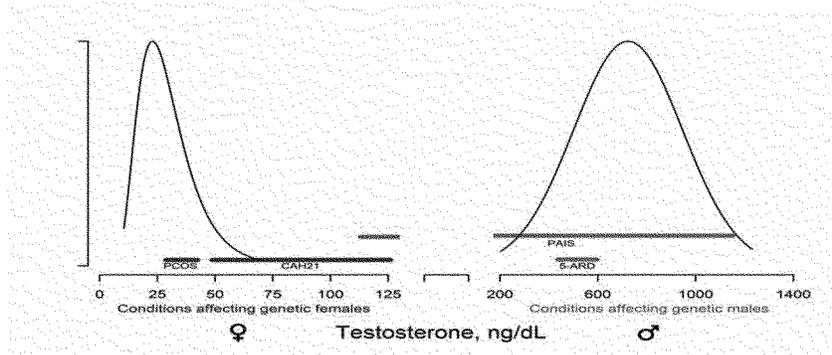
Our numbers in c-suites are notable, as are our contributions to public service. Representatives Demings and Bustos, Senator Gillibrand, and Governor Noem are just a few who are currently in office.

Those of us who were athletes know that segregation on the basis of sex or at least of sex-linked traits is necessary to achieve equality in this space. That's why, even though we've integrated almost all other spaces and opportunities, we are still committed to girls- and women's-only sport.

Scientists agree that males and females are materially different with respect to the main physical attributes that contribute to athletic performance, and they agree that the primary reason for sex differences in these attributes is exposure in gonadal males to much higher levels of testosterone during growth and development (puberty), and throughout the athletic career.

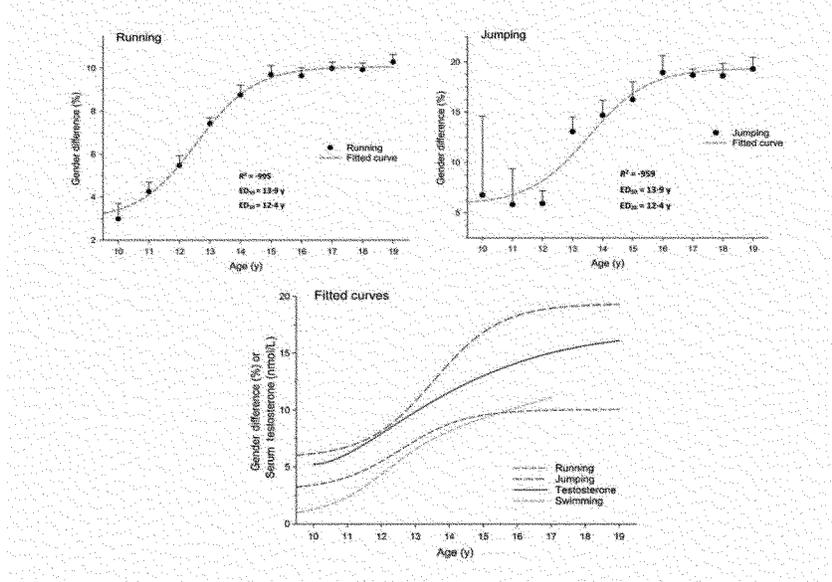
This different exposure literally builds the male body in the respects that matter for sport.

Here's what we mean by much higher testosterone levels. (Clark et al. 2017):



And here are figures that demonstrate how sex differences in athletic performance emerge coinciding with the onset of male puberty. (Handlesman 2018):

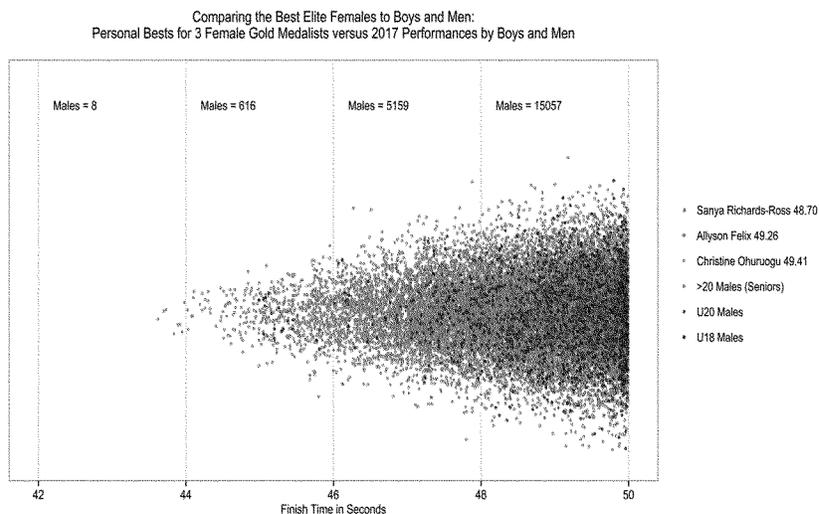
Sex differences in athletic performance emerge coinciding with the onset of male puberty



Finally, here's a figure that illustrates the effects of those differences, again starting in adolescence. (Coleman, Shreve, Wald, and Clark 2018). The figure marks the individual *lifetime bests* of three female Olympic Champions in the 400 meters – including Team USA's Sanya Richards-Ross and Allyson Felix – in the sea of male-bodied performances run *just in the single year 2017*.

It shows that *even at their absolute best*, the women would lose to literally thousands of boys and men, including to thousands who would be considered second tier in the men's category.

And because it only takes three male-bodied athletes to preclude the best females from the medal stand, and eight to exclude them from the track, it doesn't matter if only a handful turn out to be gender nonconforming.



If U.S. law changes so that we can no longer distinguish females from women with testes for any purpose, we risk not knowing the next Sanya Richards-Ross or the next Allyson Felix. We risk losing the extraordinary value that comes from having women like Serena Williams, Aly Raisman, and Ibtihaj Mohammed in our lives and on the medal stand. If they bothered to compete, they would be relegated to participants in the game.

One prominent trans activist has said that we shouldn't be concerned that the victories would belong to transgirls and women going forward, because what matters is their liberty to self-identify, and their right to be treated equally (to females) throughout society. Others, including some in the Title IX advocacy community, have embraced this evolution, arguing that what we should care about is participation.

These advocates are right to seek avenues for transgender inclusion, but listen carefully to the particular bargain they are willing to strike. In effect, it is that we don't need parity of competitive opportunity. They are wrong about this.

Participation contributes to equality, but the real power of girls and women in sport isn't in gym class, it's in teams, in competitions, and in victories. It's in the same numbers of scholarships and spots in finals and on podiums. It's in the fact that Brandi Chastain can win Worlds, celebrate like the guys, and get a whole generation of little girls to play soccer because she did. It's in the fact that Simone Manuel can win Olympic Gold in the 100 meters freestyle with millions watching on primetime television, and from there can lead a generation of African American kids to the pool who didn't believe that swimming was for them too.

I encourage you to consider revisions to H.R. 5 that provide for protections for LGBTQ people that don't risk these invaluable goods, and that are otherwise considered about the circumstances in which sex still matters.

Chairman NADLER.Thank you.  
Ms. Contreras.

#### **TESTIMONY OF JAMI CONTRERAS**

Ms. CONTRERAS. Thank you for taking the time to hear my family's story.

Four and a half years ago, my 6-day-old daughter was denied medical services by our handpicked pediatrician. This was after we made very strategic and intentional decisions to do everything in our power to avoid this very act of discrimination from happening.

You see, about 7 years ago, my wife, Krista, and I were living in my small hometown located in West Michigan. After deciding we were ready to start a family, we made the hard decision to pack up our lives and relocate 230 miles to the Metro Detroit area, hoping to ensure our future children would grow up in an accepting community free from discrimination.

We ended up finding the perfect house, located in one of the most LGBTQ-friendly towns, which has a good school district, close-knit community, and above all, it is safe. Not long after we purchased our home, we found out my wife was pregnant with our first child. We were elated.

Doing what any good parents would do, we started to research pediatricians. We asked for help on social media forums and obtained referrals from people we knew. My wife and I both made sure to attend every interview with potential pediatricians, making it very clear this was a two helicopter mom family.

After several interviews, the search was over. We had found a pediatrician that met all of our requirements. She was personable, energetic, listened to our concerns, was able to talk through her medical philosophy and explain things in a way we could understand, and she didn't seem too concerned we were two moms.

We left that meeting with her telling us just to call her office after the baby is born and set the appointment. Well, a few months later, our amazing baby girl, Bay Windsor Contreras, was born. We followed the doctor's orders, made our first appointment, and we were so excited for that appointment.

As new parents, we were craving that reassurance that we were just doing everything right, and our baby was healthy and happy. When we arrived at the office, they escorted us in our room. We waited for our doctor, excited to show her off. But when a different doctor walked in the room, she introduced herself and then started in with the appointment.

Krista and I, confused, had to stop the doctor to ask, "I am sorry. Where is Dr. Roi?" She proceeded to tell us Dr. Roi would not be seeing us, and she would be Bay's doctor today. When asked why, she stated Dr. Roi had prayed on it, and she decided she would not be able to take Bay on as a client.

My stomach sank, my eyes filled with water, and the lump in my throat felt like a rock. I remember staring at my new baby, who was now being examined by a doctor we had never met, and all I could think was what have we done? How did we get here?

We did everything within our power to avoid this very moment. We literally moved across State. We spent endless hours of research and interviews just to avoid this very situation. Yet here we

were. It was our job to protect her, and there we were, only 6 days into the most important jobs of our lives, and we had already failed.

While checking out, the receptionist asked if we wanted to make another appointment. We declined and stated we would not be back, to which she told us she understood, showing us full well she knew exactly what was going on before we even did.

It was a somber ride home from that appointment. Krista rode in the back seat with Bay as I drove home fighting back tears. Instead of leaving that appointment with reassurance, we were left with nothing but fear and more questions. My mind was racing with a question that still haunts me to this day. What is next?

Will we be asked to leave a restaurant, not allowed to sign her up for a soccer team? Will we be denied access to the school of our choice? Or worse, are we going to be refused help by an EMT?

The only silver lining in our story is that she was 6 days old rather than 6 years old. So we luckily didn't have to try to find the words to explain to her what had just happened in that moment. However, she is now at an age where she is starting to ask questions. We have to explain why mommy and mama are sometimes on TV or have to take trips like this one.

She impresses me with her ability to comprehend the concept of equality. She often responds with questions, such as "Why, mama? It is okay to be different." Or what she said when I asked her if I should come here today. She said, "You have to go, mama, because you can help all families, not just ours, feel safe."

When people ask us why we keep speaking up with the risk that comes with putting our family in the public eye, my wife and I know all too well, no amount of planning can avoid discrimination. We have to keep sharing our story to let people know this is happening to people like us and families like ours every day. And the only protection has to come from our Government.

We need our Government to send the message that all Americans are equal. This is where you come in. We are calling on you to pass the Equality Act. Please help me show my daughter and my son that our family and all LGBTQ people have the right to feel safe in the communities they live.

Thank you.

[The statement of Ms. Contreras follows:]

Jami Contreras

Equality Act H.R. 5

April 2, 2019

Thank you for taking the time to hear my family's story. Four and half years ago my six day old daughter was denied medical services by our hand picked pediatrician. This was after we made very strategic and intentional decisions to do everything in our power to avoid this very act of discrimination from happening.

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Not long after we purchased our home, we found out, my wife was pregnant with our first child! We were elated. Doing what any good parents would do, we started to research pediatricians. We asked for help on social media forums and obtained referrals from people we knew.

My wife and I both made sure to attend every interview with potential pediatricians, making it very clear this is a two helicopter mom family. After several interviews, the search was over. We had found a pediatrician that met all of our requirements. She was personable, energetic, listened to our concerns, was able to talk through her medical philosophy, explained things in a way we could understand, and didn't seem concerned we were two moms. We left that meeting with her telling us, to just call her office after the baby is born and set the appointment.

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My stomach sank, my eyes filled with water, and the lump in my throat felt like a rock. I remember staring at my new baby who was now being examined by a doctor we had never met and all I could think was, what have we done, how did we get here? We did everything within our power to avoid this very moment, we moved across state, spent endless hours of research and interviews all to avoid this very situation...yet, here we were. It's our job to protect her and there we were, only six days into the most important jobs of our lives and we had already failed.

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The only silver lining in our story is that she was six days old rather than six years old, so we luckily didn't have to try to find the words to explain to her what had just happened. However, she's now at an age where she's starting to asking questions and we have to explain why Mommy and Mama are sometimes on TV or have to take trips like this one. She impresses me with her ability to comprehend the concept of equality. She often responds with questions such as, "why mama, it's ok to be different" or what she said when I asked her if I should come here today, she said " you have to go mama, because you can help all families, not just ours feel safe."

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Thank you,

Jami Contreras

Chairman NADLER. Thank you.  
Ms. Silas.

#### TESTIMONY OF TIA SILAS

Ms. SILAS. Good morning, Chairman Nadler, Ranking Member Collins, and esteemed members of the committee.

Thank you for inviting me to testify before you today. My name is Tia Silas, and I am the vice president, global chief diversity and inclusion officer for IBM. I am responsible for creating and implementing IBM's diversity and inclusion strategy in over 170 countries around the world, advocating for fairness and equality, which we believe to be core to 100 years of success.

I am honored to speak at today's important hearing on the Equality Act to discuss IBM's longstanding and strong support for the legislation, as well as to provide the committee with an overview of IBM's proud history of inclusive LGBT+ policies.

At the outset, I wish to highlight a March 7, 2019, letter of support for the Equality Act signed by IBM's chairman, president, and chief executive officer, Ms. Ginni Rometty, in her capacity as chairman of the Business Roundtable's Education and Workforce Committee and on behalf of all Business Roundtable members' companies and their 15 million employees. A copy of that letter has been submitted with my testimony.

I would like to provide the committee with several reasons why the Equality Act's affirmative nondiscrimination protections for LGBT+ individuals across the areas of housing, public education, credit, public services and spaces, and jury service make good business and economic sense. IBM's core business objectives are to hire the best, most talented individuals regardless of their gender identity, sexual orientation, religion, or other personal characteristics. Let me outline why.

Diversity of talent ensures differentiated innovation. In order to remain one of the leading companies in the world, we seek to recruit, hire, retain the best talent anywhere, irrespective of any singular factor of a person's identity. We value a workforce that reflects the diversity of society so that we can create solutions that are both relevant and revolutionary.

We don't want our employees and their families to be limited in where they can safely and comfortably live and work. Employees must live without fear of their personal safety and security, regardless of where they reside. Without affirmative protections, employees may feel forced to be on guard so as to not inadvertently reveal their LGBT+ status. This creates stress and distracts individuals from being productive.

Like other companies, IBM's business location and investment decision-making process factors in discrimination-related legislation and policies. The United States already faces a shortage of qualified and experienced talent in key technology growth areas, such as artificial intelligence, block chain, quantum computing, cybersecurity, healthcare, and so much more. It is in the best interests of the country to ensure that all talented individuals have equal opportunity and are able to pursue careers in these and other critical fields.

The Equality Act tracks State-level statutes that have already proven successful. But at the same time, we are extremely concerned about the patchwork of noncomprehensive protections. The inconsistency and multiplicity of statutes, both positive and negative, begs for a Federal minimum standard of basic protections that extend to all LGBT+ individuals nationwide.

As IBM's chief diversity officer, I am fortunate to design and implement many inclusive policies, collaboration tools, and benefits to support IBM's LGBT+ communities, allies, and families. In my testimony, I articulate many proud moments in our history. However, in my time here today, I will highlight some of our current offerings.

IBM offers transgender inclusive healthcare benefits. We have 52 LGBT+ employee resource and affinity groups around the world. We require all U.S. contractors to comply with nondiscrimination standards. We have launched employee and general public training and certification programs about LGBT+ inclusivity.

We sponsor an LGBT+ executive council, which includes leadership from a senior vice president who reports directly to IBM's chairman, signifying IBM's top executive support for inclusion. IBM believes that fostering inclusive work environments goes beyond employment practices and protections. That is why we strongly support the Equality Act and the extension of protections it proposes across so many critical areas of society. Our country's future economic success depends on it.

Thank you again for the opportunity to testify before you today. I look forward to answering your questions.

[The statement of Ms. Silas follows:]

**Ms. Tia Silas  
Vice President, Global Chief Diversity and Inclusion Officer  
IBM Corporation**

**House Judiciary Committee**

**H.R. 5 - The Equality Act**

**April 2, 2019**

Good morning Chairman Nadler, Ranking Member Collins and esteemed Members of the Committee. I'm Tia Silas, Vice President, Global Chief Diversity and Inclusion Officer for IBM Corporation. I am responsible for creating and implementing IBM's diversity and inclusion strategy across 170+ countries.

I am honored to speak at today's important hearing on the Equality Act to discuss IBM's long-standing and strong support for the legislation, as well as to provide the Committee with an overview of IBM's proud history of inclusive LGBT+ policies that enable our employees to thrive.

At the outset, I wish to highlight a March 7, 2019 letter of support for the Equality Act that was signed by IBM's Chairman, President and Chief Executive Officer, Ms. Ginni Rometty, in her capacity as Chairman of the Business Roundtable's Education and Workforce Committee, and on behalf of all Business Roundtable member companies and their 15 million employees. In that letter<sup>1</sup>, Ms. Rometty states,

"On behalf of the CEO members of Business Roundtable who lead companies with more than 15 million employees, we write in support of the Equality Act.

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<sup>1</sup> A copy of [the letter](#) is attached to this testimony.

Equality and fairness are core American values. It is these values that lead us to strongly endorse the Equality Act, which will enshrine into federal law clear, consistent and comprehensive protections against discrimination on the basis of sexual orientation and gender identity. As employers, America's leading companies know that our economy works best when our employees can be who they are, without fear of bias, discrimination, or inequality – in the workplace or in their communities. And as Americans, we are firmly committed to the principles of equality and fairness that have distinguished our nation since its founding.

Diversity is a fact, but inclusion is hard work. Most American companies long ago included sexual orientation and gender identity in their non-discrimination policies. It is time for the federal government to make it the law of the land. The Business Roundtable endorses the Equality Act and urges that it be enacted by Congress without delay.”

Moreover, IBM is a founding member of the Human Rights Campaign's Business Coalition for the Equality Act, a coalition of 180+ leading U.S. employers that explicitly supports the Equality Act. Through the Coalition, we are committed to doing all that we can to garner bipartisan support for the legislation and facilitate its passage as quickly as possible. And, we are proud that so many other trade associations to which we belong, including the U.S. Chamber of Commerce, HR Policy Association, Information Technology Industry Council, ERISA Industry Committee, American Benefits Council, Business Software Alliance, and the Consumer Technology Association, also have endorsed the Equality Act.

**Business Case for Equality and Affirmative Nationwide Protections**

Based on our experience at IBM, which is informed by over 100 years of history, one principle has proven to be true and unchanging: providing equal opportunity for all and eliminating artificial barriers to entry and success are good for our business. This principle was first articulated nearly a decade before the 1964 Civil Rights Act in IBM's Policy Letter#4, originally approved in 1953 and updated regularly, which unequivocally states that our company prioritizes talent and relevant skills in hiring and employment. Nearly 65 years later, our current workforce diversity policy states, "Business activities such as hiring, promotion, and compensation of employees, are conducted without regard to race, color, religion, gender, gender identity or expression, sexual orientation, national origin, genetics, disability, or age."<sup>2</sup> Thus, any and all individuals who apply and are hired for an IBM position are eligible to:

- Apply for jobs and be assessed based on their skills and qualifications for the job.
- Benefit from the same terms and conditions of employment, including training, skills development and promotion based on qualifications.

IBM's core business objective is to hire the best, most talented individuals regardless of their gender identity, sexual orientation, religion or other personal characteristic. Anything that interferes with our ability to attract, retain and develop the most skilled, experienced and most competent workforce is bad for our business. Let me outline why this is the case.

- Diversity of talent ensures maximum creativity. In order to remain one of the leading companies in the world, we seek to recruit, hire and retain the best talent

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<sup>2</sup> <https://w3-03.ibm.com/ibm/documents/corpdocweb.nsf/ContentDocsByTitle/Corporate+Policy+117>

anywhere. The most creative and productive minds most certainly are not defined by sexual orientation and gender identity, nor any other singular factor.

- We value a workforce that reflects the diversity of society so we can effectively incorporate different viewpoints, perspectives and experiences into the development of new ideas and solutions that are both relevant and revolutionary for business and society.
- We don't want our employees and their families to be limited in where they can safely and comfortably live and work. IBM is a nationwide employer, and IBMers reside in nearly all 50 states and territories. It is imperative to our company's success that they be able to continue doing so without fear to their personal safety and security, as well as without legally sanctioned discrimination in areas outside the workplace that affect their everyday lives.
- Because many LGBT+ people do not know how people will react to their sexual orientation, gender identity or gender non-conforming status, they often choose not to reveal their orientation or identity. They may spend their days being "on guard," so as to not inadvertently reveal their LGBT+ status. This can consume a lot of energy, create stress and distract an individual from being productive and focused members of our community. Providing affirmative non-discrimination protections, as outlined in the Equality Act, ensures equal opportunity and access for all and guards against tangible negative ramifications both inside and outside the workplace for our LGBT+ colleagues, friends and neighbors.
- An employee's decision about where and for which firm to work often are not only individual decisions; rather, they become family decisions. In order for families to

thrive, we believe that non-discrimination protections on the basis of sexual orientation and gender identity should be extended to areas outside of the employer's four walls, namely in housing, public education, access to credit, access to public services and spaces, and jury service.

- Like other companies, IBM's business location and investment decision-making process factors in discrimination-related legislation and policies. By way of example, in 2017, when the Texas State Legislature considered a discriminatory 'bathroom bill' that would have prevented individuals from using restrooms or public facilities consistent with their gender identity, IBM - for the first time - made explicit the negative consequences of such legislation on future business investments and education initiatives in the state. Texas has IBM's second largest employee population in the U.S. and hosts some of our most significant investments worldwide.
- The United States already faces a shortage of qualified and experienced talent in key technology growth areas, such as artificial intelligence, blockchain, quantum computing, cybersecurity, healthcare, etc. It is in the best interest of the country to ensure that *all* talented individuals have equal opportunity and are able to pursue careers in these and other critical fields without being subject to discrimination based on sexual orientation, gender identity or any other personal characteristic, both in and outside of the workplace.

**IBM Supports Expansion of Protections under U.S. Law**

The Equality Act tracks state level statutes that already have proven successful. Twenty-one states, the District of Columbia, and nearly 200 local governments, large and small, already prohibit employment and housing discrimination based on gender identity. Twenty states prohibit discrimination in public accommodations on the basis of gender identity. And, roughly 400 cities and counties in the United States have implemented non-discrimination laws for sexual orientation and/or gender identity. Many of these laws have been around for years, or even decades – Minnesota adopted its protections for transgender people more than 25 years ago. Moreover, the Equality Act’s definition of gender identity closely tracks with many state and local laws.

At the same time, we are extremely concerned about the patchwork of protections, as well as too many affirmatively anti-LGBT+ discriminatory state and local laws. The inconsistency and multiplicity of statutes, both positive and negative, begs for a federal minimum standard of basic protections that extends to all LGBT+ individuals nationwide. This is inherently timely and necessary for continued strong economic growth of American companies.

Where laws are lacking in consistency and clarity, agencies and courts have stepped in to address the gap. This is far from ideal. The inconsistencies in U.S. laws are unfair to members of the LGBT+ community. And, they are harmful to employers, large and small, throughout the country. This patchwork of laws and legal interpretations creates uncertainty and unpredictability for employers and employees alike, which is bad for business.

Simply put, individuals should not be subjected to different treatment based on what city or state in which they happen to be. It is time that we recognize that our longstanding commitment to equal protection of the laws requires that we meet this need head on and pass federal legislation extending these basic protections to all regardless of where they work, live or travel within our great country.

**IBM's Weighs In on Judicial Matters to Support LGBT+ Equality**

IBM repeatedly has demonstrated its commitment to oppose discriminatory legislation and policies that harm our employees and their families where they work, live and attend school. Notably, as detailed below, IBM's advocacy has included participation in several *amicus curiae* briefs on behalf of businesses opposing a discriminatory bathroom bill, challenging a state statute purporting to protect religious freedom but which enabled discrimination on the basis of sexual orientation and gender expression, and opposing school policies that prohibit transgender students from using the restroom consistent with their gender identity.

1. United States v. North Carolina, M.D.N.C. 1916 -- IBM joined an *amicus curiae* brief opposing North Carolina's "Bathroom Bill," HB2, which required individuals using government run facilities to use restrooms and locker rooms consistent with their biological sex assigned at birth rather than their lived gender identity.
2. Barber, et al v. Bryant, et al., 6th Circuit 2016 -- IBM joined an *amicus curiae* brief challenging Mississippi HB 1523 which, under the guise of religious freedom, prohibited state action against individuals and religious organizations who deny services based on religious beliefs concerning marriage and gender identity, thereby sanctioning discrimination against LGBT+ individuals.
3. Gloucester County School Board v. GG ("Grimm") U.S. S. Ct 2016; also G.G. v. Gloucester County School Board, 4th Circuit. 2017 -- IBM joined *amicus curiae* briefs challenging Virginia high school policy that prevented transgender students from using the school restroom consistent with their gender identity.

4. Doe v. Highland Local School District, 6th Circuit 2017 -- IBM joined an *amicus curiae* brief arguing that a transgender student in Ohio should have the right to use the restroom consistent with her gender identity.

5. Adams v. School Board of St. Johns County, Florida, 11<sup>th</sup> Circuit 2019 -- IBM joined an *amicus curiae* brief opposing a Florida policy that prohibited transgender high school students from using the restroom consistent with their gender identity.

**IBM & Pro-LGBT+ Advocacy**

When proposed government action has been in fundamental conflict with our values and our business interests, we've engaged with government officials directly and publicly to make our views known, opposing various state laws and executive actions and working to preserve existing protections where they are under threat. We actively influenced legislation and policy in Louisiana, North Carolina, and Texas. And over the past year, we have engaged in countries such as Northern Ireland, Taiwan, Israel, and Japan to support marriage equality referenda.

We will continue promoting and defending LGBT+ rights around the world. Moreover, we will continue to foster and grow a shared corporate culture in which global diversity – including diversity of thought – remains central to our company and its values.

**IBM's Suite of Support for LGBT+ Individuals**

IBM has a long history of LGBT+ workplace equality. As early as 1984, we included sexual orientation in our non-discrimination policy. In 1995, we established an LGBT+ executive task force that today is known as the Global LGBT+ Council and is focused on making IBM a safe and desirable workplace for all people. In 1997, we extended same-sex domestic partner benefits for all U.S. employees, and we now offer these benefits in nearly 50 countries. In 2002, gender identity and expression were added to IBM's Global Equal Opportunity Policy. In 2006, IBM introduced the voluntary self-identification system within our official HR Management System. In 2011, the first IBM LGBT annual report was published and distributed. In 2017, we introduced a new symbol of our ongoing advocacy of diversity, acceptance, inclusion and equal opportunity—a rainbow version of IBM's iconic 8-bar logo. This was the first time in our history that we modified our corporate logo. In 2018, IBM published a white paper with a first-ever framework for supporting employee gender transition journeys in the workplace. This paper has been translated into five languages. Also in 2018, we launched the LGBT+ Ally Championship Practitioner Badge, an employer certification for employees and non-IBMers, alike. This badge also is a first-of-its-kind commercial offering and is earned by allies of the LGBT+ community who have demonstrated a level of volunteer effort and advocacy that support IBM's diversity, talent and business priorities. Finally, for the past sixteen years, IBM has scored 100% on the Human Rights Campaign Corporate Equality Index.

Beyond our notable achievements and the many awards we have received for our inclusive policies, we support our employees and their families in other ways.

- IBM offers transgender-inclusive healthcare benefits.
- We offer gender affirmation treatment benefits in nine countries.
- We provide new hires and supervisors with LGBT+ awareness training.
- We maintain 52 LGBT+ employee resource and affinity groups around the world.
- We conduct LGBT+ employee and business partner recruitment worldwide.
- We have certified LGBT+ suppliers that are part of our supplier diversity program.
- We require all U.S. contractors to comply with LGBT+ non-discrimination standards.
- We have launched employee and general public training and certification programs about LGBT+ inclusivity.
- IBM proudly sponsors an LGBT+ Executive Council. This council includes leadership from a senior vice president who reports directly to IBM's Chairman, signifying IBM's top executive support for LGBT+ inclusion.
- In addition to the SVP sponsor, we have a community of LGBT+ executives who drive strategic LGBT+ priorities across the business and re-establish new priorities annually.
- IBM employs a fully dedicated HR leader who manages LGBT+ inclusion initiatives across the globe.
- IBM annually conducts a succession planning review of LGBT+ talent ensuring that LGBT+ employees have equal access to learning, development and career path opportunities.

- IBM sponsors a voluntary mentoring experience for IBM leaders and managers who are interested in learning more about LGBT+ topics, including the use of appropriate language, role modeling inclusive behavior and sharing inclusive practices among teams.

**Conclusion**

IBM works hard to promote and provide equal opportunity within our working environment. In addition to training our employees about our expectations for personal conduct and best practices for working to ensure a comfortable and inclusive working environment, we also educate our workforce about our different backgrounds, including cultural practices, because we believe employees who are comfortable bringing their whole selves to work will be productive, innovative and successful.

However, our policies and strong support for fostering inclusive work environments go beyond employment practices and protections. As a company, we understand that to attract the best talent from around the world, we have to create and nurture a culture – both inside and outside of work – where employees can bring their authentic selves to work every day. That is why we strongly support the Equality Act and the extension of the protections it proposes across so many critical areas of society. It is absolutely essential that this Act become law. Our country's future economic success depends on it.

Thank you, once again, for the opportunity to testify before you today. I look forward to answering any questions you may have.

Chairman NADLER. Thank you.  
Professor Yoshino.

#### TESTIMONY OF KENJI YOSHINO

Mr. YOSHINO. Chairman Nadler, Ranking Member Collins, and members of the committee, thank you for the opportunity to be with you here today.

My name is Kenji Yoshino, and I am the Chief Justice Earl Warren Professor of Constitutional Law at New York University School of Law.

This year marks the 50th year anniversary of the Stonewall Riots, which inaugurated the modern LGBT rights movement. Fittingly, the Supreme Court just last term stated, “Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason, the laws and the Constitution can and in some instances must protect them in the exercise of their civil rights.”

By passing the Equality Act, Congress will bring the Nation closer to realizing that promise. I will summarize six points about the act that I have made in my written testimony.

First, the act is necessary. Despite the extraordinary strides that society has made in the past few decades, LGBT individuals continue to face broad forms of social and economic discrimination. Recent studies have shown that one in five lesbian, bisexual, and gay individuals and about one in three transgender individuals reported unfair treatment in employment decisions.

In some 29 States, no law explicitly prohibits discrimination in employment, housing, or public accommodations on the basis of sexual orientation or gender identity.

Second, Congress is authorized to pass the Equality Act under both the commerce clause of the United States Constitution and Section 5 of the Fourteenth Amendment. In 1964, the Court found that Congress could use the commerce power to promulgate the landmark Civil Rights Act, which today’s Equality Act both mirrors and extends.

Further, Section 5 of the Fourteenth Amendment gives Congress the power to pass legislation to ensure all Americans the equal protection of our laws, as the Equality Act seeks to do.

Third, the act represents an exemplary application of the principles of American federalism. More than 20 States have explicit laws against discrimination in employment and housing on the basis of sexual orientation or gender identity. As Justice Brandeis famously said, the States are laboratories of experimentation. We have seen these experiments succeed as millions of LGBT Americans have gained dignitary rights in their home States.

Meanwhile, the risks that detractors threaten have not materialized. Studies have found no evidence that protecting transgender people from discrimination leads to any increase in safety incidents in gender-segregated bathrooms or locker rooms. Further, trans women athletes have not broadly displaced nor disadvantaged non-trans women and girls when allowed to compete in accordance with their gender identity.

Fourth, a majority of Federal circuit courts nationwide have already interpreted Federal laws prohibiting sex discrimination to in-

clude discrimination based on gender identity and sexual orientation. By codifying this sound set of precedents, Congress would ensure that the applicability of Federal law does not depend on where an American resides.

Fifth, the Equality Act advances civil equality for LGBT individuals while respecting religious freedom. The claim that the act compromises religious liberties ignores the existing exemptions in the civil rights laws that the Equality Act would amend, such as the exception the Fair Housing Act makes for religious organizations to prefer people of the same religion when selling or renting commercial space.

This claim also scants the safeguards instilled in the free exercise clause of the United States Constitution. As cases ranging from the Lukumi Babalu Aye case to the Masterpiece Cakeshop case demonstrate, any misapplication predicated on religious animus would swiftly falter.

Sixth, the act validly reaches conduct as well as status. Some have argued that sexual orientation and gender identity are distinguishable from protected classifications like race or sex because they are defined partly by conduct rather than by status alone. This distinction is unavailing.

Civil rights protections in this Nation have never been limited to status alone. Neither religious conduct nor pregnancy are immutable characteristics, yet both are protected under Title VII.

I will close with how I introduced myself as the Chief Justice Earl Warren Professor of Constitutional Law. When that title was offered to me by my then dean, I rejected it. I reminded him that I was of Japanese descent, and that, as Attorney General of California, Earl Warren superintended the internment of people of Japanese ancestry. In his wisdom, my dean responded that after he became Chief Justice of the United States Supreme Court, Earl Warren not only expressed regret for his role in the internment but was the author of our Nation's most honored civil rights opinion.

What better title could I have than the name of someone who had traveled so far on issues of civil rights over the course of a single lifetime. So I now wear this title with pride, wondering in how many countries a racial minority could move so quickly from being outside the protection of the Constitution to holding a place of honor as a scholar and teacher of that hallowed document.

I consider it a matter of grace that I can tell the same story in a different register. I am a gay man who was born the year of the Stonewall Riots. Because of judicial and legislative decisions like the one you are asked to make today, I married my husband 10 years ago, and together, we are raising a son and daughter.

Despite all the forms of privilege we possess as a family, we still feel unsafe traveling to certain areas of this country. Even in our home State of New York, we have experienced acts of exclusion and bias. In those moments, I worry less about myself and more for my young children. As Dr. King did for his own 6-year-old daughter when she faced discrimination in a public accommodation, I fear seeing the "ominous clouds of inferiority begin to form in their little mental sky."

So it is no small matter you consider today. In the last half century, I have walked two versions of the American dream. That jour-

ney has led me to believe that the experience of discrimination on the basis of race on the one hand and discrimination on the basis of sexual orientation or gender identity on the other are not entirely different. And it has led me to believe the dignity the law can bestow in welcoming us into the light of the public sphere is entirely the same.

Thank you.

[The statement of Mr. Yoshino follows:]

TESTIMONY OF KENJI YOSHINO  
CHIEF JUSTICE EARL WARREN PROFESSOR OF CONSTITUTIONAL LAW  
NEW YORK UNIVERSITY SCHOOL OF LAW  
BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES  
HEARING ON THE EQUALITY ACT OF 2019  
APRIL 2, 2019

**Introduction**

Thank you for the opportunity to appear before you in these hearings on the Equality Act, House Bill 5. My name is Kenji Yoshino. I am the Chief Justice Earl Warren Professor of Constitutional Law at New York University School of Law and serve as Director of the Center for Diversity, Inclusion, and Belonging. Prior to my appointment at New York University, I was the inaugural Guido Calabresi Professor of Law at Yale Law School, where I taught for ten years and served as Deputy Dean.

In this testimony in support of the Act, I seek to make six points. First, I underscore the grim reality that discrimination against LGBT individuals is a continuing national challenge. Second, I demonstrate that Congress has ample authority to promulgate the Act. Third, I maintain that the Act—building on legislation in the several states—is an exemplar of American principles of federalism. Fourth, I show that the Act codifies the view of the majority of the federal appellate courts that the prohibition against sex discrimination includes protections against discrimination on the basis of sexual orientation and gender identity. Fifth, I note that the Act carefully maintains many protections for freedom of religion in the context of advancing civil equality for LGBT individuals. Sixth and finally, I contend that the Act is not overbroad in protecting conduct alongside status.

**I. Discrimination against LGBT individuals is a continuing national challenge.**

Since the Stonewall Riots inaugurated the modern LGBT-rights movement fifty years ago, our society has seen significant gains in recognizing the dignity and humanity of the LGBT community—including the 2015 Supreme Court decision allowing same-sex couples the constitutional right to marry.<sup>1</sup> Nevertheless, the LGBT community continues to face serious discrimination in many areas of life, including in employment, in housing, by businesses, in credit lending, in the criminal justice system, and in education. In some twenty-nine states, no state laws explicitly prohibit discrimination in employment and housing on the basis of sexual orientation and/or gender identity.<sup>2</sup>

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<sup>1</sup> *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015).

<sup>2</sup> *What Is the Equality Act?*, HUMAN RIGHTS CAMPAIGN, March 12, 2019, [https://assets2.hrc.org/files/assets/resources/EqualityAct\\_TwoPager\\_Coalition.pdf](https://assets2.hrc.org/files/assets/resources/EqualityAct_TwoPager_Coalition.pdf).

Among high-profile employers, conditions have improved over the last few decades,<sup>3</sup> but this does not tell the whole story. According to a 2013 Pew Research Center survey, 21% of LGBT Americans reported being treated unfairly by an employer in hiring, pay, or promotions.<sup>4</sup> The 2008 General Social Survey, conducted by the National Opinion Research Center at the University of Chicago, posted much higher numbers, finding that 42% of lesbian, gay, and bisexual individuals had experienced employment discrimination on the basis of sexual orientation during their lifetimes, and 27% had experienced it in the prior five years.<sup>5</sup> Of those who were open in the workplace about their sexual orientation, the numbers were yet higher: 56% and 38%, respectively.<sup>6</sup> Some 35% reported having experienced harassment at work.<sup>7</sup>

These problems affect the transgender community even more acutely. The 2015 National Center for Transgender Equality survey of over 27,000 transgender people reported some sobering findings.<sup>8</sup> In the year prior to completing the survey, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity.<sup>9</sup> The unemployment rate for transgender people was three times the national average.<sup>10</sup> The rate of homeownership was only 16% compared to 63% in the overall national population, and nearly 30% of respondents reported having experienced homelessness at some point in their lifetime.<sup>11</sup> The impact of discrimination in employment, housing, and other areas was significant: some 39% reported experiencing serious psychological distress in the month before the survey—eight times the proportion of the overall population—and 40% had attempted suicide in their lifetime—nearly *nine* times the attempted suicide rate in the overall population.<sup>12</sup>

Moreover, the burden of discrimination does not just fall on the victims of the most egregious rights violations. Researchers have found that prejudice and discrimination in these areas of life create “minority stress” for all members of the group.<sup>13</sup> Minority stress from discrimination can lead to physical and mental health outcome disparities for all sexual minorities, not just for those who report discrimination.<sup>14</sup>

<sup>3</sup> Currently, 93% of the Fortune 500 include sexual orientation in their policies and 85% include gender identity. See HUMAN RIGHTS CAMPAIGN FOUNDATION, CORPORATE EQUALITY INDEX 2019, at 6, <https://assets2.hrc.org/files/assets/resources/CEI-2019-FullReport.pdf>.

<sup>4</sup> PEW RESEARCH CENTER, A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES 1 (June 13, 2013), [http://www.pewsocialtrends.org/files/2013/06/SDT\\_LGBT-Americans\\_06-2013.pdf](http://www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pdf).

<sup>5</sup> See BRAD SEARS & CHRISTY MALLORY, DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 4 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> SANDY E. JAMES ET. AL, NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 4 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Michael P. Dentato, *The Minority Stress Perspective*, Psychology & AIDS Exchange Newsletter, April 2012, <https://www.apa.org/pi/aids/resources/exchange/2012/04/minority-stress> (canvassing the literature).

<sup>14</sup> *Id.*; see also Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. 674 (2009); INSTITUTE OF MEDICINE, THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING 211-22 (2011).

Last term, the Supreme Court held: “Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason the laws and the Constitution can, and in some instances must, protect them in the exercise of their civil rights.”<sup>15</sup> By passing the Equality Act, Congress will bring the nation closer to realizing this promise.

## **II. Congress has the power to promulgate the Equality Act.**

The Commerce Clause of the U.S. Constitution empowers Congress “to regulate Commerce with foreign Nations, and among the several States.”<sup>16</sup> This Clause has long been a significant source of Congressional power. Congress’s commerce power “is not limited to regulation of an activity that by itself substantially affects interstate commerce, but also extends to activities that do so only when aggregated with similar activities of others.”<sup>17</sup>

Because discrimination against LGBT people substantially affects interstate commerce, the Commerce Clause authorizes Congress to pass the Equality Act. Indeed, the Supreme Court twice upheld the Civil Rights Act of 1964—one of the statutes the Equality Act amends—on these grounds.

In *Heart of Atlanta Motel v. United States*, the Court held that the Commerce Clause empowered Congress to ban racial discrimination even by private actors such as a small hotel business.<sup>18</sup> The Court noted that “the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce.”<sup>19</sup> Here, discrimination in hotel accommodations substantially affected—and impeded—interstate travel. In *Heart of Atlanta*, the fact that the Civil Rights Act addressed a *moral* wrong “[did] not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse.”<sup>20</sup>

Similarly, in *Katzenbach v. McClung*, the Court held that the commerce power allowed Congress to regulate the behavior of a small, family-owned barbeque restaurant.<sup>21</sup> Again, the Court noted that racial discrimination in restaurants had a “direct and adverse effect on the free flow of interstate commerce.”<sup>22</sup>

In neither case was it relevant that the hotel or the restaurant’s interstate activity was modest. As the Court explained in *Katzenbach*, such activity, when “taken together with that of many others similarly situated, . . . is far from trivial.”<sup>23</sup>

<sup>15</sup> *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018).

<sup>16</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>17</sup> *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 549 (2012) (citing *Wickard v. Filburn*, 317 U.S. 111, 127–28 (1942)).

<sup>18</sup> *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964).

<sup>19</sup> *Id.* at 258.

<sup>20</sup> *Id.* at 257.

<sup>21</sup> *Katzenbach v. McClung*, 379 U.S. 294, 304 (1964).

<sup>22</sup> *Id.* at 304. The Court noted that the restaurant bought \$150,000 of food, half of which was from local supplier who originally procured it out of state. *Id.* at 296.

<sup>23</sup> *Id.* at 301 (quoting *Wickard v. Filburn*, 317 U.S. 111, 128 (1942)).

Under *Heart of Atlanta* and *Katzenbach*, the Equality Act is within Congress's commerce power. Just as racial discrimination has a significant effect on interstate commerce, so too does discrimination against LGBT people.

Later cases in which the Supreme Court struck down Congressional laws as beyond the scope of the commerce power are not to the contrary. In *United States v. Lopez*, the Court invalidated the Gun-Free School Zones Act because the possession of guns near schools was in "no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce."<sup>24</sup> Given that it deemed the activity not to be economic in nature, the Court did not permit its aggregate effects on interstate commerce to be considered.<sup>25</sup> It then determined that the activity, taken alone, had too attenuated a link to interstate commerce to be regulated under the commerce power. It characterized the link as follows: the possession of guns would lead to a degraded educational environment, which would in turn lead graduates to become less productive members of the workforce, which would in turn affect interstate commerce.<sup>26</sup> In *United States v. Morrison*, the Court invalidated part of the Violence Against Women Act on similar grounds, holding that the link between gender-motivated violence and interstate commerce required a "but-for causal chain" of very "attenuated effect[s]."<sup>27</sup> In both *Lopez* and *Morrison*, the Court also observed that no jurisdictional element restricted the sweep of the statute to the reach of the commerce power.<sup>28</sup>

In contrast, as *Heart of Atlanta* and *Katzenbach* explained, private businesses are (by definition) engaged in economic activity. Even under *Lopez*, regulated activity can be aggregated if it is economic in nature.<sup>29</sup> For this reason, discrimination in the operation of those businesses substantially affects interstate commerce. Moreover, the Equality Act contains a jurisdictional element specifying that the term "establishment . . . shall be construed to include an individual whose operations affect commerce and who is a provider of a good, service, or program."<sup>30</sup> By its terms, the ambit of the Equality Act is limited to entities that affect commerce.

The Court also held in *National Federation of Independent Business v. Sebelius* that the Commerce Clause did not afford the power to enact the individual mandate of the Affordable Care Act.<sup>31</sup> If *Lopez* and *Morrison* focused on the distinction between economic and non-economic activity, the *Sebelius* Court focused the distinction between activity and inactivity. *Sebelius* held that Congress could not regulate what the Court deemed to be inactivity (non-participation in the insurance market) through the Commerce Clause. As the Equality Act clearly regulates only activity (discrimination against LGBT individuals), it remains unaffected by *Sebelius*.

Longstanding precedents establish that Congress has the power under the Commerce Clause to pass the Equality Act in its entirety.

<sup>24</sup> *United States v. Lopez*, 514 U.S. 549, 567 (1995).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 565.

<sup>27</sup> *United States v. Morrison*, 529 U.S. 598, 615 (2000).

<sup>28</sup> *Lopez*, 514 U.S. at 561; *Morrison*, 529 U.S. at 611–12.

<sup>29</sup> *Lopez*, 514 U.S. at 556 (explaining that an economic contribution can be aggregated when, "taken together with that of many others similarly situated, [it] is far from trivial" (quoting *Wickard v. Filburn*, 317 U.S. 111, 128 (1942))).

<sup>30</sup> Equality Act, H.R. 5, pg. 13, 116th Cong. (2019).

<sup>31</sup> *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 557–58 (2012). The majority of the Court nonetheless upheld the individual mandate on the basis that it fell under Congress's Taxing Power. *See id.* at 574.

Another basis for Congress’s power to enact the Equality Act is Section 5 of the Fourteenth Amendment. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”<sup>32</sup> Under established precedent, courts apply intermediate scrutiny to discrimination by state actors on the basis of sex.<sup>33</sup> Section 5 states that Congress “shall have the power to enforce, by appropriate legislation, the provisions of this article.”<sup>34</sup> The Court has held that Congress can pass laws to enforce any violation of the Equal Protection or Due Process Clauses in a “congruent and proportional” manner.<sup>35</sup>

In *Nevada v. Hibbs*, the Court held that, because Congress had identified many instances of sex discrimination—and because sex discrimination received heightened scrutiny—the family-care provision of the Family Medical Leave Act (FMLA) was permitted under Section 5.<sup>36</sup> To be sure, the Court later struck down the FMLA’s self-care provision, but only because the Court concluded that Congress’s purpose in enacting the self-care provision was “unrelated” to sex discrimination.<sup>37</sup> The Equality Act directly addresses sex discrimination on the basis of sexual orientation and gender identity and documents many examples of such discrimination in employment, education, housing, and criminal justice.<sup>38</sup> Thus, a court is highly unlikely to conclude that any of its provisions are “unrelated” to sex discrimination.

Additionally, many courts have held that governmental discrimination on the basis of sexual orientation and/or gender identity require heightened scrutiny under the equal protection guarantees of the Fifth and Fourteenth Amendments not only as a type of sex discrimination, but also because they are themselves suspect classifications. Two circuit courts have held that sexual orientation is a quasi-suspect class and that heightened scrutiny under the Equal Protection Clause must therefore be applied.<sup>39</sup> Similarly, numerous district courts have held that transgender status is a quasi-suspect class that merits heightened scrutiny.<sup>40</sup> Because these courts held that these violations are subject to heightened scrutiny, they allow Congress expansive

<sup>32</sup> U.S. CONST. amend. XIV, § 1.

<sup>33</sup> See *United States v. Virginia*, 518 U.S. 515, 533 (1996) (explaining that the State must show an “exceedingly persuasive” justification and that the classification “serves important governmental objectives and that the discriminatory means employed are substantially related to . . . those objectives” (internal citations omitted)); see also *Craig v. Boren*, 429 U.S. 190, 197–99 (1976).

<sup>34</sup> U.S. CONST. amend. XIV, § 5.

<sup>35</sup> *Boerne v. Flores*, 521 U.S. 507, 520 (1997).

<sup>36</sup> *Nevada Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 736 (2003) (holding that Section 5 authorized Congress to address subtle discrimination stemming from “employers’ stereotypical views about women’s commitment to work and their value as employees”).

<sup>37</sup> *Coleman v. Court of Appeals of Maryland*, 566 U.S. 30, 38 (2012).

<sup>38</sup> See also Ryan Thoreson, “*All We Want is Equality*”, HUMAN RIGHTS WATCH (Feb. 19, 2018),

<https://www.hrw.org/report/2018/02/19/all-we-want-equality/religious-exemptions-and-discrimination-against-lgbt-people> (describing “religious exemption” laws passed by eight state legislatures and proposed in many more). These laws permit discrimination against LGBT people in adoption/foster care services, mental/physical health care, and/or counseling. *Id.* The religious exemption in Mississippi’s HB 1523 is particularly broad. *Id.*

<sup>39</sup> *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 483 (9th Cir. 2014); *Windsor v. United States*, 699 F.3d 169, 185 (2d Cir. 2012), *aff’d on other grounds*, 570 U.S. 744 (2013).

<sup>40</sup> See, e.g., *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 749 (E.D. Va. 2018); *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep’t of Educ.*, 208 F. Supp. 3d 850, 873 (S.D. Ohio 2016); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015).

power to legislate in a way that is “congruent and proportional.”<sup>41</sup> Additionally, some courts have held that discrimination on the basis of sexual orientation or gender identity violate other rights such as the right to privacy in the Due Process Clause.<sup>42</sup> Violations of other constitutional rights—including the Eighth Amendment right to be free from cruel and unusual punishment<sup>43</sup>—may also be addressed by Congress, as they are incorporated against the states through the Due Process Clause of the Fourteenth Amendment. Still other courts have held that discrimination is so irrational that it fails even rational basis review.<sup>44</sup> All of these Fourteenth Amendment violations form an independent part of the record that Congress may consider in legislating under its Section 5 powers.

Because the Equality Act’s provisions that apply to state actors are authorized under its Section 5 powers, the Act can pierce sovereign immunity. It is well settled that “Congress may authorize private suits against nonconsenting States pursuant to its enforcement power”<sup>45</sup> provided that Congress makes its intention “unmistakably clear in the language of the statute.”<sup>46</sup> As noted, the Equality Act is a proper exercise of § 5 power. Moreover, the text of Title VII and the other statutory provisions that the Equality Act amends clearly state an intention to abrogate sovereign immunity.<sup>47</sup> For these reasons, the Act can pierce sovereign immunity.

### **III. The Equality Act shows the benefits of “our federalism” at work.**

Currently, twenty-one states and the District of Columbia have enacted equivalents of most key provisions of the Equality Act.<sup>48</sup> These twenty-two jurisdictions have explicit protections against discrimination in employment or housing on the basis of sexual orientation or gender identity. All but one of these twenty-two jurisdictions also provide explicit protections against discrimination in public accommodations on the basis of sexual orientation or gender identity, with one additional state forbidding public accommodations discrimination solely on the basis of sexual orientation.<sup>49</sup> Sixteen of those jurisdictions also explicitly prohibit discrimination

<sup>41</sup> *Boerne v. Flores*, 521 U.S. 507, 520 (1997).

<sup>42</sup> *See, e.g., Love v. Johnson*, 146 F. Supp. 3d 848, 856 (E.D. Mich. 2015) (holding that a state policy disallowing gender marker changes on driver’s licenses violated the substantive due process right to privacy of transgender people).

<sup>43</sup> *See, e.g., Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011) (holding that a state statute banning treatment for inmates with gender dysphoria violated the Eighth and Fourteenth Amendments).

<sup>44</sup> *Baskin v. Bogan*, 766 F.3d 648, 656 (7th Cir. 2014).

<sup>45</sup> *Alden v. Maine*, 527 U.S. 706, 756 (1999).

<sup>46</sup> *Nevada Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 726 (2003).

<sup>47</sup> 42 U.S.C. § 2000e (2012) (defining “person” under the Act to include “governments, governmental agencies, [and] political subdivisions”).

<sup>48</sup> *What Is the Equality Act?*, HUMAN RIGHTS CAMPAIGN, March 12, 2019, [https://assets2.hrc.org/files/assets/resources/EqualityAct\\_TwoPager\\_Coalition.pdf](https://assets2.hrc.org/files/assets/resources/EqualityAct_TwoPager_Coalition.pdf). Note that as these state laws differ from the Equality Act, the number twenty-one quoted here is not an exact count. The Transgender Law Center counts 17 states plus the District of Columbia with a “high overall policy tally.” *See Equality Maps: Overall Policy Tally*, TRANSGENDER LAW CENTER, <https://transgenderlawcenter.org/equalitymap> (last visited March 31, 2019).

<sup>49</sup> *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/state-maps/public-accommodations> (last visited March 31, 2019). Utah is the one exception that has employment and housing protections but no public accommodations protections, and Wisconsin is the state protecting discrimination in public accommodations only on the basis of sexual orientation.

in education on the basis of sexual orientation or gender identity, with another two prohibiting discrimination solely on the basis of sexual orientation.<sup>50</sup>

A few additional states explicitly provide LGBT people protection against discrimination in more conscribed contexts.<sup>51</sup> Specifically, an additional four states bar discrimination on the basis of both sexual orientation and gender identity only in *public* employment.<sup>52</sup> Beyond those, eight states bar discrimination on the basis of sexual orientation but not gender identity, and only in public employment.<sup>53</sup>

Opponents of the Equality Act have contended that there will be many negative consequences to its passage. A letter from the United Conference of Catholic Bishops maintains that the Equality Act would regulate thought, belief, and speech, retract religious freedom, hinder quality health care, endanger privacy, threaten charitable services, and exclude people from various career paths and livelihoods.<sup>54</sup> Opponents of protections for transgender people have argued that predators would use them to infringe on the privacy rights of young women.<sup>55</sup>

These arguments and arguments like them have been raised in response to every gain in equality for LGBT people. Opponents of gay rights argued that pedophilia and predatory behavior would result from gays, lesbians, and bisexuals teaching in schools, getting married, and adopting children.<sup>56</sup> Concerns about privacy in showers and locker rooms were also used to justify the military's Don't Ask Don't Tell policy.<sup>57</sup> Yet once LGBT people gained rights in each of these arenas, these objections were shown to be baseless.<sup>58</sup>

Moreover, if we examine the twenty-two jurisdictions with cognates of the Equality Act, we do not see the threatened parade of horrors. Some states have had these laws for decades. A recent study comparing jurisdictions in Massachusetts with different ordinances regarding whether people may use the restroom or locker room of their gender identity found that assault, sex crimes, and voyeurism did not increase in jurisdictions where gender identity was

<sup>50</sup> *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/state-maps/education> (last visited March 31, 2019).

<sup>51</sup> *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/state-maps/employment> (last visited March 31, 2019).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Letter to Representative, U.S. Conf. of Catholic Bishops, March 20, 2019, <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/promotion-and-defense-of-marriage/upload/Equality-Act-Letter-to-Congress-House-1.pdf>

<sup>55</sup> See, e.g., *340,000 Pledge to Boycott Target over Transgender Bathroom Policy*, FOX NEWS INSIDER (April 24, 2016), <https://insider.foxnews.com/2016/04/24/340000-sign-pledge-boycott-target-over-transgender-bathroom-statement> (noting that the American Family Association, the conservative Christian group that started the boycott, alleged that “[f]his means a man can simply say he ‘feels like a woman today’ and enter the women’s restroom.”).

<sup>56</sup> Eugene Scott, *How Correlating Homosexuality to Child Molestation Influenced Politics*, WASH. POST (Oct. 30, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/10/30/how-correlating-homosexuality-to-child-molestation-influenced-politics/>.

<sup>57</sup> Eric Schmitt, *Military Cites Wide Range of Reasons for Its Gay Ban*, N.Y. TIMES (Jan. 27, 1993), <https://www.nytimes.com/1993/01/27/us/military-cites-wide-range-of-reasons-for-its-gay-ban.html> (quoting a Navy spokesman’s claim that heterosexuals who showered with gay men would have an “uncomfortable feeling of someone watching”).

<sup>58</sup> See, e.g., Elisabeth Bumiller, *One Year Later, Military Says Gay Policy Is Working*, N.Y. TIMES (Sept. 19, 2012), <https://www.nytimes.com/2012/09/20/us/dont-ask-dont-tell-anniversary-passes-with-little-note.html> (explaining that military “recruiting, retention and overall morale have not been affected” and that “[n]one of the dire predictions of opponents” have occurred).

protected.<sup>59</sup> This study did not locate a single example of a transgender perpetrator of one of these crimes. Nor did it find a single example of people pretending to be transgender committing these crimes.<sup>60</sup> This should not be surprising: whether gender identity is protected under antidiscrimination law or not, criminals are still subject to prosecution for whatever crimes they commit.

As Justice Brandeis famously said, states are “laboratories of experimentation.”<sup>61</sup> We have had ample time to see these experiments at work, and they have been successful. Millions of LGBT Americans have gained dignitary rights. At the same time, the slippery slope simply has not materialized.

**IV. The Equality Act codifies judicial precedents interpreting discrimination on the basis of sex to encompass discrimination on the basis of sexual orientation and gender identity.**

Similarly, the sky has not fallen in the wake of multiple federal appellate courts adopting the same interpretation of sex discrimination as that embodied in the Equality Act. Over the last fifteen years, the EEOC and a number of Circuit Courts of Appeals have determined that discrimination “because of . . . sex”<sup>62</sup> in Title VII includes discrimination on the basis of gender identity and/or sexual orientation.

These courts have drawn largely on the reasoning of two Supreme Court cases interpreting Title VII. In the path-marking case of *Price Waterhouse v. Hopkins*, a plurality of the Court explained that discrimination “because of . . . sex” encompassed discrimination rooted in sex stereotypes.<sup>63</sup> *Price Waterhouse* concerned a female accountant who, despite being at the top of her class, was passed over for partnership because she supposedly was “macho” and needed to act “more femininely.”<sup>64</sup> In ruling in her favor, the plurality observed that “we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype attached to their group.”<sup>65</sup> In Title VII, Congress “intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.”<sup>66</sup>

More recently, the Court observed that interpretations of the word “sex” in Title VII should be interpreted according to text rather than intent. Writing for a unanimous Court in *Oncale v. Sundowner Offshore Services*, Justice Scalia acknowledged that “male-on-male sexual harassment in the workplace was assuredly not the principal evil congress was concerned with when it enacted Title VII.”<sup>67</sup> Nevertheless, he observed that “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions

<sup>59</sup> Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms and Changing Rooms*, 16 *SEXUALITY RES. & SOC. POL'Y* 70, 80 (2019).

<sup>60</sup> *Id.* at 78–79.

<sup>61</sup> See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

<sup>62</sup> Civil Rights Act of 1964, § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1).

<sup>63</sup> 490 U.S. 228 (1989).

<sup>64</sup> *Id.* at 235.

<sup>65</sup> *Id.* at 251.

<sup>66</sup> *Id.* (internal quotations and citations omitted). Note that

<sup>67</sup> *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998).

of our laws rather than the principal concerns of our legislators by which we are governed.”<sup>68</sup> Under this view, courts should directly interpret the meaning of phrases such as “because of . . . sex” without reference to legislative intent.<sup>69</sup>

Increasingly, circuit courts have adopted the reasoning of these Supreme Court cases to address a fuller range of sex discrimination in the workplace. Taking note that Title VII covered “reasonably comparable evils” (*Oncale*), including discrimination on the basis of sex stereotypes (*Price Waterhouse*), these courts have concluded that discrimination on the basis of gender identity and sexual orientation was actionable under extant law.

For the past fifteen years, circuit courts have been coming to the conclusion that gender identity discrimination was a form of sex discrimination. In 2004, the Sixth Circuit held that discrimination against transgender people was sex discrimination under Title VII because it turned on sex stereotypes.<sup>70</sup> The Sixth Circuit explained that “discrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman.”<sup>71</sup> In 2011, the Eleventh Circuit applied this reasoning under the Equal Protection Clause to find a state employer liable for discriminating against a transgender employee.<sup>72</sup> In 2012, the Equal Employment Opportunity Commission (EEOC) adopted the view that discrimination on the basis of transgender status is sex discrimination.<sup>73</sup> In 2016, the Sixth Circuit applied this reasoning to Title IX to find that a school had unlawfully discriminated against a transgender student.<sup>74</sup> A year later, the Seventh Circuit did the same.<sup>75</sup> Many district courts have also arrived at the same conclusion.<sup>76</sup>

More recently, the EEOC and two circuit courts have held sexual orientation discrimination to be a subset of sex discrimination. In 2015, the EEOC took this position in the case *Baldwin v. Foxx*.<sup>77</sup> Two years later, the Seventh Circuit<sup>78</sup> and the Second Circuit<sup>79</sup> heard these claims en banc and held, in light of *Oncale* and *Price Waterhouse*, that sexual orientation discrimination is a form of sex discrimination. As the Seventh Circuit noted, in a society that views heterosexuality as the norm, a person with a different sexual orientation “represents the

<sup>68</sup> *Id.*

<sup>69</sup> *E.g.*, *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 111–12 (2d Cir. 2018) (en banc) (“In deciding whether Title VII prohibits sexual orientation discrimination, we are guided, as always, by the text and, in particular, by the phrase ‘because of . . . sex.’”)

<sup>70</sup> *Smith v. City of Salem, Ohio*, 378 F.3d 566, 573–75 (6th Cir. 2004). The Sixth Circuit has of course followed this precedent in more recent Title VII cases. *See EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 575 (6th Cir. 2018) (“[D]iscrimination ‘because of sex’ inherently included discrimination against employees because of a change in their sex.”); *Barnes v. City of Cincinnati*, 401 F.3d 729, 736 (6th Cir. 2005).

<sup>71</sup> *Smith*, 378 F.3d at 575.

<sup>72</sup> *Glenn v. Brumby*, 663 F.3d 1312, 1320–21 (11th Cir. 2011).

<sup>73</sup> *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995, at \*4 (Apr. 20, 2012) (holding that “claims of discrimination based on transgender status, also referred to as claims of discrimination based on gender identity, are cognizable under Title VII’s sex discrimination prohibition”).

<sup>74</sup> *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016).

<sup>75</sup> *Whitaker ex rel. Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017).

<sup>76</sup> *See, e.g.*, *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F. Supp. 3d 730, 741–42 (E.D. Va. 2018) (Title IX); *M.A.B. v. Board of Education of Talbot County*, 286 F. Supp. 3d 704 (D. Md. 2018) (Title IX).

<sup>77</sup> *Baldwin v. Foxx*, EEOC Appeal No. 0120133080, 2015 WL 4397641, at \*7–9 (July 16, 2015) (finding that sexual orientation discrimination is a subset of sex discrimination because it necessarily depends on the concept of sex itself, association on the basis of sex, and sex stereotypes).

<sup>78</sup> *Hively v. Ivy Tech. Coll. Cmty. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc).

<sup>79</sup> *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (en banc).

ultimate case of failure to conform” to gender stereotypes.<sup>80</sup> Despite the change in administration, the EEOC has not repudiated its position that both gender identity and sexual orientation discrimination are sex discrimination, and it argued for the plaintiff in the Second Circuit case.<sup>81</sup>

In addition to adverting to the sex stereotyping argument, courts have noted that discrimination on the basis of gender identity or sexual orientation cannot be analytically distinguished from sex discrimination. After all, the concept of sex is a necessary foundation to gender identity (which focuses on the sex with which one identifies) and sexual orientation (which focuses on the sex to whom one is attracted). The Sixth Circuit held that “it is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex.”<sup>82</sup> Another court made an analogy to religious discrimination, noting that firing someone for a transitioning from male to female violated Title VII just as firing an individual for “convert[ing] from Christianity to Judaism” would.<sup>83</sup> Similarly, courts have held that, if a man can marry a woman but a woman cannot, that is discrimination “because of . . . sex.” The Second Circuit explained that sexual orientation discrimination was a “subset” of sex discrimination because “sexual orientation is defined by one’s sex in relation to the sex of those to whom one is attracted, making it impossible for an employer to discriminate on the basis of sexual orientation without taking sex into account.”<sup>84</sup>

To be sure, the courts have not been unanimous in interpreting “sex” to encompass “gender identity” or “sexual orientation.” Even after *Price Waterhouse* and *Oncale*, the Tenth Circuit effectively rejected the idea that sex discrimination under Title VII could encompass gender identity discrimination.<sup>85</sup> A divided Eleventh Circuit panel recently followed that circuit’s precedent that sexual orientation discrimination was not sex discrimination.<sup>86</sup>

The lack of unanimity on these questions only emphasizes why Congress must step in with a clear answer. In the Pregnancy Discrimination Act of 1978, Congress stated that sex discrimination encompassed pregnancy discrimination. In doing so, it superseded a Supreme Court interpretation to the contrary.<sup>87</sup> Here, Congress should pass the Equality Act to clarify that sex discrimination encompasses discrimination on the basis of gender identity and sexual orientation. By aligning federal statutory law with the dominant jurisprudential view, Congress will be codifying this precedent and setting the same uniform standard across the nation.

<sup>80</sup> *Hively*, 853 F.3d at 346.

<sup>81</sup> Chris Opfer, *Trump LGBT Rift Should Be Solved by Court, Congress: EEOC Leaders*, BLOOMBERG LAW (Nov. 14, 2018, 10:36 AM), <https://www.bloomberglaw.com/document/X2207FJ4000000>.

<sup>82</sup> *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 575 (6th Cir. 2018).

<sup>83</sup> *Schroer v. Billington*, 577 F. Supp. 2d 293, 306–07 (D.D.C. 2008) (“Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only ‘converts.’ That would be a clear case of discrimination ‘because of religion.’”); see also *Macy v. Holder*, EEOC DOC 0120120821, 2012 WL 1435995, at \*11 (Apr. 20, 2012).

<sup>84</sup> *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 131 (2d Cir. 2018) (en banc). There is also a pending appeal on this same issue in the Eighth Circuit. See *Horton v. Midwest Geriatric Management*, 2017 WL 6536576 (E.D. Mo. Dec. 21, 2017).

<sup>85</sup> *Etsitty v. Utah Transit Authority*, 502 F.3d 1215, 1224 (10th Cir. 2007). The case is ambiguous, implying there might be certain situations when gender identity discrimination would be actionable, but the scope is very narrow.

<sup>86</sup> *Evans v. Georgia Reg’l Hosp.*, 850 F.3d 1248, 1255 (11th Cir.), cert. denied, 138 S. Ct. 557 (2017) (internal quotations omitted).

<sup>87</sup> Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified as amended at 42 U.S.C. § 2000e(k) (2012)), superseding *General Elec. Co. v. Gilbert*, 429 U.S. 125 (1976).

**V. The statute carefully maintains many protections for freedom of religion in the context of advancing civil equality for LGBT individuals.**

Some critics of the Equality Act have suggested that the law could threaten religious liberty, pointing to provisions that bar the use of the Religious Freedom Restoration Act as a defense to actions brought under the statute. Yet the statute in fact seeks to protect religious freedom without allowing it to become the freedom to discriminate against LGBT individuals.

Civil rights statutes safeguarding vulnerable groups have never included an unlimited license to refuse compliance on religious grounds. Such license would eviscerate the protections of these statutes. In the 1968 case *Newman v. Piggie Park Enterprises, Inc.*, the Supreme Court addressed a challenge to the Civil Rights Act by a barbeque chain restaurant owner who argued that his religious beliefs did not permit him to serve black customers.<sup>88</sup> The Court rejected this claim, explaining that the “defendants’ contention that the Act was invalid because it ‘contravenes the will of God’ and constitutes an interference with the ‘free exercise of the Defendant’s religion’” was “patently frivolous.”<sup>89</sup>

Whenever Congress promulgates safeguards for vulnerable minorities, individuals may argue that religious freedom should allow them to refuse to accord such protections. As the Supreme Court noted last Term in *Masterpiece Cakeshop*, exemptions from civil rights statutes must be confined or else “a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with . . . civil rights laws.”<sup>90</sup> We anticipate that courts will determine that application of nondiscrimination laws governing businesses, landlords and publicly funded programs is narrowly tailored to serve a compelling interest in eradicating discrimination and ensuring the ability to fully participate in public life for all, thus satisfying RFRA. However, claimants in civil rights cases should not be required to litigate this question in every case. For this reason, the Equality Act cabins the extent to which claims under RFRA can be used to evade the requirements of the statute.

To be clear, however, the Equality Act only seeks to limit the potential abuse of religious exemptions, not to eliminate them altogether. The Act leaves in place the long-standing exemptions that have governed the operation of our civil-rights laws for decades. Since 1972, courts have held that Title VII has a “ministerial exemption.” In that year, the Fifth Circuit held that the First Amendment prevented a female minister from bringing a sex discrimination claim against a church.<sup>91</sup> In 2012, the Supreme Court unanimously upheld the ministerial exemption in the Americans with Disabilities Act (ADA), explaining that “the authority to select and control who will minister to the faithful . . . is the church’s alone.”<sup>92</sup> Courts have also found that the exemption applies not only to Title VII and the ADA, but also to the Age Discrimination in Employment Act, the Family Medical Leave Act, and other anti-discrimination statutes.<sup>93</sup> Title VII also contains a religious organization exemption, which exempts religious employers “with respect to the employment of individuals of a particular religion to perform work connected with

<sup>88</sup> 390 U.S. 400 (1968) (per curiam).

<sup>89</sup> *Id.* at 403 n.5.

<sup>90</sup> *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018).

<sup>91</sup> *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972).

<sup>92</sup> *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 195 (2012).

<sup>93</sup> Caroline Mala Corbin, *Above the Law? The Constitutionality of the Ministerial Exemption from Antidiscrimination Law*, 75 *FORDHAM L. REV.* 1965, 1975-76 (2007).

the carrying on by such corporation, association, educational institution, or society of its activities.”<sup>94</sup> Similarly, the Fair Housing Act already includes an anti-discrimination exemption for religious organizations, allowing them to give preference to those of the same religion in “the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose.”<sup>95</sup> The Equality Act retains all these protections for people of faith.

Moreover, the free exercise guarantees of the U.S. Constitution provide protections for religious liberties. Under the Supremacy Clause, no statute can affect those protections. In *Employment Division v. Smith*, the Court held that “valid and neutral law[s] of general applicability” could not be challenged under the Free Exercise Clause simply because they place a burden on a given religion.<sup>96</sup> Yet the Court subsequently clarified in *Church of Lukumi Babalu Aye v. Hialeah* that an ordinance motivated by animus against a certain religious group, even though it appeared neutral on its face, was invalid under the Free Exercise Clause.<sup>97</sup> Finally, just last term, the Court explained in *Masterpiece Cakeshop* that religious animus in the enforcement of civil-rights statutes was impermissible.<sup>98</sup> Religious people are “entitled to the neutral and respectful consideration of [their] claims,” and disputes must be resolved “with tolerance [and] without undue disrespect to sincere religious beliefs.”<sup>99</sup> Under this long line of post-*Smith* jurisprudence stretching from *Lukumi Babalu Aye* to *Masterpiece Cakeshop*, any enforcement of the Equality Act based on religious animus would be swiftly invalidated.

#### **VI. The Act appropriately protects conduct alongside status.**

Some have argued that sexual orientation and gender identity are distinguishable from sex—or other protected classifications like race—because they are defined by conduct, rather than by status alone. This distinction is unavailing.

Civil-rights protections in our nation have never been limited to status alone. Religious conduct is not immutable, and Title VII explicitly protects it. Thus, in 1972, Congress specified that “[t]he term ‘religion’ includes *all aspects of religious observance and practice*, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship.”<sup>100</sup> Similarly, pregnancy, which was included in Title VII with the Pregnancy Discrimination Act of 1978, concerns an intrinsically mutable characteristic. The statutory text provides that “because of sex” must “include . . . because of or on the basis of pregnancy, childbirth, or related medical conditions.”<sup>101</sup> Although pregnancy is not an immutable status but rather a temporary condition—and one that in many cases is planned and chosen voluntarily—

<sup>94</sup> 42 U.S.C. § 2000e-1(a); *see, e.g.*, *EEOC v. Townley Eng’g & Mfg. Co.*, 859 F.2d 610, 617–18 (9th Cir. 1988) (explaining how to properly construe the provision in light of the statutory text and legislative history).

<sup>95</sup> 42 U.S.C. § 3607(a); *see, e.g.*, *Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries*, 657 F.3d 988, 996 (9th Cir. 2011) (holding that § 3607(a) permitted a non-profit Christian-based homeless shelter to give preference to Christians).

<sup>96</sup> *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990).

<sup>97</sup> *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (“The Free Exercise Clause protects against governmental hostility which is masked, as well as overt.”).

<sup>98</sup> *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018).

<sup>99</sup> *Id.* at 1729, 1732.

<sup>100</sup> An Act to Further Employment Opportunities for American Workers, Pub. L. No. 92-261, § 2, 86 Stat. 103, 103 (1972), *codified at* 42 U.S.C. § 2000e(j) (emphasis added).

<sup>101</sup> 42 U.S.C. § 2000e (2012).

Congress still included it within the scope of Title VII “sex” protections. The same can and should be done with gender identity and sexual orientation.

Moreover, in the context of sexual orientation and gender identity, status and conduct are inextricably linked. In *Christian Legal Society v. Martinez*, the Court observed that “[o]ur decisions have declined to distinguish between status and conduct” in the context of sexual orientation.<sup>102</sup> The same logic would apply to gender identity. If gender identity is the status, then the relevant conduct would presumably be gender expression (including but not limited to transition). Yet here too, the conduct is almost inextricably intertwined with the status. As the *CLS* Court said, quoting an earlier case: “A tax on yarmulkes is a tax on Jews.”<sup>103</sup> Thus, the Equality Act protects both status and conduct to ensure that LGBT people are adequately protected from discrimination.

### Conclusion

I end where I began, by noting that I am the Chief Justice Earl Warren Professor of Constitutional Law. I wish to elaborate that when the title was first offered to me in 2008 by my then-Dean, I rejected it. I reminded him that I was of Japanese descent, and that, as Attorney General of California, Earl Warren superintended the internment of people of Japanese ancestry without due process or criminal charges.<sup>104</sup> In his wisdom, my Dean responded that after he became Chief Justice of the United States Supreme Court, Earl Warren not only expressed regret for his role the internment,<sup>105</sup> but also wrote canonical civil-rights opinions like *Brown v. Board of Education*<sup>106</sup> and *Loving v. Virginia*.<sup>107</sup> My Dean asked me what better title I could have than the name of an individual who had been able to travel so far on issues of civil rights over the course of a single lifetime, at the point where he was completing his journey. So I now wear that title with pride, wondering in how many countries a racial minority could move so quickly from being outside the protection of the Constitution, to holding a place of honor as a scholar and teacher of that document.

I consider it a matter of grace that I can tell the same story in a different register. I am a gay man who was born in 1969, the year of the Stonewall Riots. In 2003, when the Court decided *Lawrence v. Texas*,<sup>108</sup> often called the *Brown v. Board* of the gay-rights movement, I became a full member of the American polity. Even then, the idea that I could marry and raise children seemed unimaginable. And yet because of judicial and legislative decisions like the one you are asked to make today, I married my husband ten years ago in Connecticut and have two children. Today it is a life without them—my husband, my daughter, and my son—that seems unimaginable.

<sup>102</sup> *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 689 (2010) (citing *Lawrence v. Texas*, 539 U.S. 558, 575 (2003) (“When homosexual conduct is made criminal . . . that declaration in and of itself is an invitation to subject homosexual persons to discrimination.”)).

<sup>103</sup> *Id.* at 689 (quoting *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993)).

<sup>104</sup> JIM NEWTON, *JUSTICE FOR ALL: EARL WARREN AND THE NATION HE MADE* 134–35 (2007).

<sup>105</sup> EARL WARREN, *THE MEMOIRS OF EARL WARREN* 149 (1977) (“I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens.”).

<sup>106</sup> *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955).

<sup>107</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).

<sup>108</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

Yet the movement for LGBT equality is far from complete. Even with all the forms of privilege we possess as a family, we still feel unsafe traveling to certain areas of this country. As a family, we have encountered exclusion and bias even in our home state of New York—in a restaurant here, or a water park there. I worry less about myself when these events occur, and more for my young children. I worry, as Dr. King did for his own six-year-old daughter, about “see[ing] ominous clouds of inferiority begin to form in [their] little mental sk[ies].”<sup>109</sup>

So it is no small matter you consider today. I have dedicated much of my life to civil-rights law because it has a unique capacity to transform the morally impossible into the morally inevitable. Over the course of the last half-century, I have lived two versions of the American Dream. That journey has led me to believe that the experience of discrimination on the basis of race on the one hand and discrimination on the basis of sex, sexual orientation, or gender identity, on the other, are not entirely different. And it has led me to believe the dignity the law can bestow in welcoming us into the light of the public sphere is entirely the same.

Thank you.

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<sup>109</sup> Martin Luther King, Jr., Letter from a Birmingham Jail, Apr. 16, 1963, AFRICAN STUDIES CENTER, UNIVERSITY OF PENNSYLVANIA, [https://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html) (last visited March 31, 2019).

Chairman NADLER. Thank you. I thank the witnesses.

We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes, and I have three questions for Ms. Chandy.

Ms. Beck objects to the addition of gender identity as a protected characteristic in our civil rights laws because she believes that treating someone as if they are a member of the opposite sex is not a civil right. What is your response to that?

Ms. CHANDY. Yes. Listening to that testimony, it seems like that particular witness does not believe that transgender people exist, and personally I have sort of worked in a volunteer capacity over the last 25 years with LGBTQ organizations, and I just want to say that no one up here are doctors or scientists, so we are talking about our experience with people and how that fits into the law for today.

And so I have met numerous transgender individuals who are trans women and girls who are women and girls. In terms of the biology piece, biology is made up by so many different things, as I understand it, not just external sex organs. There are hormones. There are internal things. And so all of these things make up a person. And so transgender women and girls are women and girls. Transgender boys and men are boys and men, as we have heard. So to basically have someone say that does not exist, and then to say that people will go so far as to make up an entire identity, change their pronouns, maybe engage in medical treatment to just simply invade sex-segregated spaces or participate in sports is so outlandish, it is so far-fetched when you think about the weight and seriousness that someone goes through before deciding that they need to be presenting a gender-affirming gender identity.

So it just sort of—I hear it as offensive because it is sort of here—it sounds to me like someone is saying that a particular identity does not exist.

I can also address the point about sex stereotyping. That is the very theory that the Supreme Court has used to cover both sexual orientation and gender identity. The Supreme Court has said how you present yourself, whether you present in a feminine or masculine way, all of those sorts of things are protected and you cannot discriminate based on those, and that is the theory that has led us to saying sexual orientation and gender identity are all part of sex discrimination, and that is not allowed to discriminate on any of those characteristics.

Chairman NADLER. Thank you.

In her written testimony, Ms. Beck lists a number of potential scenarios that could arise if Congress were to include protections against gender identity-based discrimination in the Equality Act, including “men will dominate women’s sports, and girls will stay home from school when they have their periods to avoid harassment by boys in mixed-sex toilets.” What is your response?

Ms. CHANDY. There is no research to support the claim that allowing trans athletes to play on teams that fit their gender identity will create a competitive imbalance. Trans children display the same variation in size, strength, and athletic ability as other youth. And there are no reported instances of a boy pretending to be transgender or presenting as a girl to fraudulently join a sports

team. There is just no example of this happening. And for this to be raised as the issue today, we are an organization that cares about women in sports. We can talk about women in sports: unequal pay; how women coaches are treated; resources given to women in sports. We can spend a lot of time talking about women in sports. The “problem” of transgender inclusion in sports is not the issue that is being raised.

Chairman NADLER. Thank you. I have one more question on the same topic.

Professor Coleman testifies that female athletes “know that segregation on the basis of sex, or at least of sex linked to traits, is necessary to achieve equality in this space.” And he also testifies—I am sorry, Professor Coleman. She testifies that because those born male are exposed to much higher levels of testosterone, they enjoy physical advantages in athletic performance, and not recognizing this difference will hinder women’s opportunities in sports. Your response to those two—

Ms. CHANDY. I would just say that half of the country, we have state and local laws that protect on the basis of gender, sexual orientation, and gender identity. And as the professor described, this has been going on in half of the country, and it is not as if sports has been sort of—women’s sports has been overcome with transgender athletes winning every race.

Even in the example that was given in Connecticut, which is the only one I am hearing, those people went on to the Nationals, and one did not participate, and one came in like 30th or 31st. So this idea that transgender inclusion is going to mean that transgender individuals are going to win in all of the sports is simply not true. We have heard no data to say that that is true, and these are just fears and myths and stereotypes, which is not a way that we can make law.

Chairman NADLER. And finally, given that many courts have interpreted Title 7 and other civil rights statutes to already prohibit discrimination on the basis of sexual orientation or gender identity, why do we need to amend existing statutes to provide such protection?

Ms. CHANDY. Okay. So, right now, the circuit courts are sort of deciding, and there has been a growing consensus among Federal courts that the existing prohibition on sex discrimination also prohibits discrimination based on sexual orientation or gender identity. But that depends on the court that is looking at it. There are also some circuits that have not gone in that way. So it is not fair that whether or not you have rights, not to be discriminated against based on sexual orientation or gender identity cannot depend on the state you live in, the location, or the circuit. That is not a fair way to have civil rights protections.

These protections need to be firmly established in the legislation so that all genders need to follow it, all circuits need to follow it, and that everyone in the country can have this protection.

Chairman NADLER. Thank you. I take it you mean should not, not cannot.

My time has expired. The gentleman from Georgia, the Ranking Member, Mr. Collins, is recognized.

Mr. COLLINS. Thank you, Mr. Chairman.

H.R. 5 will require under Federal law that all entities receiving Federal financial assistance, including K–12 schools, colleges, hospitals, recognize whatever self-professed gender identity an adolescent might profess. In the audience today are several parents who are representing the Kelsey Coalition. These are parents of transgender-identifying children who have been harmed by gender identity medical practices. Their stories are not reported in the press. They have been denied meetings with their representatives, and they are here today to make sure that this committee will seriously consider the disastrous impact of including gender identity in the Equality Act, under which doctors will be required to administer testosterone to young girls on demand, they will be required to block the—of young boys based on the feelings of gender confusion, and this is already happening, including gender identity in the Federal law will turn these unsound medical practices into Federal mandate.

The opposition to this bill is both deep and wide in both Republican and Democrat men and women, mothers and fathers from all sides of the political spectrum, and no side at all. I just received a letter this morning from a Georgia mom deeply concerned with what is happening with girls sports and its effect on daughters and girls everywhere, and I would like to ask that to be submitted for the record.

Chairman NADLER. Without objection.

Mr. COLLINS. But opposition to this bill also consists of many people who are scared to express their views, and so we on our side are going to use some of our question time to give voice to those who might otherwise remain voiceless in the face of the injustice that will be imposed by this legislation.

To that end, I will begin my questioning by reading parts of the peer-reviewed study by Dr. Lisa Littman entitled, “Parents Reports of Adolescents and Young Adults Perceived to Show Signs of Rapid Onset Gender Dysphoria,” which shows how the transgender ideology is propagated in part by social media and aimed at vulnerable children. H.R. 5, if enacted, would codify an Internet phenomenon into Federal law.

H.R. 5 would make it illegal for well-meaning parents and doctors to protect children from rash judgments that are part of childhood, even more so in the era of smart phones and social media obsession. The following is from Dr. Lisa Littman’s article.

Dr. Littman found that none of the AYAs, adolescents and young adults, described in the study would have met diagnostic criteria for gender dysphoria in childhood. In fact, the vast majority, 80.4 percent, had zero indicators from the DSM–V distinct diagnostic criteria for childhood gender dysphoria, with 12.2 percent possessing one indicator, 3.5 with two indicators, and 2.4 with three indicators.

Adolescents and young adults had received online advice, including that if their parents were reluctant to take them for hormones, that they should use the suicide narrative, telling the parents that there is a high rate of suicide of transgender teens to convince them, 20.7 percent, and that it is acceptable to lie or withhold information about one’s medical or psychological history from doctors

or therapists in order to get hormones and get hormones faster, 17.5 percent.

There is a lot of concern, as I stated in my opening statement. There is love and compassion for all folks who are going through different stages, but this bill has real consequences and real concerns.

Professor Coleman, as a member of Congress I am used to being discussed in the third person about what I have said and not said, and my Chairman, we talk about each other a lot in different ways than what we have said, but your testimony has actually been brought up, and I would like for you to be able to respond to what was said earlier, discussing the dysphoria aspect and some of these differences that we have seen that is not isolated in this, and I would like for you to comment on that.

Ms. COLEMAN. Thank you. So, I understand that sport is really important in consideration of this bill, but it covers things more broadly, and I want to make clear again that my position is narrow and concerns only sport, and you can do with that what you would like.

A couple of responses. Again, Professor Yoshino mentioned that transgender girls and women have not yet broadly displaced girls and women in sport. That is absolutely right, but also this is just the beginning of a period of time in various states where trans kids are coming out as trans and are being welcomed and included for their authentic selves. So the question is what will happen if this trend continues and identification into girls' and women's sport comes to be based on gender identity rather than biology, or in addition to biology on an equal basis.

In the Olympic movement we have seen the effects of this issue in the last period where the Court of Arbitration for Sport lifted the requirements of testosterone reduction for intersex and trans women. For example, the Olympic podium in the women's 800 meters likely was comprised entirely of biological males in the last Olympic championships, and that is—we are talking three people out of hundreds of girls and women.

I will just add, with respect to the national championships in indoor track recently, the high school and college national championships, only one of the two girls from Connecticut was able to compete, and the girl who was able to compete had satisfied the National Scholastic Athletic Foundation policy of dropping her T levels for over a year to within the women's range, the girls and women's range.

Mr. COLLINS. Well, thank you.

And again, I appreciate everyone who has come here today. We may disagree on certain things, but also not everything is simply solved by nature or number, and these are questions that need to be addressed and need to be talked about. But I think the concerns, most that I relate here, is something that we need to discuss, and I appreciate the Chairman having it, and we will continue on.

With that, I yield back.

Chairman NADLER. I thank the gentleman.

The gentle lady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Like so many other Americans, LGBTQ have had their rights eroded since the Administration took power, from removing LGBTQ issues from Federal data collection surveys, to the ban on transgender individuals who are serving in the military, just to name a few. The first few years of the presidency had our country taking several steps backwards.

We have taken this step with the Equality Act to stop stepping backwards but to step forward, and I am a proud original co-sponsor of this bill. As a consequence, everyone, regardless of their sexual orientation, should be afforded the same protections provided under the Civil Rights Act and other civil rights bills, and the Equality Act does ensure that that is the case.

I have listened to the testimony, and all of you said interesting things, and I appreciate that you were here. But, Reverend Wiley, I was so moved listening to your testimony and thinking back to your days in the segregated south. We have many challenges remaining, but we have made some progress. We should celebrate the successes in addition to bemoaning the challenges that remain.

But I am particularly struck that you are here as a man of faith, and many opponents—I am not suggesting here on the dais today but in our country—of LGBTQ equality claim that somehow that equality is at odds with religious freedom and with people of faith, and yet here you are, a faith leader testifying in support of this bill.

Why, as one who has dedicated himself to religious life your entire life, do you support LGBTQ equality? How do you reconcile your faith, your belief, with those who oppose it for religious reasons?

Rev. WILEY. Thank you for the question.

I grew up as the son of a Baptist minister. My uncles, a couple of uncles were ministers. I have an aunt who is a minister, cousins, my brother. So I have been surrounded by the Church all my life, and I am thankful that my parents not only taught me the Bible, but they also lived what they believed to be the principal concept of the Bible that included justice, equality, liberty, compassion, and those are the kinds of things that were instilled in me.

And also, the need to stand up for what we believe is right. My father assisted Dr. King on many occasions in the civil rights movement. So I grew up believing that it was part of my responsibility as a minister not just to stand in the pulpit and preach on Sunday mornings, but also to be active in the community and in the nation and the world in an active way to challenge any kind of issue that would bring any kind of injustice to people.

I also was taught to respect and appreciate all of God's creation, that God was a god of love and a god of forgiveness and a god of saying that everybody is welcome into God's house.

So I am sometimes amazed at how the Church is not more active in struggles like this. Martin Luther King, Jr., when he was sitting in the Birmingham jail and wrote the letter from that jail, he was concerned that some of the ministers in that town were saying he was going too fast, he needed to wait, he needed to slow down and be more gradual. But he says that he could not wait because justice delayed is justice denied.

So that is where I come from. And not only was I involved in the struggle for racial justice but as I studied with theologians, they helped me to understand that none of us are free until all of us are free.

Ms. LOFGREN. Thank you very much, Reverend. My time is expired, but your words are inspiring to us all. Thank you very much.

Rev. WILEY. Thank you.

Chairman NADLER. Thank you.

I now recognize the gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. And thank you to all the witnesses for providing insight for members on both sides of the aisle here, whether you are for or against H.R. 5.

As well as being a member of this committee, I happen to be the ranking member of the House Small Business Committee, which is the lead Republican on that committee. In the last two congresses I was chairman of that committee, and in that capacity we get to hear from small businesses all over the country about how laws that we pass here impact them on a daily basis, and I would note that America's small businesses provide about 70 percent of the new jobs created in America nowadays.

With respect to H.R. 5, small business, particularly small business owners who have common religious beliefs, many of whom are women, have shared their concerns about H.R. 5 with me and other members. For example, and we have already seen this in athletics, where physical men now in some cases have to compete with women, we heard testimony on both sides of that, and it does not seem to be fair to a lot of people that men who identify as women are competing with women. Similarly, it does not seem fair for men who identify as a woman to be able to take advantage of certain government contracts, because doing so allows them to utilize the women-owned small business Federal contracting program, for example, which is designed to provide greater access to Federal contracting opportunities for women-owned small businesses.

One of the requirements to be certified in that particular program is to be 51 percent owned and controlled by one or more women. This program gives contracting officers a statutory goal of providing at least 75 percent of Federal contracting dollars to women-owned firms, and adopting H.R. 5 could mean that this program and others like it, designed to level the playing field for women in business, could be jeopardized. So that is certainly, I think, something to be considered.

It could also mean that small business owners would have to provide the cost of providing health care if one of their employees wanted to undergo elective procedures that were covered under H.R. 5, the bill that we are considering today. This could be very costly for small business owners who are already facing rising health care costs under the Affordable Care Act or Obamacare, whichever terminology one prefers. Forcing them to provide pharmaceutical and other types of health care for these sorts of procedures because someone identified as a member of the opposite sex could, no doubt, exacerbate the already high cost to small business.

So overall, while H.R. 5 says it is intended to provide equality for all, it in many people's views does anything but and goes beyond creating a level playing field to once again making it easier

for men who identify as women to take advantage of programs that are actually designed to do that. So that is something to be considered.

And then finally, there is a report from Dr. Littman, a study that I think a number of us had access to. This is a different topic, but there are online instructions about lying to parents and physicians under this, and these are a couple of things that it said, and these are quotes from some of these young people.

“Find out what they want to hear if they are going to give you T,” which apparently stands for testosterone, “and then tell them just that. It is about getting treatment, not about being true to those around you. It is not their business, and a lot of time doctors will screw stuff up for you.”

Another one said, “Get a story ready in your head and, as suggested, keep the lie to a minimum, and only for stuff that can’t be verified, like how you were feeling but was too afraid to tell anyone, including your family.”

From another one, “I would also look up the DSM,” which is Diagnostic and Statistical Manual, by the way, “for the diagnostic criteria for transgender and make sure your story fits it, assuming your psych follows it.”

Another correspondent offered, “He is rewriting his personal history to suit his new narrative.”

And another respondent said, “Our son has completely made up his childhood to include only girlfriends and dressing up in girls’ clothes and playing with dolls, etc. This is not the same childhood we have seen as parents.”

And then finally another parent said, “I overheard my son boasting on the phone to his older brother that the doc swallowed everything I said hook, line and sinker, easiest thing I ever did.”

And I yield back.

Chairman NADLER. I thank the gentleman.

The gentleman from Georgia, Mr. Johnson, is recognized.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman.

Good morning, and thank you all for being here today. Super-protections should ensure that no one can be discriminated against in their housing, their employment, and their public accommodations. Would you agree with that, Professor Coleman?

Ms. COLEMAN. Yes, sir, I do.

Mr. JOHNSON of Georgia. And do you agree with that, Ms. Beck.

Ms. BECK. Yes.

Mr. JOHNSON of Georgia. And so you both seem to be more in line with discriminating in the area of athletics, in the area of women’s athletics. Is that correct, Dr. Coleman, Professor Coleman?

Ms. COLEMAN. That is what I am here to testify about.

Mr. JOHNSON of Georgia. And Ms. Beck, you also?

Ms. BECK. I believe sex is a basis upon which sports should be segregated.

Mr. JOHNSON of Georgia. Now, is it true that there are some women who have high levels of testosterone, and then some with lower levels of testosterone?

Ms. COLEMAN. So, if I can, I can point you to—

Mr. JOHNSON of Georgia. Well, I mean, I am just asking as—some women, traditional women, if you will—

Ms. COLEMAN. Biological females' T levels do not overlap with biological males' T levels. There is quite a gap, no overlap, between the two ranges.

Mr. JOHNSON of Georgia. So you are in favor of kind of discriminating in the field of athletics based on testosterone levels.

Ms. COLEMAN. We have always done that. Sports has always done that.

Mr. JOHNSON of Georgia. All right. Now—

Ms. COLEMAN. That is the reason women's sport exists, is because of testosterone levels.

Mr. JOHNSON of Georgia. Ms. Chandy, what is your position on that, on that distinction insofar as it would create an ability to legally discriminate against someone?

Ms. CHANDY. The Equality Act would ensure that LGBTQ students, including women and girls who are LGBTQ, have the same opportunity to participate as their peers. We have heard about the benefits of sports, particularly for students who may be experiencing self-esteem or other concerns. It can be incredibly important.

And so the key for most of the people playing in sports is for inclusion and participation at those levels, and state schools and athletic associations across the country have found for many years that equal participation for LGBTQ students, including ones who are transgender, does not harm women and girls' sports in any way.

I also want to say that under similar state laws, schools and athletic associations have developed approaches that place primary focus on ensuring equal opportunity for participation for transgender athletes while taking account of the different context for ages and levels of competition. And so there are rules that govern these areas where experts can figure out how to allow transgender students to participate equally and without facing discrimination.

So these sort of discussions and rules are already in place in half of our country, and I was so relieved to hear Professor Coleman say this is actually not a problem now. This is a hypothetical problem. And meanwhile people are being excluded, and we want people to not have a place on the team for some hypothetical problem that we cannot even—we have no evidence of it. So we cannot create law based on that.

Mr. JOHNSON of Georgia. Thank you.

Professor Yoshino, has this issue of testosterone levels and sports been an issue that you have formed an opinion about?

Mr. YOSHINO. I do have an opinion.

Mr. JOHNSON of Georgia. Turn on your microphone.

Mr. YOSHINO. I defer it to Ms. Chandy, who has deeper expertise on this issue than I, but I do have an opinion based on the mere empirical evidence that has been adduced. We opened with Ranking Member Collins offering up the example of the two individuals in Connecticut who placed first and second in a particular athletic meet. Ms. Chandy responded by saying they went on to nationals. One did not participate, the other placed 30th.

Then I understood Ranking Member Collins to follow up on that and to say to Professor Coleman I understand that this is not a single incident and this is actually a much broader phenomenon, and I heard Professor Coleman agree with my testimony to say that this is not a broad phenomenon, that these are isolated incidents, but that in the future we might expect more. And my only response to that is again the federalism point, which is that we have had decades of experience since the 1970s of women participating, trans women participating in women's leagues, and they have not dominated.

It just strains credulity to think that an individual who is undergoing such a deeply personal transformation as to transition away from the gender assigned to them at birth would do so opportunistically simply because they wanted a gold medal in some track meet. This is not what gender identity is about, and this is not what the AMA or the American Psychological Association or the American Psychiatric Association say that it is about.

This is a civil rights issue. This is not about individuals opportunistically trying to take advantage of particular entitlements or benefits that are accorded to women, whether that be in sports, whether that be in small business. It is a deeply, deeply personal issue of identity formation that occurs, as many physicians say, at a very early level.

And one thing that I really appreciate both sides of the aisle being concerned about is our youth and our children, and I am glad to hear that even opponents of this bill articulate deep compassion for the children who are affected by gender identity disorder. I will point out that in the name of that compassion, I think it is useful to point out that the suicide rate among individuals who are transgender is 40 percent. Forty percent of individuals had attempted suicide in their lifetime, which is nearly nine times the attempted suicide rate in the overall population.

Chairman NADLER. The gentleman's time has expired. Thank you.

Mr. CICILLINE. Mr. Chairman, may I make a unanimous consent request? Mr. Chairman, I ask unanimous consent, in light of this line of questioning, that this statement of women's rights and gender justice organizations in support of full and equal access to participation in athletics for transgender people be made a part of the record.

It is signed by a number of organizations, including the American Association of University Women, Legal Voice, National Women's Law Center, the National Women's Political Caucus, Women Leaders in College Sports, the Women's Sports Foundation, and many, many others. I ask that it be made a part of the record.

Chairman NADLER. Without objection, the document will be made a part of the record.

[The information follows:]

**MR. CICILLINE FOR THE OFFICIAL RECORD**

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**Statement of Women’s Rights and Gender Justice Organizations in Support of Full and Equal Access to Participation in Athletics for Transgender People**

We, the undersigned organizations committed to women’s rights and gender justice, support the full inclusion of transgender people in athletics. Our organizations have a long history of advocating for fairness in sports and opportunities for all women to benefit from athletic participation and competition. Inclusion of transgender women and girls in women’s sports advances those goals. As organizations that care deeply about ending sex-based discrimination and ensuring equal access to athletics for women and girls, we support laws and policies that protect transgender people from discrimination, including in participation in sports, and reject the suggestion that cisgender women and girls benefit from the exclusion of women and girls who happen to be transgender.

Opponents of the Equality Act, the federal bill that would update our civil rights laws to provide explicit protection to LGBTQ people and expand existing sex discrimination protections, have cited alleged concerns for women’s equality and fair competition in sports as reasons to oppose the bill. Some state legislators have introduced bills that would ban transgender youth from competing in school sports consistent with their gender, citing fears about sexual assault in locker rooms and cisgender boys pretending to be girls in order to dominate girls’ sports. As organizations dedicated to opportunity and well-being for women and girls, we reject these unfounded fears. Instead, we recognize the harm to all women and girls that will flow from allowing some women and girls to be denied opportunities to participate and cast out of the category of “woman” for failing to meet standards driven by stereotypes and fear.

Just as opponents of equality claimed that cisgender women and girls would be harmed if transgender people could use restrooms that match who they are, opponents are now claiming that the need to “protect” cisgender women and girls in athletics justifies opposition to nondiscrimination protections for transgender people in public spaces and activities. As organizations that fight every day for equal opportunities for all women and girls, we speak from experience and expertise when we say that nondiscrimination protections for transgender people—including women and girls who are transgender—are not at odds with women’s equality or well-being, but advance them.

Equal participation in athletics for transgender people does not mean an end to women’s sports. The idea that allowing girls who are transgender to compete in girls’ sports leads to male domination of female sports is based on a flawed understanding of what it means to be transgender and a misrepresentation of nondiscrimination laws. Transgender girls are girls and transgender women are women. They are not and should not be referred to as boys or men, biological or otherwise. And when transgender people are excluded from participation on teams

that align with their gender identity, the result is often that they are excluded from participating altogether.

Nondiscrimination laws and policies protecting transgender people have existed for years in many states and athletic associations around the country. These laws and policies have allowed transgender people to participate equally in society, including in sports, without harming anyone else. None of these policies has resulted in the dissolution of girls' or women's athletics or a surge in transgender girls and women winning national championships. Rather, just like other female athletes, they have made important contributions within expected ranges; and, unfortunately, the small numbers of transgender girls and women who have achieved some level of local sports success have been wrongly stripped of the opportunity to celebrate their hard-earned victories due to public backlash.

People are right to be concerned about sex discrimination in sports. Women and girls continue to fight for equal opportunities and resources at all levels of athletics. As experts in sex discrimination, we know firsthand that equal opportunities for transgender people are not the problem, they are part of the solution. We will continue to spend our energy combating the actual problems: stereotypes about women and girls' interest and ability to compete, lack of equal resources for girls' sports, pay inequality and other types of discrimination against women coaches and professional women athletes, and sexual harassment that pushes women and girls out of sports. We will only accomplish these goals by treating all people, including transgender people, with fairness and respect. That means celebrating all athletes, including transgender athletes—not shaming them and casting them out.

American Association of University Women (AAUW)

California Women's Law Center

Clearinghouse on Women's Issues

End Rape on Campus

Equal Rights Advocates

Feminist Majority Foundation

Gender Justice

Girls Inc.

Know Your IX

Legal Momentum, the Women's Legal Defense and Education Fund

Legal Voice

National Organization for Women  
National Women's History Alliance  
National Women's Law Center  
National Women's Political Caucus  
Public Justice  
Sargent Shriver National Center on Poverty Law  
Southwest Women's Law Center  
Surge Reproductive Justice  
Tucker Center for Research on Girls & Women in Sport  
Women Leaders in College Sports  
Women's Law Project  
Women's Sports Foundation

Chairman NADLER. The gentleman from Texas, Mr. Gohmert, is recognized.

Mr. GOHMERT. Thank you, Mr. Chairman.

Ms. Coleman, you had a response to the last answer?

Ms. COLEMAN. Yes, please. So, trans women and trans girls are participating in sport, and most of them—this is just a factual point—most of them have dropped their T levels. In fact, part of transitioning, as I think everyone knows here—I do a lot of work with trans kids, including in the medicine area, and one of the things that trans girls would like to do is to drop their T levels into the female range as part of becoming their authentic selves. And when they do this and they compete, it is not at all a problem.

So just to be clear, at least my position is not that trans kids should be excluded from sport. It is simply that inclusion based on biology or biological trait, sex-linked traits makes sense because otherwise, in fact—and this is not a hypothetical. In fact, it will be the end of girls' and women's-only sport if we make simply gender identity the basis for eligibility for—

Mr. GOHMERT. Right. You will have men's sports and you will have co-ed sports.

You were one of two girls to get a track scholarship to Villanova in 1978, thanks to Title 9. And the point has been made—and I can see your facial expression, Professor Coleman—about the comment that there is no evidence of a problem with men competing. But there is no question that problem will continue to arise, and nothing more dramatic than this diagram you have, each one of these points representing an athlete, and the three red dots that are lost in the middle representing three Olympic winners in the 400 meters, and yet when they are compared with just the performances in the single year of 2017 of men, as you say, it shows that even at the women's best, the women would lose to literally thousands of boys and men, including to thousands who would be considered second tier in the men's category.

I think that we consider laws to say something is equal, like testosterone, when the testimony has already indicated it is clear in the medical literature it does make a difference. As you say in your testimony—I thought it was pretty clear—“Scientists agree that males and females are materially different with respect to the main physical attributes they contribute to athletic performance.”

It is true, but to see that graph you have, that demonstration, anybody here that seriously thinks that there are men who would not like to have Professor Coleman's scholarship and could get it, apparently there are thousands that could have beat you if there are guys that say, look, I feel like I am a woman—and let's be fair here, too. If we are going to say, as this law does, that the Olympic Committee and every other sport is going to have to eliminate the testosterone level requirement, that is going to have to go, because the presence of that rule makes it very clear that there is not equality in sports, and that is why that rule was put in place, because it was so unfair to the women.

And you point out in your testimony—I mean, viva la difference, but women are biologically able to carry children, most, and men are not. There is a difference. And having my own experience in the area of felony judgeship prosecution, I think about all the psy-

chiatric testimony I have heard about women who—they seem to have more post-traumatic stress disorder from sexual assault, and yet we are going to force them to have men in combined spaces, in shelters where they are seeking refuge away from men inflicting violence on them, and because we are going to stand up here and say, well, it is just too bad, we are going to force men to be into your spaces, and you are going to have to like it, I think is a war on women that should not be allowed.

We need to make consideration for what is going on, and I would ask unanimous consent—Ms. Chandy, you talk about evidence? This is one of the best, most thorough reports, the New Atlantis, the Journal of Technology and Society. I would ask unanimous consent that this special report on sexuality and gender be admitted as part of the record.

Chairman NADLER. Without objection.

Mr. GOHMERT. The head of Johns Hopkins, the first hospital in America to do sex-change surgery, Dr. Paul McHugh, his article in the Wall Street Journal dated May 13, 2016.

Chairman NADLER. Without objection.

Mr. GOHMERT. And also the transgender individual that had the surgery, his article in the Federalist from January 29, 2019, I would ask that that be made a part of the record.

Chairman NADLER. Without objection, the documents will be admitted into the record.

**MR. GOHMERT FOR THE OFFICIAL RECORD**

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Mr. Gohmert item for the record, The New Atlantis report on Sexuality and Gender:  
[https://www.thenewatlantis.com/docLib/20160819\\_TNA50SexualityandGender.pdf](https://www.thenewatlantis.com/docLib/20160819_TNA50SexualityandGender.pdf)

THE FEDERALIST

## 6-Year Old Texas Boy On Track For Repressed Puberty Due To Gender Dysphoria Diagnosis

*Little James is comfortable being a boy when he's around his dad & other friends. So why is his mother dressing him as a girl and calling him Luna?*

By Walt Haver

JANUARY 29, 2019

As reported in an earlier [article](#) concerning a Dallas, Texas, custody case, when in the care of his mother six-year-old James attends first grade obediently dressed as a girl enrolled under the name "Luna." But when with his father, where he's given the choice of boy or girl clothes, James chooses boy clothes and refuses to wear girl clothing. Despite this inconsistent behavior, a gender therapist has given James a diagnosis of gender dysphoria.

In response, heartwarming things have happened in the fight to save James. A team of designers volunteered their services to update the [savejames.com](#) website and another caring friend started an online [petition](#) directed to Texan representatives to do something to prevent this kind of abuse of children. Generous people [donated](#) to the father's legal expense fund, raising half of what is needed.

But the father, Jeff Younger, is still hampered by a shortage of finances to secure expert witnesses and perform a forensic custody evaluation to change the outcome for James.

### Follow-Up Visit

After writing the first article about James, I arranged to visit Jeff and his six-year-old twin sons in Texas. We met on a Thursday evening during the boys' usual two hours of visitation with their father. To keep the time casual, Jeff suggested we spend the time with his good friends, the Scott family and their four young children, who always enjoy time together.

Jeff and I drove across town to the mother's home to pick up the boys. As we pulled up, the front door opened, and the two young boys came flying out. James was dressed as a boy, like his brother. Into the backseat they went, saying hi to their dad and to me before they started talking about Ninja Turtles and other things they had done at school. Not one smidgeon of gender dysphoria or "girl talk" appeared during the drive back to the Scott home.

The next two hours were supervised and playful bedlam. Jeff brought out a toy popular with this bunch of friends—plastic swords and shields. Immediately, all six children were joyfully absorbed in rough-and-tumble swordplay with their fathers and each other. A pleasant dinner followed, and then the children went off to other playtime activities.

I observed James' mannerisms, voice inflections, and interactions, looking for evidence of gender dysphoria. I can emphatically say that during the two hours of the visit I saw no sign of gender dysphoria. James indicated no desire to be a girl, nor did he behave like a girl or talk like a girl during the entire time. Both James and his brother happily engaged with the four Scott children and the adults. Both were talkative, demonstrated strong vocabularies, and eagerly showed off their artwork created during a previous playdate.

I asked Jeff why James was dressed as a boy when he ran out of mom's house. Jeff explained that James prefers to dress as a boy, even at his mother's, except when he goes to school dressed as a girl.

After observing James and his behavior, I cannot see how his counselor at Dallas Rainbow Counseling could have diagnosed James with gender dysphoria. She spent time with James and his father, where James showed a preference for being a boy. Even if James preferred a girl name in sessions with his mother, it is a huge leap to a diagnosis of gender dysphoria. He's only six, after all.

A misdiagnosis cannot be ruled out, and a prudent next step is a comprehensive psychological assessment to explore why he identifies as a girl with mom and as a boy with dad. Per the custody order, the only parent authorized to oversee James' psychological counseling is his mother.

#### A Single Diagnosis Is Not Enough

A single therapist's diagnosis of gender dysphoria has put James on a life-changing protocol known as the Dutch protocol. (The Dutch protocol lacks scientific basis, yet clinics are adopting it.) The protocol consists of social transition to acting like the opposite sex, and hormone blockers.

Social transition is the first step. James' mother has enrolled him in first grade as a girl with a girl name and dresses him as a girl for school. Social transition for a young child is not harmless. It's grooming. My grandmother dressed me as a girl when I was 4, 5, and 6 years old, which led to my own gender confusion.

The next step is administering drugs to block the necessary and natural process of physical maturity and puberty, as early as age 8. Dr. Michael Laidlaw, an endocrinologist practicing in Rocklin, California, says, "What parents should find truly terrifying is the psychological effect of this medication."

Early evidence shows a troubling effect: All of the children put on blockers continue towards sex changes. The blockers themselves seem to influence children to transition. In vivid contrast, 60 to 90 percent of trans kids who are not reinforced in this desire or put on puberty blockers are no longer trans by adulthood. In other words, most trans children naturally grow out of it as they go through puberty, if they are not socially locked into an opposite-sex identity and puberty is not blocked.

Puberty blockers and the following step, cross-sex hormones, are known to cause serious side effects, including infertility. Children are not able to understand these consequences or give informed consent.

James is on track to be given these drugs.

Another opinion is so clearly needed. It's easy to see why this father is alarmed and fights so hard for his boy. An intervention is clearly needed and needed now. A second opinion needs to come from someone who is not a cheerleader for diagnosing gender dysphoria and preparing a child for a sex change. The ideal counselor will explore the family dynamics and other contributing factors.

If the current counselor is solid in her belief the gender dysphoria diagnosis is indisputable and fixed, she should support getting a second opinion in the best interests of the child.

#### Cross-Dressing Young People Will Influence Their Future

The case of James is very troubling to me because I know how the story unfolds. My grandmother dressed me as a girl when I was 4, 5, and 6 years old. Like James, I was far too young to comprehend the long-term consequences of being encouraged to cross-dress at such a young age, much less fight back. In my child's mind, it felt good to be the center of her attention. Now I call what grandma did to me "child abuse" because her grooming of me as a female negatively affected my entire life.

In adulthood, I was diagnosed with gender dysphoria and underwent unnecessary cross-gender hormone therapy and surgical gender change. I lived eight years as a woman and tried my best to make it work, but after surgery I still had gender dysphoria. Even worse, I was suicidal. Before giving me hormones and surgery, my medical providers should have helped me explore the possible psychological roots of my desire to escape into a female persona, but none did.

I'm not the only one whose life was hurt by the rush to change gender. I have heard from so many trans adults who ask me for advice in going back to their sex at conception that I compiled 30 people's emails into a book, "Trans Life Survivors." Several people in the book transitioned in their teens but when they hit their twenties, their feelings of gender dysphoria changed. They grew out of it, but only after making irreversible changes to their bodies, including the ability to have children, and losing years of their life to an alternate identity.

#### Help James From Being Locked In

Jeff and his lawyer are pursuing action through the court to save James, but public response is still very much needed. Even after a generous outpouring of support, Jeff is still hampered by a shortage of finances to secure expert witnesses and perform a forensic custody evaluation.

This case is not only about one six-year-old boy, but about all children who will get locked into a trans life by a gender dysphoria diagnosis and a parent's endorsement of social transition and hormone blockers. If Younger can prevail in proving the diagnosis of gender dysphoria and the resulting treatment is misguided, this Texas case has the potential to save other young children from similar gender identity nightmares.

***Walt Heyer is an accomplished author and public speaker with a passion for mentoring individuals whose lives have been torn apart by unnecessary gender-change surgery.***

WALL ST. JOURNAL

COMMENTARY

## Transgender Surgery Isn't the Solution

*A drastic physical change doesn't address underlying psycho-social troubles.*

By PAUL MCHUGH

Updated May 13, 2016 2:18 p.m. ET

*Editors' note: This op-ed was originally published on June 12, 2014.*

The government and media alliance advancing the transgender cause has gone into overdrive in recent weeks. On May 30, a U.S. Department of Health and Human Services review board ruled that Medicare can pay for the "reassignment" surgery sought by the transgendered—those who say that they don't identify with their biological sex. Earlier last month Defense Secretary Chuck Hagel said that he was "open" to lifting a ban on transgender individuals serving in the military. Time magazine, seeing the trend, ran a cover story for its June 9 issue called "The Transgender Tipping Point: America's next civil rights frontier."

Yet policy makers and the media are doing no favors either to the public or the transgendered by treating their confusions as a right in need of defending rather than as a mental disorder that deserves understanding, treatment and prevention. This intensely felt sense of being transgendered constitutes a mental disorder in two respects. The first is that the idea of sex misalignment is simply mistaken—it does not correspond with physical reality. The second is that it can lead to grim psychological outcomes.

The transgendered suffer a disorder of "assumption" like those in other disorders familiar to psychiatrists. With the transgendered, the disordered assumption is that the individual differs from what seems given in nature—namely one's maleness or femaleness. Other kinds of disordered assumptions are held by those who suffer from anorexia and bulimia nervosa, where the assumption that departs from physical reality is the belief by the dangerously thin that they are overweight.

With body dysmorphic disorder, an often socially crippling condition, the individual is consumed by the assumption "I'm ugly." These disorders occur in subjects who have come to believe that some of their psycho-social conflicts or problems will be resolved if they can change the way that they appear to others. Such ideas work like ruling passions in their subjects' minds and tend to be accompanied by a solipsistic argument.

For the transgendered, this argument holds that one's feeling of "gender" is a conscious, subjective sense that, being in one's mind, cannot be questioned by others. The individual often seeks not just society's tolerance of this "personal truth" but affirmation of it. Here rests the support for "transgender equality," the demands for government payment for medical and surgical treatments, and for access to all sex-based public roles and privileges.

With this argument, advocates for the transgendered have persuaded several states—including California, New Jersey and Massachusetts—to pass laws barring psychiatrists, even with parental permission, from striving to restore natural gender feelings to a transgender minor. That government can intrude into parents' rights to seek help in guiding their children indicates how powerful these advocates have become.

How to respond? Psychiatrists obviously must challenge the solipsistic concept that what is in the mind cannot be questioned. Disorders of consciousness, after all, represent psychiatry's domain; declaring them off-limits would eliminate the field. Many will recall how, in the 1990s, an accusation of parental sex abuse of children was deemed unquestionable by the solipsists of the "recovered memory" craze.

You won't hear it from those championing transgender equality, but controlled and follow-up studies

reveal fundamental problems with this movement. When children who reported transgender feelings were tracked without medical or surgical treatment at both Vanderbilt University and London's Portman Clinic, 70%-80% of them spontaneously lost those feelings. Some 25% did have persisting feelings; what differentiates those individuals remains to be discerned.

We at Johns Hopkins University—which in the 1960s was the first American medical center to venture into "sex-reassignment surgery"—launched a study in the 1970s comparing the outcomes of transgendered people who had the surgery with the outcomes of those who did not. Most of the surgically treated patients described themselves as "satisfied" by the results, but their subsequent psycho-social adjustments were no better than those who didn't have the surgery. And so at Hopkins we stopped doing sex-reassignment surgery, since producing a "satisfied" but still troubled patient seemed an inadequate reason for surgically amputating normal organs.

It now appears that our long-ago decision was a wise one. A 2011 study at the Karolinska Institute in Sweden produced the most illuminating results yet regarding the transgendered, evidence that should give advocates pause. The long-term study—up to 30 years—followed 324 people who had sex-reassignment surgery. The study revealed that beginning about 10 years after having the surgery, the transgendered began to experience increasing mental difficulties. Most shockingly, their suicide mortality rose almost 20-fold above the comparable nontransgender population. This disturbing result has as yet no explanation but probably reflects the growing sense of isolation reported by the aging transgendered after surgery. The high suicide rate certainly challenges the surgery prescription.

There are subgroups of the transgendered, and for none does "reassignment" seem apt. One group includes male prisoners like Pvt. Bradley Manning, the convicted national-security leaker who now wishes to be called Chelsea. Facing long sentences and the rigors of a men's prison, they have an obvious motive for wanting to change their sex and hence their prison. Given that they committed their crimes as males, they should be punished as such; after serving their time, they will be free to reconsider their gender.

Another subgroup consists of young men and women susceptible to suggestion from "everything is normal" sex education, amplified by Internet chat groups. These are the transgender subjects most like anorexia nervosa patients: They become persuaded that seeking a drastic physical change will banish their psycho-social problems. "Diversity" counselors in their schools, rather like cult leaders, may encourage these young people to distance themselves from their families and offer advice on rebutting arguments against having transgender surgery. Treatments here must begin with removing the young person from the suggestive environment and offering a counter-message in family therapy.

Then there is the subgroup of very young, often prepubescent children who notice distinct sex roles in the culture and, exploring how they fit in, begin imitating the opposite sex. Misguided doctors at medical centers including Boston's Children's Hospital have begun trying to treat this behavior by administering puberty-delaying hormones to render later sex-change surgeries less onerous—even though the drugs stunt the children's growth and risk causing sterility. Given that close to 80% of such children would abandon their confusion and grow naturally into adult life if untreated, these medical interventions come close to child abuse. A better way to help these children: with devoted parenting.

At the heart of the problem is confusion over the nature of the transgendered. "Sex change" is biologically impossible. People who undergo sex-reassignment surgery do not change from men to women or vice versa. Rather, they become feminized men or masculinized women. Claiming that this is civil-rights matter and encouraging surgical intervention is in reality to collaborate with and promote a mental disorder.

*Dr. McHugh, former psychiatrist in chief at Johns Hopkins Hospital, is the author of "Try to Remember: Psychiatry's Clash Over Meaning, Memory, and Mind" (Dana Press, 2008).*

Chairman NADLER. The time of the gentleman has expired.

I would ask unanimous consent that the following documents be inserted into the record: a statement from the ACLU in support of H.R. 5; a statement from Todd Brower of the UCLA School of Law in support of H.R. 5; a letter from Nancy Kaufman from the National Council of Jewish Women in support of H.R. 5; a letter from Business Roundtable in support of the Equality Act; Federal policy recommendations regarding how the criminal justice system affects the LGBTQ community from the organization Black and Pink; and a letter of support from the American Bar Association.

Without objection, I will grant my motion to admit these documents.

[The information follows:]

**MR. NADLER FOR THE OFFICIAL RECORD**

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April 1, 2019

The Honorable Jerrold Nadler  
Chairman, Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Doug Collins  
Ranking Member, Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515



Washington Legislative  
Office  
915 15th Street, 6th  
floor  
Washington DC 20005  
(202) 544-1681  
aclu.org

Susan Herman  
*President*

Anthony Romero  
*Executive Director*

Ronald Newman  
*National Political  
Director*

**Statement of the American Civil Liberties Union (ACLU)  
in Support of H.R. 5, the Equality Act**

Dear Chairman Nadler, Ranking Member Collins, and Members  
of the Committee on the Judiciary:

The American Civil Liberties Union (ACLU) strongly supports H.R. 5, the Equality Act. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in this country. With more than 2 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, sex (including sexual orientation and gender identity), disability, national origin, or record of arrest or conviction.

H.R. 5, the Equality Act, is landmark civil rights legislation. It is grounded in the principle that all people in this country should be able to fully participate in public life and not be judged based on characteristics like sexual orientation or gender identity. Everyone deserves a fair chance to support themselves, provide for their family, and live as their true selves free from the fear of harassment or discrimination. The harsh reality – despite increasing support among the public and representation in popular culture – is that discrimination remains a persistent problem for LGBTQ people across the country. From discrimination and harassment of transgender youth in our nation's schools to older same-sex couples denied housing in

retirement communities because of their sexual orientation, this is something that LGBTQ people confront throughout their lives and in every corner of the country.

This is why the Equality Act is so critically important. It would provide LGBTQ people with consistent, explicit, and nationwide nondiscrimination protections across all of the key areas of daily life, including employment, housing, and access to public spaces and services. It would do this by explicitly prohibiting discrimination based on sexual orientation and gender identity in our nation's federal civil rights laws, including the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, and the Jury Selection and Service Act. This approach would give LGBTQ people the same protections that have long existed for other characteristics under federal law, such as race, religion, and national origin.

The Equality Act would also fill significant gaps in our federal civil rights laws. It would do this in several ways including:

- updating and modernizing the scope of public spaces and services covered in current law to include retail stores, services such as banks and legal services, and transportation service, such as airports, taxis, and bus stations; and
- expanding protections from sex discrimination by banning this type of discrimination in public spaces and services and in federally funded programs.

For the first time under federal law, it would be illegal to discriminate against individuals for “Shopping While Black” or “Flying While Brown.” In addition, with the significant expansion in sex discrimination protections, the routine practice of mechanics charging women more than men for the same car services would be illegal under federal law.

As an organization that represents people who have experienced discrimination simply because of who they are, we feel it is important to share a few of our clients' stories, as they clearly speak to why the Equality Act's protections are so important.

#### **Meagan Taylor**

Meagan Taylor, a Black transgender woman, and her best friend, who is also Black and transgender, checked into a hotel in Iowa, on July 13, 2015 while traveling from Illinois to Kansas City for a funeral. Despite the fact that she and her friend had made reservations, the pair were sent a clear message that they were not welcome. Before finalizing the check-in, the front desk clerk – at the request of the general manager – asked to make a copy of Meagan's ID even though they had already processed payment and checked her ID once. Like many transgender people, Meagan had not been able to update the name and gender on her ID so the identification listed her birth name and the sex she was assigned at birth.

At some point between Meagan's check-in and 8:30am the next morning, the hotel staff called the police to report that they suspected Meagan and her friend were engaging in prostitution because they were "men dressed like women."

As a result of the hotel's discrimination against her, Meagan was arrested and charged with possessing her hormone pills without a copy of the prescription – charges that were dismissed. There was never evidence of prostitution, and she was never charged with it. After her arrest, she was held for eight days in Polk County Jail before being bonded out, never making it to the funeral in Kansas City that she was traveling to attend.

In describing her experience, Meagan wrote the following:

When I came out as transgender, I expected I would experience some discrimination, but I didn't know how strong it would be. When something bad happens, I try to think about things and sort out why they happened. When this all happened, I knew exactly what it was: the racial profiling, the transgender profiling, the harassment, the solitary confinement. I knew why it was happening, and I knew it wasn't right. I knew something had to change. To experience so many levels of discrimination makes you feel like less of a person.<sup>1</sup>

### **Gavin Grimm**

Gavin Grimm, a 19-year-old young man who is transgender, was a student at Gloucester High School in Gloucester County, Virginia. When he was 15, Gavin came out to his family as a boy and transitioned to living in accordance with his male identity.

By the time Gavin began his sophomore year at Gloucester High School, he had legally changed his name and had begun using male pronouns. He wore his clothing and hairstyles in a manner typical of other boys and used men's restrooms in public venues, including restaurants, libraries, and shopping centers, without encountering any problems.

With the support of the school principal and superintendent, Gavin used the boys' restrooms at his high school for approximately seven weeks without incident. But in response to complaints from some adults in the community – including those without school-age children – the Gloucester County School Board overruled its own

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<sup>1</sup> Meagan Taylor, *I Was Arrested Just for Being Who I Am*, ACLU, Nov. 10, 2015, <https://www.aclu.org/blog/lgbt-rights/transgender-rights/i-was-arrested-just-being-who-i-am>.

administrators and enacted a policy prohibiting students “with gender identity” issues from using the same restrooms as other students. The new, discriminatory policy directed transgender students to an “alternative appropriate private facility.” This policy effectively banished Gavin from the boys’ restroom and denied him the basic dignity of being recognized by his school as the young man he is.

As the school board meeting that led to the adoption of this discriminatory policy, Gavin and his parents sat while strangers pointedly referred to him as “a young lady” to deliberately undermine his gender identity. One speaker called Gavin a “freak” and compared him to a person who thinks he is a dog and wants to urinate on fire hydrants.

Throughout the rest of high school, Gavin was segregated from his peers by being forced to use separate restrooms that no other student was required to use. The degrading and stigmatizing policy singled Gavin out as unfit to use the same restrooms that were available to every other student. Shockingly, the school board continues to discriminate against Gavin to this day – even though he has now graduated – by refusing to update his official school transcript to match the male sex on his birth certificate. As a result, every time Gavin is required to provide a copy of his high school transcript to a college or potential employer, he must provide a transcript that – unlike all his other identification documents – wrongly declares that his sex is “female.”

Following the adoption of the discriminatory policy by the Gloucester County School Board, Gavin wrote the following:

I am boy, and it is important to me to live life like other boys do, including using the boys' bathroom. I am disappointed that the school board decided to ignore my best interest, including others in the same situation, and chose to adopt a policy that is discriminatory and spreads fear and misinformation. This needs to stop.<sup>2</sup>

### **Andre Cooley**

Andre, a Black gay man, was a corrections officer for juvenile detainees at the Sheriff's Department in Forrest County, Mississippi. He was fired after his supervisors learned of his sexual orientation.

Andre was raised in the foster care system from birth. He became a corrections officer so he could serve as a mentor and positive role model for troubled teenagers.

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<sup>2</sup> Gavin Grimm, *I'm a Boy, so Why Won't My School Allow Me to Use the Boys' Bathroom?*, ACLU, Dec. 22, 2014, <https://www.aclu.org/blog/speak-easy/im-boy-so-why-wont-my-school-allow-me-use-boys-bathroom>.

In November 2009, Andre began working at the Forrest County Sheriff's Department and was quickly promoted to senior corrections officer. At the time Andre was hired, he was told that he had a better resume than any other person who had applied for the job.

On June 14, 2010 while at home and off-duty, Andre called 911 after his boyfriend became physically violent. One of Andre's supervisors was among the officers responding to the call and learned at that time of Andre's sexual orientation. The day after the incident, for which Andre was identified in the police report as the "victim," Andre learned that despite having an exemplary record, he was being fired from his job. When Andre asked if he was being fired because he was gay, he was told "yes."

Andre did not receive a written explanation for his firing and was never charged or disciplined in connection with the domestic violence perpetrated by his former boyfriend. After firing Andre, the sheriff's department attempted to deny him unemployment benefits by alleging that Andre had engaged in unspecified "inappropriate conduct and behavior while off duty, unacceptable for an officer." After a hearing, an administrative law judge concluded that the sheriff's department failed to show that Andre committed misconduct of any kind.<sup>3</sup>

#### **Patricia Dawson**

Patricia Dawson is a transgender woman and licensed electrician who lives north of Little Rock, in rural Arkansas. She has worked in the field of electrical and mechanical maintenance for over 20 years. Despite her skills as an electrician, Patricia was fired from her job because of the objections of her boss to her transition.

Of her firing, Patricia wrote:

The day after I got my new driver's license, I told my boss that I am a transgender woman. He looked shocked. He told me that I was one of his best people and that he would hate to lose me. I was stunned that his first reaction was that he might have to fire me.

He didn't fire me right away, but he didn't let me come to work as a woman, either. He told me I couldn't discuss my transition with anyone at work or use my legal name, Patricia.

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<sup>3</sup> American Civil Liberties Union, *ACLU SUES SHERIFF'S DEPARTMENT ON BEHALF OF CORRECTIONS OFFICER FIRED FOR BEING GAY*, Oct. 18, 2010, <https://www.aclu.org/news/aclu-sues-sheriffs-department-behalf-corrections-officer-fired-being-gay>.

Even though I didn't say anything, people at work noticed that I was transitioning. My hair was growing out, and I'd started hormone therapy. Some of my co-workers were kind to me, but others were cruel. Twice, co-workers tried to sabotage my work. One of those instances could have caused an explosion that could hurt or even kill someone. Fortunately, I discovered it in time, and no one was hurt.

The more time passed, the more it became obvious that I am a woman. Eventually I felt brave enough to wear makeup and a blouse to work. I was on top of the world. I had a great job, and I was finally being myself. That week, my boss pulled me aside and said, "I'm sorry, Steve, you do great work, but you are too much of a distraction and I am going to have to let you go."

I am not a distraction. I am a woman, and I shouldn't be fired for being who I am.<sup>4</sup>

#### **Dave Mullins and Charlie Craig**

Dave Mullins and Charlie Craig visited Masterpiece Cakeshop in Colorado in July 2012, with Charlie's mother, to order a cake for their upcoming wedding reception. Dave and Charlie planned to marry in Massachusetts and then celebrate with family and friends back home in Colorado (at the time, same-sex couples did not yet have the freedom to marry in Colorado). But the bakery's owner informed them that the bakery wouldn't sell wedding cakes to same-sex couples.

Describing the experience of being refused service in a business that is open to the public, Charlie's mom, Deborah Munn, wrote the following:

What should have been a fun and special moment turned into a day I will never forget. The three of us walked into Masterpiece Cakeshop, and a man at the counter motioned for us to sit at a small table and then joined us. When the man asked whose wedding this was for, and my son said "it is for our wedding," the man said that he does not make cakes for same-sex couples' weddings or commitment ceremonies. When my son said "really?" the man tried to justify his stance by saying he will make

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<sup>4</sup> Patricia Dawson, *Fired for Being Trans*, ACLU, Feb. 23, 2015, <https://www.aclu.org/blog/speakeasy/fired-being-trans>.

birthday cakes or other occasion cakes for gays, just not a wedding cake.

I just sat there in disbelief. All of the levity that we felt on the drive to the bakery was gone. As I left that bakery, my heart was breaking for my son and his fiancé. What should have been a joyous occasion had turned into a humiliating occasion.<sup>5</sup>

### **Joaquín Carcaño**

Joaquín is a 30-year-old Latino, transgender man who is the Director of Community Organizing at the Latino Commission on AIDS. Until recently, he worked at the University of North Carolina at Chapel Hill at the Institute for Global Health and Infectious Disease, where he coordinated a project that provided medical education and services such as HIV testing to the Latinx population.

In March 2016, the so-called “Public Facilities Privacy & Security Act,” commonly known as HB 2, was passed by the North Carolina General Assembly and signed into law by then-Governor Pat McCrory to respond to the City of Charlotte’s enactment of an ordinance that extended existing municipal anti-discrimination protections to LGBTQ people. Advocates for these protections had spent years describing the significant degree of discrimination faced by LGBTQ people, particularly transgender people, to the City Council. Because North Carolina state law does not explicitly prohibit discrimination based on sexual orientation or gender identity, the many LGBTQ residents of Charlotte – as well as LGBTQ residents throughout the state like Joaquín – were exposed to significant discrimination in their day-to-day lives simply for being themselves. After two hours-long hearings, in which there was extensive public comment on both sides of the issue, the City Council voted to adopt the non-discrimination ordinance to protect LGBTQ people from discrimination in public spaces.

Before the Charlotte Ordinance could take effect, the North Carolina General Assembly rushed to convene a special session with the express purpose of passing a statewide law that would preempt Charlotte’s move to protect its residents from discrimination. Lawmakers made no attempt to hide the purpose of their actions and instead openly and virulently made clear that HB 2 was targeted retaliation for what it called Charlotte’s “radical” move to protect its residents from discrimination.

In addition to repealing the Charlotte ordinance, HB 2 also:

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<sup>5</sup> Deborah Munn, *It Was Never About the Cake*, ACLU, Dec. 9, 2013, <https://www.aclu.org/blog/lgbt-rights/lgbt-relationships/it-was-never-about-cake>.

- forced transgender students to use restrooms and locker rooms that accord with the sex they were assigned at birth, whether or not that matches how they identify;
- forced transgender individuals to use restrooms and locker rooms in any government building, including public universities and colleges, that accord with the sex they were assigned at birth, whether or not that matches how they identify; and
- prohibited local governments from passing LGBTQ-inclusive non-discrimination protections.

Prior to the passage of HB 2, Joaquín was treated just like all other men at UNC-Chapel Hill. As part of his social transition, he had begun using the men's restroom at work and elsewhere in late 2015, which occurred without incident for the five months or so prior to the enactment of HB 2. Joaquín had used the multi-user men's restroom on his floor at work just like all of the other men on that floor. Indeed, the only restrooms on the floor where Joaquín works at UNC-Chapel Hill are multi-user and designed for either men or women. HB 2 thus excluded him from using the same restrooms used by his co-workers. Following the passage of HB 2, Joaquín generally used a single-user, gender neutral restroom in another building on campus, which was an approximately 20-30 minute roundtrip walk from his building. He was later informed by administrative staff in the building where he worked that there was a single-user, gender neutral restroom in that building – accessible only by using a special service elevator and located in a cubby in a part of the building used for housekeeping.

In describing what he had to endure simply to use the restroom at his job, Joaquín wrote the following:

I feel humiliated by being singled out and forced to use a separate restroom from all my coworkers. Because using the special service elevator several times a day would attract even greater attention to the fact that I am not able to use the same restrooms as my coworkers, I have generally resorted to leaving the building and using a restroom in another building on-campus. I now have to plan out my trips to the restroom as part of my schedule. For example, I cannot simply make a quick trip to the restroom before a meeting is about to start, as my coworkers are able to do. All of this often causes me to delay or avoid going to the restroom, or to limit my fluid intake.<sup>6</sup>

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<sup>6</sup> Decl. of Joaquín Carcaño at 4-5, *Carcaño v. McCrory*, 203 F.Supp.3d 615 (M.D.N.C. 2016) (No. 1:16-cv-00236-TDS-JEP).

These stories illustrate the many ways in which discrimination robs individuals of their education, employment, even their very liberty.

Unfortunately, the patchwork nature of current laws has left millions of people across the country subject to uncertainty and potential discrimination that impacts their safety, their families, and their day-to-day lives. Around 50% of LGBTQ people in the U.S. – approximately 8 million people – live in states that still lack explicit statewide legal protections, leaving their residents and visitors at risk of discrimination because of who they are.

The need for consistent, explicit, and nationwide civil rights protections for LGBTQ people – exactly what the Equality Act would provide – could not be clearer. This year, as we mark the 50<sup>th</sup> anniversary of the uprising at Stonewall – an event that launched the modern struggle for LGBTQ equality – we urge all Members of Congress to write the next chapter in our nation’s civil rights history by passing the Equality Act.

Please reach out to Ian Thompson, ACLU senior legislative representative, with any questions at (202) 715-0837 or [ithompson@aclu.org](mailto:ithompson@aclu.org).

Sincerely,



Ronald Newman  
National Political Director



Ian S. Thompson  
ACLU Senior Legislative Representative

Cc: Members of the U.S. House Committee on the Judiciary

March 31, 2019

The Honorable Jerrold Nadler  
 Chairman, Committee on the Judiciary  
 U.S. House of Representatives

The Honorable Doug Collins  
 Ranking Member, Committee on the Judiciary  
 U.S. House of Representatives

Dear Chairman Nadler and Ranking Member Collins:

I am the Judicial Education Director of Williams Institute on Sexual Orientation Law and Public Policy at UCLA. I am also the current Vice-President of the National Association of State Judicial Educators, the organization for judicial education professionals working in the courts of the United States and internationally. I have trained over 5000 judges, court staff and related court professionals from virtually every state in the United States on sexual orientation and gender identity issues for nearly 15 years. Additionally, I am a Professor of Law at Western State College of Law in Irvine, California. I have studied the treatment and experiences of Lesbian, Gay, Bisexual, and Transgender [LGBT] people in courts and the judicial system for over twenty years and have published several book chapters, law review articles and studies on these topics.

I am writing to you about H.R. 5, the Equality Act introduced in the 116<sup>th</sup> Congress. As you know, this bill would prohibit discrimination based on sexual orientation and gender identity in public accommodations, including the courts, on juries, and court-related governmental services and facilities. In addition, the judicial system also serves as the employer for court personnel, judges and others. Accordingly, the bill would explicitly confirm the prohibition on sexual orientation and gender identity discrimination in hiring, firing and other employment decisions in those contexts. I have reviewed over two decades of surveys, reports and studies of the experiences of LGBT people in the legal system as both court users and employees. Research findings make two main points that document the need for this legislation.

First, research shows a widespread pattern of disparate and unequal treatment and experiences faced by LGBT court users, witnesses, and parties in courtrooms, jury rooms and other segments of the judicial system. There are two statewide studies of state court systems exclusively focused on sexual orientation; those studies were conducted by the courts of California and New Jersey. The California and New Jersey studies' documentation of discrimination in the courts build upon and confirm the findings of other studies of the judicial

system conducted by state or local bar associations, and other groups. In addition, the U.S. Transgender Study contained important findings that, like LGB people, transgender and gender nonconforming persons faced discrimination and unequal treatment in courts and judicial systems across the United States.

- The California Judicial Council, Access and Fairness Committee (2001) conducted a statewide study of the experiences and treatment of sexual orientation minorities in the California courts. That report found significant examples of unequal treatment of lesbians and gay men in the California judicial system. When lesbian and gay court users were involved in sexual orientation issues in court, 25.5% of lesbian and gay court users reported they were treated differently from everyone else, and 29.6% of lesbian and gay respondents felt those who knew their sexual orientation did not treat them with respect. In that same contact, 39% of lesbian and gay court users believed that their sexual orientation was used to devalue their credibility.
- A 2001 study by the New Jersey Supreme Court Task Force on Sexual Orientation Issues found that 45% of lesbian and gay court users reported experiencing or observing litigants or witnesses treated disadvantageously because they were or were perceived to be gay or lesbian. Sixty-one percent of gay or lesbian New Jersey court users believed that sexual orientation bias affected the outcome of a case in which they were involved or which they observed. Compared to all N.J. respondents, sexual minorities reported significantly more incidents in which gay litigants or clients of gay lawyers fared worse in the family or criminal courts because of sexual orientation.
- More recently, the Florida Supreme Court Standing Committee on Fairness and Diversity (2008) found that 14% of litigants in the Florida courts reported that the courts did not show fairness and respect to people without regard to sexual orientation. Nine percent of attorneys, 8% of judges, and 4% of staff reported seeing or experiencing unfair treatment of individuals in the courts based on sexual orientation.
- The State Bar of Arizona Gay and Lesbian Task Force, *Report to the Board of Governors*, (1999) and its findings detail evidence of discrimination typical of that found in the bar association reports. That report demonstrated that lesbians and gay men are substantially disadvantaged as participants in the justice system because of sexual orientation bias. Thirteen percent of the judges and lawyers surveyed observed judges in open court negatively treating those perceived to be lesbians or gay men; 47% heard disparaging remarks about lesbians or gay men in courthouse public areas. Further, 8% percent of court personnel and 4% of litigants, jurors, and witnesses indicated they preferred not to work with lesbian or gay lawyers.
- The 2015 U.S. Transgender Survey found that, when they believed that staff knew or believed they knew about their transgender status, 13% of transgender and gender nonconforming people reported having one or more of the following experiences in courts and courthouses: being denied equal treatment or service (8%), verbally harassed (8%), or physically attacked (<1%) because of being transgender. Legal name changes are an important step in ensuring that identification documents match gender identity. Because name changes in most states take place via court order, transgender people's experiences in those court proceedings are particularly significant. In name change

proceedings, when transgender people believed that judges and/or court staff thought or knew they were transgender during their interaction, 22% felt they were only sometimes treated with respect, and 2% felt they were never treated with respect.

Most Americans' experiences with courts and the judicial system come from their being called for or serving on a jury. Studies involving jury service experiences by LGBT people document a significant number of cases and data on disparate or discriminatory treatment during those experiences which affect people throughout the nation. Accordingly, the provisions of H.R. 5, the Equality Act, that amend 28 U.S.C. Chapter 121 – Juries; Trial by Jury to confirm the prohibition on sexual orientation and gender identity discrimination on juries are particularly needed.

- Shay (2014) collected cases and reports of other documented experiences where jurors and litigation parties were unequally and discriminatorily treated based on sexual orientation and gender identity. These cases and reports ranged from voir dire questioning on sexual orientation matters, attempts to discredit potential witness and party testimony because of their sexuality, to reports of juror prejudice in decision making.
- Brower (2011) reported that over 10% of lesbians and gay men experienced disparate treatment during their jury service experience in court; nearly 20% believed they were not treated respectfully, and over 13% stated that their sexual orientation was used to devalue their credibility. Some study participants reported being dismissed from the venire panel because of their sexual orientation. Brower also collected juror attitude studies in which jurors chronicle being unable to be fair or impartial to sexual minority litigants at a higher rate than reported unfairness toward racial or ethnic minority litigants.

Second, LGBT lawyers and others working in courts are confronted with a far-reaching array of employment decisions evidencing discrimination on the basis of sexual orientation or gender identity. Each study documents numerous experiences of being fired, being denied a job, given disparate work assignments or evaluations, or experiencing some other form of unequal treatment in the workplace that stemmed from these individuals' sexual orientation or gender identity.

- California lesbian and gay court employees were over five times more likely to experience negative actions, discrimination, or hear comments based on sexual orientation than were heterosexual employees: 25% of lesbian and gay employees reported experiencing discrimination (as opposed to only negative comments or actions) at their work place based on their sexual orientation; conversely, a mere 2% of the non-LGBT employees reported being discriminated against based on sexual orientation. If a person is suspected of being lesbian or gay, 17.3% of California court employees stated that it is harder to be hired for a job at the court; 13.4% agreed that sexual orientation is used to devalue the credibility of some gay or lesbian court employees; and 9.8% believed that anti-gay prejudice is widespread in the courts as a workplace.
- Thirty percent of New Jersey judicial branch employees of all sexual orientations and 78% of lesbian and gay employees heard a co-worker, supervisor or judge make a

derogatory statement or inappropriate joke about homosexuals. Moreover, lesbian and gay court employees themselves were often the target of that treatment: 14% of all judicial employees and 49% of lesbian and gay workers heard those remarks or jokes about a person in the office because that person was or was perceived to be lesbian or gay.

Finally, research suggests that reported cases and administrative complaints underreport the amount of discrimination experienced by LGBT people. Brower (2014) found that in each of the court employee studies he reviewed, a significant number of sexual minority court employees who experienced discrimination and unequal treatment did not report it for fear of greater, more widespread exposure as gay or lesbian, which would have increased and exacerbated their discriminatory treatment. Sexual minority court workers are reluctant to “out” themselves further by filing complaints and facing state administrators and supervisors who have been hostile to their claims. In addition to documenting underreporting of LGBT discrimination in court, those court studies evidence the fact that LGBT court employees (and court users) often do not at all reveal their sexual orientation or gender identity in court settings because they fear discrimination and unequal treatment. Both of these factors suggest that discrimination against LGBT workers in the judicial system could be even greater than the degree suggested by the studies discussed earlier.

In sum, more than two decades of research finds ample evidence of discrimination against LGBT persons in public accommodations like courts and the judicial system and in those same public institutions as workplaces. These patterns of discrimination demonstrate the need for, and importance of, the Equality Act, H.R. 5.

Sincerely,



Todd Brower

Todd Brower

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Todd Brower,  
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MAKING CHANGE HAPPEN SINCE 1893

Beatrice Kahn
President
Nancy K. Kaufman
Chief Executive Officer
Washington Office
2055 L Street, NW
Suite 650
Washington, DC 20036
202 296 2588
action@ncjw.org
www.ncjw.org

April 1, 2019
The Honorable Jerry Nadler
Chairman
US House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
US House Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Collins,

I am writing on behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW) in support of HR 5, the Equality Act. NCJW is committed to the enactment, enforcement, and preservation of laws and regulations that protect civil rights and individual liberties for all. We are driven by the Jewish value of b'tzelem Elohim, that all are created in the divine image.

The Equality Act would ensure that people nationwide understand that discrimination against lesbian, gay, bisexual, transgender, and queer (LGBTQ) people violates federal law by adding sexual orientation and gender identity to the list of identities protected under the Civil Rights Act. The bill would also expand protections for women in public accommodations and federal funding, two areas not currently covered by existing federal civil rights law.

A majority of LGBTQ Americans have experienced harassment or discrimination due to their sexual orientation or gender identity. Discrimination happens in in the spheres of employment, education, housing, public accommodations, and health care — every part of a person's life.

LGBTQ people are integral to the fabric of our nation. Though many federal courts have ruled that anti-LGBTQ discrimination is a form of sex discrimination that violates federal law, the administration is working to overturn these rulings and redefine federal sex discrimination through regulation. In the face of these efforts, Congress must confirm and make these protections permanent.

The Equality Act provides important clarity and explicit protections from discrimination. The bill is not about punishing religious belief, but rather, about generally applicable laws that apply to public life. These civil rights protections go hand in hand with religious freedom. We work for LGBTQ equality and inclusion not in spite of our religious beliefs, but because of them.

All people deserve to live lives free from discrimination and fear regardless of their sex, sexual orientation, or gender identity. We urge you to support the Equality Act and look forward to a fair and comprehensive hearing on this important bill.

Sincerely,

Nancy K. Kaufman

Nancy K. Kaufman
CEO
National Council of Jewish Women



**BR** Business Roundtable

300 New Jersey Avenue, NW, STE 800  
Washington, DC 20001  
202.872.1260  
brt.org

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March 7, 2019

The Honorable David Cicilline  
U.S. House of Representatives  
2233 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jeff Merkley  
U.S. Senate  
313 Hart Senate Office Building  
Washington, DC 20510

Dear Representative Cicilline and Senator Merkley:

On behalf of the CEO members of Business Roundtable who lead companies with more than 15 million employees, we write in support of the Equality Act.

Equality and fairness are core American values. It is these values that lead us to strongly endorse the Equality Act, which will enshrine into federal law clear, consistent and comprehensive protections against discrimination on the basis of sexual orientation and gender identity.

As employers, America's leading companies know that our economy works best when our employees can be who they are, without fear of bias, discrimination or inequality – in the workplace or in their communities. And as Americans, we are firmly committed to the principles of equality and fairness that have distinguished our nation since its founding.

Diversity is a fact, but inclusion is hard work. Most American companies long ago included sexual orientation and gender identity in their non-discrimination policies. It is time for the federal government to do the same. Business Roundtable endorses the Equality Act and urges that it be enacted by Congress without delay.

Sincerely,



Ginni Rometty  
Chairman, President and Chief Executive Officer  
IBM Corporation  
Chair, Education and Workforce Committee  
Business Roundtable

C: Speaker Nancy Pelosi

Mr. Nadler for the record, Black and Pink Federal Policy Recommendations:

<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD042.pdf>



Robert M. Carlson  
President

AMERICAN BAR ASSOCIATION

321 North Clark Street  
Chicago, IL 60654-7598  
(312) 988-5109  
Fax: (312) 988-5100  
abapresident@americanbar.org

April 2, 2019

The Honorable Jerrold Nadler  
Chairman, U. S. House Committee on the Judiciary  
House of Representatives  
Washington, DC 20515

The Honorable Doug Collins  
Ranking Member, U. S. House Committee on the Judiciary  
House of Representatives  
Washington, DC 20515

RE: ABA SUPPORT FOR H.R. 5, THE EQUALITY ACT OF 2019

Dear Representatives Nadler and Collins:

On behalf of the American Bar Association and its over 400,000 members, I am writing to voice our support for H.R. 5, The Equality Act of 2019, which addresses the need to protect every American regardless of their sexual orientation or gender identity. We offer the following comments in support of the legislation and request that this letter be made part of the hearing record.

The Equality Act will include LGBTQ+ people in the Civil Rights Act of 1964. Over 50 years ago, when this landmark civil rights legislation was enacted, a minority group was omitted; this needs to be rectified. Currently, the rights of LGBTQ+ individuals depend on the state where they reside, and in 30 states, LGBTQ+ people are at risk of being denied housing, credit, services, public accommodations, education, access to their children, employment, or jury service simply because of their sexual orientation or gender identity.

There is bipartisan support for the Equality Act, and 70 percent of Americans support equal rights for LGBTQ+. When the Equality Act was introduced in the last Congress, it received unprecedented support from businesses and more than 180 national and statewide organizations.

Last summer the ABA adopted a resolution specifically supporting enactment of the Equality Act. Let me elaborate on our reasons for supporting this important legislation:

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**1. The Equality Act will protect LGBTQ+ people from workplace discrimination because of their sexual orientation, gender identity, or gender expression.**

The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, or national origin. The Government Employee Rights Act of 1991 prohibits discrimination based on race, color, religion, sex, national origin, age, or disability. They will both be amended to include, “sex, (including sexual orientation, and gender identity).”

Every day LGBTQ+ employees, co-workers, and job applicants are subjected to discrimination in the workplace. Other social groups have been protected by legislation, yet the LGBTQ+ community has not been included even though their livelihood, careers, and quality of life are equally affected.

The Equal Employment Opportunity Commission (EEOC) enforces federal laws that protect job applicants or employees from discrimination based on race, color, religion, sex, national origin, age, disability, or genetic information. In *EEOC v. R.G. & G.R. Harris Funeral Homes*, the EEOC filed a lawsuit against Harris Family Funeral Homes on behalf of Aimee Stephens, a transgender woman who was fired shortly after telling her employer she was transgender. The Sixth Circuit Court of Appeals concluded that Title VII prohibits discrimination based on gender identity, thus applying to businesses claiming exemption based on anti-LGBTQ+ religious beliefs.

The Equality Act will codify this case law making discrimination against LGBTQ+ people in the workplace unlawful by explicitly stating that sexual orientation and gender identity are protected traits.

**2. The Equality Act will prevent LGBTQ+ people from being denied services and public accommodations because of their sexual orientation, gender identity, or gender expression.**

Title II of the Civil Rights Act of 1964 prohibits discrimination in public accommodations based on race, color, religion, or national origin. However, it is currently legal in 30 states to deny LGBTQ+ people services without cause and bar them from public accommodations such as hotels, restaurants, and libraries.

In *Joel Doe v. Boyertown Area School District*, Boyertown Area High School in Pennsylvania had a policy to respect the gender identity of transgender students. In 2017, an anti-LGBTQ+ organization filed a lawsuit challenging the policy, stating that the privacy of non-transgender students is threatened by transgender students using the restrooms and locker rooms that align with their gender identity. The Third Circuit Court of Appeals rejected the plaintiff’s claims that transgender-inclusive policies violate people’s privacy. The Equality Act is necessary to codify this ruling for the entire country. Denying public accommodations to LGBTQ+ individuals is harmful to their health and dignity and precludes them from fully participating in public life.

In addition to the places of public accommodation already included in the 1964 Civil Rights Act, the Equality Act will revise the law to ensure that other providers of products,

April 2, 2019

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services, and public accommodations, such as stores, accountant firms, transportation, and banks, may not discriminate against a protected social group.

**3. The Equality Act will prevent LGBTQ+ people from being denied or evicted from housing based on their sexual orientation, gender identity, or gender expression.**

The Fair Housing Act, Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale, rental, or financing of housing by landlords, real estate agents, municipalities, banks, other lending institutions, and homeowner's insurance companies based on race, color, national origin, religion, sex, family status, or disability.

LGBTQ+ individuals may be rejected when trying to purchase or rent a home. LGBTQ+ people can face eviction, which may have financial and legal consequences. A partner's request to be added to the insurance of a homeowner may be rejected which could affect the property title.

In *Smith v. Avanti*, a landlord in Colorado refused to rent to a same-sex couple, one of whom was also transgender. The United States District Court stated that the property owner violated the Colorado Anti-Discrimination Act. This was the first time a federal court, placing sexual orientation and gender identity under the umbrella of sex discrimination, has ruled that anti-LGBTQ+ discrimination violated the Fair Housing Act.

Since homelessness in the LGBTQ+ community is more prevalent than it is in the general population, enactment of the Equality Act can help reduce these higher rates.

**4. The Equality Act will ensure that LGBTQ+ individuals are not denied credit based on their sexual orientation, gender identity, or gender expression.**

The Equal Credit Opportunity Act (ECOA) prohibits discrimination based on race, color, religion, national origin, sex, marital status, or age with respect to credit transactions. The Equality Act will amend ECOA to include "sexual orientation" and "gender identity" as protected classes.

LGBTQ+ individuals are often denied credit and mortgages. The negative financial impact can mean that they are often unable to become homeowners, pursue higher education or vocational training, build assets, or purchase a car. By amending ECOA, the Equality Act will allow for equal access to credit, financial improvements, education, and affordable housing.

**5. The Equality Act will protect LGBTQ+ people from discrimination in jury service.**

The Equal Protection Clause of the Fourteenth Amendment protects the right of a criminal defendant to a jury selection process free from racial, ethnic, or gender discrimination. When LGBTQ+ people are unfairly dismissed from jury service, there is no recourse in the justice system.

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The Equality Act will protect the integrity of the jury selection process for the defendant, as well as the rights of the LGBTQ+ jurors.

The American Bar Association believes that everyone deserves equal protection under the law. Nearly two-thirds of LGBTQ+ Americans reported that they have experienced discrimination in their everyday lives. We urge Congress to pass legislation explicitly affirming that discrimination due to sexual orientation, gender identity or expression, or sex stereotyping is sex discrimination prohibited by the Civil Rights Act of 1964, among other federal statutes, and including sex, sexual orientation, and gender identity or expression protections in those statutes.

Thank you for this opportunity to convey the ABA's position on this important legislation. If you have any questions regarding these comments, please contact Thomas M. Susman, Governmental Affairs Office, at 202-662-1765 or [Thomas.susman@americanbar.org](mailto:Thomas.susman@americanbar.org).

Sincerely,

A handwritten signature in black ink that reads "Robert M. Carlson". The signature is written in a cursive, flowing style.

Robert M. Carlson

Chairman NADLER. I now recognize the gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thank you, Chairman Nadler. Thanks for holding this hearing. Thanks to Representative Cicilline for introducing H.R. 5.

I am proud to stand with the LGBT community, and with an ever-increasing majority of Americans in support of full equality and truly equal protection for all.

I think we can all agree that the mainstream view of LGBT has moved forward at a rapid pace in recent years. We still have a long way to go for full equality, and the Equality Act is an important next step.

As I realized back when I was in the Florida State Senate, on these issues and so many others, legislative progress is tied to personal experience. When I introduced the Employment and Non-Discrimination Act in Florida, it did not include protections for trans people because we thought, you know, maybe we can just take what we can get, we will make a little bit of an advancement, and that will be a dramatic step forward.

And thanks to the thoughtful and passionate advocacy of Equality Florida and so many other activists that I had become privileged to know and become friends with, I came to understand how important it was to include trans rights, and what I learned then and what we are reminded of today is that equality means equality, and you cannot have full equality if we leave people behind. That is what we are reminded of at this hearing today.

So I am a proud and outspoken ally of the LGBT community and the trans community especially, and I want to thank the panel for being here. I want to thank Carter and Jami—sorry, Mr. Brown and Ms. Contreras. I want to thank you both for coming here today to share your stories. It can be hard to open your lives to the microscope of this hearing, but I think having members hear about your experiences with discrimination is a critical step to help move all of us forward.

What struck me about both of your experiences is that you were both doing everything right. Mr. Brown, you invested in yourself. You worked hard to make a better life for yourself and your family. The thought that it could all disappear by the simple disclosure of your identity as a trans man is repellant, but it is, sadly, not surprising.

Ms. Contreras, beyond the denial of care that you ultimately experienced, you and your wife wanted to take on the burden of being discriminated against in advance, in advance, to shield your daughter from having to experience it herself, when in a fair world all three of you would be protected.

Both of your cases get to the heart of why the Equality Act is necessary. Yes, some states have laws explicitly protecting people from these kinds of discrimination, but fewer than half. So we can either accept that fewer than half of Americans benefit from equal treatment, or we can move forward with the Equality Act. That is what today is about.

Now, I would just like to say a couple of words about some of what I have heard here today, and the gentleman from Texas' comments before especially. I am grateful to the trans community for

something that I never thought I would be grateful for, and that is that there is now an interest in the other side of the aisle in women's athletics that has never existed in this House before. [Laughter.]

Mr. DEUTCH. So I am thankful for your helping to elevate the issue of full participation in women's athletics. Thank you for helping to accomplish that.

I also was struck by—

Mr. GOHMERT. Will the gentleman yield?

Mr. DEUTCH. I will in one moment because I am going to say one more thing about something else you said.

I also would acknowledge that it is, frankly, rich for some of the members on the other side of the aisle who come to this committee literally every single time we meet since I have been in Congress doing everything they can to limit the ability of women to make their own choices about their own bodies, to talk about a war on women. That is absolutely rich, but I would be glad to yield to Mr. Gohmert.

Mr. GOHMERT. As a father of three girls who would absolutely love seeing them, helping them, coaching them, I have been a fan of women's sports for a long time.

Mr. DEUTCH. I appreciate that.

Ms. Chandy, let me just actually give you the opportunity to respond to some of what we have heard just over the past 15 minutes or so.

Ms. CHANDY. You took my main point, which is that I am so excited to have a discussion about women's rights. We are talking about women's safety in the MeToo moment. We have spent a considerable amount of work connecting people with lawyers to fight back about sexual harassment in the workplace, in the schools, in health care, and across all of these contexts, and women's safety and rights is at the utmost, at top of our mind as a national women's rights law center.

So in that context, I want to say that transgender students and individuals are at higher risk of sexual violence than cisgender women, and we need to protect all of us and be in a collective struggle against sex discrimination and sexual assault wherever it happens. If there is an incident of assault, whether it be in a shelter, a prison, or anywhere else, it must be investigated and dealt with, and we are very firm about that. But we do not create policy about myths and stereotypes, and that is what I am hearing here today, is that based on individual instances of harassment or assault, they must be addressed.

But that is not a reason to exclude transgender individuals from this bill, and you can never do that in the name of women's rights, and that is what I am hearing here, and thank you for allowing me the chance to respond.

Mr. DEUTCH. Mr. Chairman, if I could have 10 seconds, I appreciate it.

Professor Yoshino, I also just wanted to take a moment to thank you for your comments at the start of this hearing and sharing your very powerful story, your personal story, the impact that two moments of our history have had on you and how much of an honor it is for us to have you here with us today.

Thanks, Mr. Chairman. I yield back.

Chairman NADLER. I now recognize the gentleman from Florida, Mr. Gaetz.

Mr. GAETZ. Thank you, Mr. Chairman.

For dozens of days, my Republican colleagues have gone to the floor of the House seeking a vote on the Born Alive Act so that human beings are not slaughtered and murdered after their birth. A number of those human beings are women. So we will accept no lecture on that subject—

Chairman NADLER. Will the gentleman yield for a second?

Mr. GAETZ. No. Since the majority has taken an excessive time, I would like to take all of my time.

Chairman NADLER. I will grant you an extra minute.

Mr. GAETZ. Very well. Then you can take it at the end of my remarks, Mr. Chairman.

I want to support this legislation, and in the broadest sense I do. I believe that individuals in our country should not face discrimination for their sex or their gender or their sexual orientation or for their gender identity. Our country is an inclusive place, and bigotry and prejudice and discrimination do not belong here. I very much want to support the legislation, but I keep—because the legislation would only nominally protect certain individuals while causing tremendous harm to others.

First off, the legislation has a drafting problem partly because H.R. 5 does not define gender identity well, and I will read directly from the legislation. It says, “The term ‘gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual regardless of the individual’s designated sex at birth.” And then only a few lines later the bill says, “The term ‘sex’ includes sexual orientation or gender identity. “So gender identity is defined as a concept distinct from sex, but at the same time the term sex is defined in part by gender identity.

In the last Congress and this Congress we passed legislation for the advancement of women, improving women’s access to STEM education in careers. We passed bills that increased the number of women-owned businesses to help female entrepreneurs, and more.

What happens when sex is defined as gender identity and gender identity is terribly vague? Will all sex distinctions be erased? That may sound like something my colleagues on the other side of the aisle would cheer, but thinking more broadly, would grants for female-owned businesses or programs for women in STEM fields suddenly be open to all persons whether they believe or not that they identify as a woman?

I strongly support the rights of transgender individuals. I will not denigrate or deny their existence or their struggles, but I am concerned about the potential bad actors who exploit the provisions of this law for their own gain.

Consider this possibility. If President Trump were to say “I am now the first female president,” who would celebrate that? Would those who support the legislation think that is a good thing, or would they be dismayed?

Bad actors have already weaponized some ostensible equality laws for their own benefit. Steven Wood was convicted of serial sex-

ual assault and was in prison. He then announced that he identified as Karen, a woman, and was transferred to an all-female facility, where he promptly sexually abused female inmates.

Recently, a musician and weight lifter who identified as Zube briefly claimed identity as a woman, during which time he broke the women's world record dead lift, and then promptly went back to identifying as a man.

These are isolated instances, to be sure, and I am most emphatically not saying that a majority of transgender individuals are using their gender identity to exploit the process. But I am saying that these cases do exist, and the legislation before us would expand and exacerbate those problematic loopholes.

Faith-based businesses, religious institutions, and religious groups would find their rights greatly jeopardized by the legislation as it explicitly prevents claims from being filed on the Religious Freedom Restoration Act. Consider the Chairman's own words on the passage of that bill. He said, "What has made the American experiment work? What has saved us from the poisonous hatreds that are consuming other nations has been a tolerance and a respect for diversity enshrined in the freedom of religion clauses of our Bill of Rights. It was no accident that the framers of our Bill of Rights chose to place the free exercise of religion first among our fundamental freedoms. The House should do no less."

Yet this legislation significantly and overtly undermines religious freedom, and it is not something worth celebrating because it will harm people and communities of faith across our nation.

Again, I support protecting individuals from discrimination based on their sexual orientation or gender identity, but this legislation creates more problems than it solves. It will chill freedom of speech. It will harm religious liberty. It will undermine women's rights, and I wish I could support it, but I cannot.

I wanted to yield my remaining 20 seconds to Ms. Beck because I found your advice very instructive about a path forward that would accommodate our desire for greater equality without falling into some of the traps I have identified.

Ms. BECK. Thank you, and I would like to dispel some of the logical fallacies that were stated today.

No one is saying that people do not exist. How can we tell if someone is lying about identifying as transgender? If Karen White was a woman, then he would have belonged in a woman's prison. But we know that he was lying. There is no way to tell if someone is lying about being transgender because there is no evidence.

And I would like to go back to what Ms. Chandy said. If there is no evidence, we cannot legislate. There is no evidence of a gender identity. It is not a material reality at all.

There is also the myth of assault being higher for people who identify as transgender. But according to GLAAD, in 2015 there were 20 people killed. The rate of murder for transgender identified individuals is 1.5 per 100,000. That is lower than the murder rates of both men and women. So this data shows that people who self-identify as transgender are murdered at a lower rate than the general population.

I would also like to say that—where else was—

Chairman NADLER. The time of the gentleman has expired, has well expired.

The gentleman from New York, Mr. Jeffries.

Mr. JEFFRIES. Thank you, Chairman Nadler. Let me also thank my good friend David Cicilline for his tremendous leadership on the Equality Act.

I have great respect for my friend from the State of Florida, but the reality of the situation is that many of my colleagues voted against the Paycheck Fairness Act. Many of my colleagues voted against equal pay for equal work, notwithstanding the fact that women are paid approximately 80 percent of what men are paid for doing the same job. Many of my colleagues on this Judiciary Committee voted against the Violence Against Women Act.

So we do find it strange that you want to come here and lecture us about women's rights.

Ms. CHANDY, you have 20 years of experience in civil rights law and are a member of the LGBT community; is that correct?

Ms. CHANDY. Yes, that is correct.

Mr. JEFFRIES. And LGBTQ Americans make up approximately 4.5 percent of the population; is that right?

Ms. CHANDY. Right.

Mr. JEFFRIES. And it is about 14 million people; is that correct?

Ms. CHANDY. Yes.

Mr. JEFFRIES. But there is no Federal legal standard that guarantees 14 million Americans rights and protections under our civil rights law; is that right?

Ms. CHANDY. That is correct.

Mr. JEFFRIES. So that means that there are still places in the United States of America where someone can be fired because of their gender identity or sexual orientation; is that right?

Ms. CHANDY. That is right. There is Federal law that is evolving, but it is not a guarantee, and there is no clear or explicit protection in Federal law to protect against sexual orientation or gender identity-based discrimination.

Mr. JEFFRIES. And are there still places in the United States where someone can be evicted because of their gender identity or sexual orientation?

Ms. CHANDY. That is correct.

Mr. JEFFRIES. And still places in the United States of America where someone can be denied a loan because of their gender identity or sexual orientation?

Ms. CHANDY. That is correct. I am giving just the caveat that there are Federal protections evolving, but those are not guaranteed, and so it is sort of a guess. So we need the clear Federal protections.

Mr. JEFFRIES. Okay. And approximately 50 percent of LGBTQ Americans live in 30 states that lack statewide legal non-discrimination protections; is that correct?

Ms. CHANDY. Right.

Mr. JEFFRIES. Is that one of the reasons why it is important to have a Federal standard?

Ms. CHANDY. That is right.

Mr. JEFFRIES. Okay. Nearly two-thirds of LGBTQ Americans report having experienced discrimination in their personal lives; is that true?

Ms. CHANDY. Right, yes.

Mr. JEFFRIES. And do discriminatory laws and practices have a negative impact on our economy?

Ms. CHANDY. Well, of course. You are not getting jobs, not getting housing, you are not able to purchase things. I mean, the areas of protection that we are looking for today impact all areas of our lives.

Mr. JEFFRIES. Ms. Silas, several hundred companies, including your own, support a Federal non-discrimination standard for LGBTQ Americans, like the one included in the Equality Act; is that right?

Ms. SILAS. Correct.

Mr. JEFFRIES. And can you explain why you as a business person support it?

Ms. SILAS. Yes, there are a number of reasons. One, I stated earlier that enduring 100 years as a prominent American company has been grounded in really our belief around fairness and equality, and this is not the first issue we have advocated for, and it certainly will not be the last, but we think it is an enduring characteristic of an American company.

The second is the survival of any corporation is about skills, and adequate access to those skills, and we believe that access to skills means that we need to ensure that our employees are in environments that will protect them and their families, and that that does not become a distraction to the productivity and the contribution that they can have to American innovation.

And then lastly, what we find problematic is certainly the patchwork of legislation. So thinking about a brand such as IBM and how we operate, it certainly is not within state lines, and we cannot just ensure access to skills and protections of employees based on singular state legislation, but there really needs to be a Federal minimum standard so that our employees can operate and run our business broadly.

Mr. JEFFRIES. In terms of that patchwork, one of the things that my free enterprise colleagues on the other side of the aisle often lecture us about is the notion that we need certainty in the business environment. How can you have certainty when there is a patchwork of legislation in terms of what States do or do not do?

And last question—my time is expiring—am I correct that your company actually bases business decisions on whether a State has a nondiscrimination protective statute or not?

Ms. SILAS. That is 100 percent correct, and that is correct in this context and dates as early as the 1950s, when we declared even prior to the Civil Rights Act that we would be making decisions around where we base our employees based on segregation policy at that time and the idea that we would not comply with that. So it is not new to us, and it certainly is the case today.

Mr. JEFFRIES. Thank you. Not only is the Equality Act in our view pro-American, it is also pro-business.

I yield back.

Chairman NADLER. I thank the gentleman for yielding. The gentleman from Colorado, Mr. Buck.

Mr. BUCK. Thank you, Mr. Chairman.

Ms. CONTRERAS, I wanted to ask you a quick question.

You said in your testimony that you had chosen a doctor, and the doctor refused to work with you, and another doctor came in and worked with you. Did you receive inferior medical care?

Ms. CONTRERAS. Possibly. I don't know, to be honest with you. So we didn't do any research on that doctor. We didn't have the opportunity to.

Mr. BUCK. Did you have any complaints about the medical care that you received from that doctor?

Ms. CONTRERAS. There were some things in that meeting that were less than what we were looking for and what we expected from a pediatrician, yes.

Mr. BUCK. Did you—is your daughter healthy now? Ms. CONTRERAS. Yes, she was healthy at the time, luckily. Yes.

Mr. BUCK. Is it your position that an orthodox Jewish doctor should be required to work with a—orthodox Jewish doctor whose grandparent was killed in the Holocaust be required to work with a Nazi patient?

Ms. CONTRERAS. Well, here is what I—here is what I believe. I believe that the Religious Freedom Act, religious freedoms are a core American value. I think it is very important. I think it is important that you know that I was raised on Christian values, came from a Christian home. Me and my wife are raising our children on those same values, which is respect everyone, love thy neighbor, treat everyone equally, which is—

Mr. BUCK. Would you answer my question? Should that doctor be required to take that patient?

Ms. CONTRERAS. I think that there are some people here that could answer that a little bit better than I could, but I think that everyone should be treated equally and—

Mr. CICILLINE. Mr. Buck, if you will yield, I am happy to answer that question. I don't view Nazis as a protected class—

Mr. BUCK. I will not yield. I will not yield. I reclaim my time. I will not yield.

Mr. CICILLINE. Oh, okay.

Mr. BUCK. Professor Coleman, I have a question for you.

Chairman NADLER. If the gentleman doesn't want an answer, he doesn't have to yield.

Mr. BUCK. Well, that is a nice cheap shot from the chairman. I appreciate that. I didn't know the chairman—

Chairman NADLER. Not a cheap shot, it is a real shot. [Laughter.]

Mr. BUCK. Professor Coleman, under this legislation, would BYU be required to open its married student housing to a gay couple, a gay married couple?

Ms. COLEMAN. I believe so.

Mr. BUCK. And is that the—would you define for me what “public accommodation” means?

Ms. COLEMAN. Public accommodations are hotels, restaurants, things like that.

Mr. BUCK. A business that opens itself up to the public?

Ms. COLEMAN. Correct.

Mr. BUCK. Including a university?

Ms. COLEMAN. A university is an educational institution and typically is governed under a different set of rules, but sometimes it is a place of public accommodation.

Mr. BUCK. Okay. But this law does apply to public accommodations?

Ms. COLEMAN. Yes.

Mr. BUCK. And Notre Dame the same way would be required to open its student housing. And I am not suggesting that BYU or Notre Dame would have a religious objection, a theological objection to that. But if they did, they would still be required to do it?

Ms. COLEMAN. I believe so.

Mr. BUCK. And is that your position also, Professor Yoshino?

Mr. YOSHINO. I actually don't think that that is correct with regard to educational institutions. So if there is a religiously run educational institution, that that religiously run educational institution would be protected in the same way that a church would be protected.

Mr. BUCK. And you are saying that this law does not apply to educational institutions receiving Federal financing, Federal funds?

Mr. YOSHINO. I don't believe that this alters Title VI. So, yes.

Mr. BUCK. Okay, good. I appreciate that. And I yield back, Mr. Chairman.

Chairman NADLER. The gentleman from Rhode Island, the author of the bill, Mr. Cicilline is recognized.

Mr. CICILLINE. Thank you, Mr. Chairman.

Thank you to our witnesses for being here and for your really inspiring and very powerful testimony.

Thank you, Chairman Nadler, for calling this hearing and for your outspoken and unwavering support of the Equality Act from the very first moment we began to discuss it nearly 5 years ago.

This bill is bipartisan and now has 240 cosponsors, including 3 Republicans. As we consider H.R. 5 here in the House, I can't help but think of the upcoming 50th anniversary of the Stonewall riot just a few weeks from now. Just 50 years ago, the patrons of Stonewall Inn in New York, one of the few places of refuge for the marginalized and criminalized LGBT community, were targeted, beaten, harassed, and arrested simply for being willing to live their true lives.

That riot 50 years ago in what is now Mr. Nadler's district sparked the modern LGBT rights movement that has ushered in extraordinary achievements in our fight for equality. As a young man, I never could have dreamed I would be the first openly gay mayor of a capital city in America or that I would be able to serve in the U.S. House of Representatives openly and not afraid to be my authentic self.

This path was made possible by activists like Harvey Milk, Bayard Rustin, Barbara Gittings, and Audre Lorde, to name just a few. In the political world, the trail was blazed by many, including our former colleagues and my friends Barney Frank, Tammy Baldwin, Jim Kolbe, who is here today, and many others.

And today, I am proud that we have the greatest number of individuals from the LGBTQ community in the House of Representa-

tives in U.S. history with eight openly lesbian, gay, and bisexual Members.

I want to acknowledge and thank my LGBTQ Equality Caucus co-chairs who have supported my efforts on this bill—Mark Pocan, Mark Takano, Sean Patrick Maloney, Angie Craig, Chris Pappas, Sharice Davis, and Katie Hill, all trailblazers in their own right.

It is important to me that young people now have the example of a diverse group of LGBT lawmakers not just on the Federal level, but across government at the State and local level. We introduced the Equality Act because we don't think it is right that members of our community are still told that they can't go to school, live where they want to live, work in their chosen field, access healthcare or housing. It is simply not right, and it undermines core founding values of this great country of fairness and equality.

And I want to be clear that when someone votes against this bill or questions why LGBT people should have the same rights as everyone else, they are telling me that my rights and the rights of my community don't matter as much as their own comfort. Now is the time for legal discrimination against an entire community of Americans to end.

Speaker Pelosi has been an extraordinary and great champion for our community and a bulwark of support for this bill, as are our majority leader Steny Hoyer and whip Jim Clyburn, and our esteemed colleague and civil rights icon, John Lewis.

On the Senate side, we have worked in tandem with the Senate lead, Senator Merkley, Tammy Baldwin, and Cory Booker, and I couldn't be prouder to have partnered with them in this effort.

As you all know, no major piece of legislation is possible without the support and advocacy of a cavalcade of experts, advocates, and allies. And I want to take a moment to thank the groups who have been so instrumental in getting this legislation drafted and introduced with such a strong showing of support.

The Human Rights Campaign, and I know Chad Griffin is with us today, the president. The ACLU, the National Women's Law Center, the Center for American Progress, the National Center for Transgender Equality, the Leadership Conference on Civil and Human Rights, the National Black Justice Coalition, the National Center for Lesbian Rights, the National LGBT Task Force, Lambda Legal, Family Equality Council, the National Partnership for Women and Families, the Transgender Law Center, Freedom for All Americans, SAGE, PFLAG, the NAACP, the Urban League, and many, many others.

I would also like to mention that we have widespread support in the business community from companies of all sizes, all across the country. Additionally, we have the support of labor groups, trade associations such as the National Associations of Manufacturing and even the U.S. Chamber of Commerce.

I would like to ask for unanimous consent to enter this list of 330 organizations and 180 companies who have endorsed the Equality Act into the record as well.

Chairman NADLER. Without objection.

[The information follows:]

**MR. CICILLINE FOR THE OFFICIAL RECORD**

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Mr. Cicilline for the record, list of businesses and organizations in support of Equality Act:

<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD002.pdf>

Mr. CICILLINE. We have such widespread support because businesses know that their employees thrive when they are free from harassment, when they are able to visit doctors, take their children to school, and live freely.

I should note that this bill does not only provide protections for the LGBT community, we also add protections in areas of civil rights law that weren't previously in place. We expand the list of public accommodation protections in the civil rights area so that there will be recourse for people who are harassed for shopping for the color of their skin or flying because of their perceived religion.

This bill will target one of the root causes of poverty, marginalization and alienation of many in the LGBT community in this country. For example, LGBT people are more likely to live in poverty, and LGBT people of color experience some of the highest rates of poverty of any group in the United States.

This can be directly attributed to the discrimination in employment, housing, and other areas that make it more difficult for people to maintain a job and earn a living wage. The Equality Act seeks to level the legal playing field so that all Americans have a chance to thrive. It is vital for Congress to be clear that sexual orientation and gender identity are protected under the law, and individuals cannot be discriminated against on this basis.

But of course, any bill that expands civil rights must never retreat from our commitment to the progress that we have made, and it is vital and very important that we first do no harm.

So, Mr. Chairman, under our proposal, the very same protections that exist for other minorities in the Civil Rights Act of 1964 will protect the rights of lesbian, gay, bisexual, and transgender people all across America. We are asking for no more and no less. And as my great friend and colleague Congressman John Lewis told me when we began this work on the bill, the time is now.

I thank you, and I yield back.

Chairman NADLER. The gentleman's time has expired.

The gentlelady from Arizona, Mrs. Lesko, is recognized.

Mrs. LESKO. Thank you, Mr. Chairman.

I believe that all people should be treated equally, but I am concerned that H.R. 5, with the weight of Federal law, forces schools, prisons, shelters, et cetera, to prioritize the rights of biological males over that of biological women.

H.R. 5, in the vast number of settings covered, will require that men be allowed to enter space formerly reserved for women. Whereas Federal anti-discrimination laws are supposed to protect women from the unjust dominance of men in virtue of their generally bigger size and strength, H.R. 5 will require that dominance of males over females in sports and incentivize it in other areas such as dormitories, locker rooms, bathrooms, and even the Girl Scouts, which is a federally chartered and federally funded organization.

Nine women have sued the Poverello House, one of the largest service providers for homeless people in Fresno, California, for allowing a male resident to sexually harass them during their stay at the nonprofit women's shelter, leering at them in the shower, showing them pictures of himself masturbating, and making sexual

advances. He was permitted to do these things on the basis that he identifies as a woman.

In England, Karen White, who is male, was transferred to a female prison on the basis of his self-declared gender identity. He later admitted to sexually assaulting women in a female prison and raping another two women outside jail.

Alexis Lightcap, a high school student in the United States, is also challenging the violation of privacy caused by her own school's policy of allowing boys in the girls' bathroom.

A liberal writer and gay advocate Andrew Sullivan writes in opposing H.R. 5, "The Equality Act also proposes to expand the concept of public accommodations to include exhibitions, recreation, exercise, amusement, gatherings, or displays. It bars any religious exceptions invoked under the Religious Freedom Restoration Act of 1993, and it bans single-sex facilities like changing, dressing, or locker rooms. It could put all single-sex institutions, events, or groups in legal jeopardy. The bill, in other words, undermines the fundamental legal groundwork for recognizing and combating sex-based oppression and sex discrimination against women and girls."

Ms. Beck, do you think H.R. 5 will eliminate separate spaces and opportunities for biological women?

Ms. BECK. Thank you, Mrs. Lesko.

I definitely do. I believe that the language of gender identity lends itself readily to abusive gaslighting that disguises and distorts women's ability to name what is happening. Nothing is to be gained by pretending that all social issues and oppressions are gender neutral. We must be able to name sex.

And for women, being female has never been a private matter. Institutions such as marriage, prostitution, and forced sterilization, and rape mark women's bodies as public domain across the world. Well, we won't have the ability to name these things if men can be women, if male people can call themselves women.

So, yes, we risk losing all of our sex-segregated spaces if H.R. 5 passes.

Mrs. LESKO. Thank you.

And Ms. Coleman, do you think that H.R. 5 will eliminate separate opportunities in sports for biological women that now will be like biological men will be allowed to compete in women's sports?

Ms. COLEMAN. It won't eliminate the ability to participate, but it will eliminate or reduce competitive opportunities significantly.

Mrs. LESKO. Thank you. I yield back my time.

Chairman NADLER. I thank the gentlelady. The gentleman from California, Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chair, and let me thank Representative David Cicilline for bringing this important legislation.

So some of the arguments I hear from my colleagues across the aisle strike me as very similar arguments when their first LGBT movement started, the notion that somehow people who are transgender are pretending to gain an advantage. That is what they said about gay people, that they are just pretending, that they could be straight if they wanted to. It spawned this whole industry of conversion therapy that did significant harm to patients across America.

One reason I was proud that when I was in the California State legislature, I authored the first ban on conversion therapy in the Nation, and it has now been copied in multiple jurisdictions. And what we are hearing today is a very similar argument against those who are transgender.

And I don't question the motivations of my colleagues. I have learned not to do that, and I don't believe they are bigoted for believing this idea. I am simply making a point that the idea itself is bigoted, and I urge them to let it go.

I served in the United States military on active duty. The U. S. military is the best in the world because we rely on data, on facts, on science. We don't live in a fantasy world because if we did, U. S. troops will die. We live in reality.

And reality is women serve in combat. Women serve on nuclear submarines. Women are fighter pilots. We are simply making progress. And every time we make progress, we hear the same exact arguments repeated over and over again.

So one reason that we now have Title IX, and it has been successful, is because congress chose to pass it despite very similar arguments again that it was, again, going to hurt women. So, Professor Coleman, let me ask you. Are you hearing very similar arguments today as you did during Title IX's passage in terms of how it would hurt women or equality?

Ms. COLEMAN. I think I disagree with you. I think that it was pretty clear before Title IX was passed in 1972 that girls and women didn't have opportunities in the educational space, including in the sports area, but more broadly, in the educational space. And that Title IX was going to help girls and women by providing those opportunities.

There may have been some conservative positions that suggested that women belonged outside of educational spaces and outside of sport, but I think that—

Mr. LIEU. I am sorry—let me. I was not narrow enough in my question. Was there a conservative argument that women would be, in fact, you still hear it, would be assaulted?

Ms. COLEMAN. Would be assaulted?

Mr. LIEU. Right. Sexually assaulted because of having their athletic facilities not be discriminatory?

Ms. COLEMAN. Women would be assaulted—

Mr. LIEU. Maybe we don't read the same conservative blogs that I have?

Ms. COLEMAN. I probably don't. I try to stay off of social media.

Mr. LIEU. So let me ask this another way. Title IX has been a success. Is that correct?

Ms. COLEMAN. Yes.

Mr. LIEU. Okay. We will leave it at that. So one of the things we know about discrimination against LGBTQ is that there has been a rise in homelessness among many constituencies, but particularly among the LGBTQ sector. So, Ms. Chandy, can you explain why that is and how we can try to make that better?

Ms. CHANDY. I would like to use this question to talk about the rates of harassment and violence since I think it relates to that. Transgender students face harassment and violence at far higher rates than their cisgender peers, and confirming earlier studies' re-

cent data from the CDC shows that 27 percent of U. S. transgender high school students feel unsafe at school or traveling to or from campus, that 35 percent are bullied at school, and 35 percent attempt suicide.

Similarly, a survey conducted by the National Center for Transgender Equality found that the majority of respondents who were out or perceived as transgender in school in K through 12 experienced some form of mistreatment including being verbally harassed, 54 percent; physically attacked, 24 percent; and sexually assaulted, 13 percent; because they were transgender.

And startlingly, 17 percent of respondents experienced such severe mistreatment that they left school as a result. Respondents who did not complete high school were more than twice as likely to have attempted suicide as the overall sample.

And finally, in a survey conducted by the American Association of Universities, nearly 1 in 4 transgender students experience sexual violence in college, a higher rate of victimization than that experienced by cisgender college women.

I wanted to share these statistics because Congress designed Title IX to address sex discrimination across the board, including women and including transgender individuals.

And we are continuing to fight against this narrative that puts women's rights on one side and LGBTQ rights on another or the rights of transgender people on another. Because transgender women are women, and so all of us need this protection together.

And that is why, why would the National Women's Law Center and the host of women's rights organizations be here in support of the Equality Act if it was going to harm women? We are the experts on this. This is what we do, day in and day out, across sectors, workplace, you know, healthcare. Workplace, justice, education, all of these areas, this is what we do is we fight for women's rights.

And so please look to us as the experts on whether or not this bill is good for women and LGBTQ people.

Mr. LIEU. Thank you.

Chairman NADLER. The time of the gentleman has expired.

Before I recognize the next person, I ask unanimous consent to insert into the record a letter from more than 40 trade and professional associations in support of the Equality Act.

Without objection, it will be entered.

[The information follows:]

**MR. NADLER FOR THE OFFICIAL RECORD**

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March 13, 2019

The Honorable Nancy Pelosi  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Chuck Schumer  
Minority Leader  
U.S. Senate  
Washington, DC 20510

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer:

The undersigned trade and professional associations support provisions in the Equality Act that amend Title VII of the Civil Rights Act to provide employment non-discrimination protections based on sexual orientation and gender identity. Equality of opportunity is a key pillar of our great democracy—one that allows all people to pursue their American Dream—and part of what makes our nation exceptional. Our industries, representing tens of millions of Americans, understand this basic fact and have been at the forefront of efforts to combat discrimination based on sexual orientation and gender identity in the workplace.

We believe an appropriately-tailored federal standard would complement our members' ongoing work to promote equal opportunity in the workplace. A clear federal standard would better enable individuals to succeed based on their abilities and qualifications to perform a job. Our members recognize the value of equal opportunity because it enables them to attract and retain the most talented employees.

Title VII of the Civil Rights Act provides a well-understood legal framework for preventing and addressing discrimination. Amending the Act to include protections based on sexual orientation and gender identity is a sensible approach to ensure consistency with other protected classes.

We look forward to working with Congress to promote and perfect the Equality Act, as we believe it meets these criteria.

Sincerely,

ACT | The App Association  
AdvaMed  
Aerospace Industries Association  
American Benefits Council  
American Cleaning Institute  
American Hotel & Lodging Association  
American Medical Association  
American Society of Association Executives

Asian American Hotel Owners Association  
Auto Care Association  
BSA | The Software Alliance  
Business Roundtable  
College and University Professional Association for Human Resources  
Consumer Healthcare Products Association  
Consumer Technology Association  
Council for Responsible Nutrition  
Edison Electric Institute  
Financial Executives International  
Food Marketing Institute  
Fragrance Creators Association  
Grocery Manufacturers Association  
Household & Commercial Products Association  
HR Policy Association  
Information Technology Industry Council (ITI)  
International Council of Shopping Centers  
International Franchise Association  
Internet Association  
Nareit  
National Association of Chain Drug Stores  
National Association of Manufacturers  
National Investor Relations Institute  
National Leased Housing Association  
National Restaurant Association  
National Retail Federation  
National Safety Council  
National Venture Capital Association  
Personal Care Products Council  
Retail Industry Leaders Association  
Solar Energy Industries Association  
The Center for Baby and Adult Hygiene Products  
The ERISA Industry Committee  
The National Multifamily Housing Council  
The Real Estate Roundtable  
U.S. Chamber of Commerce

Chairman NADLER. Now I recognize the gentleman from California, Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Last week, I had the privilege of visiting with an endocrinologist from my district, Dr. Michael Laidlaw. He has witnessed the medical dangers of this obsession with new transgender ideology and specifically how dangerously it is being pushed on children as young as 8 years old, which will only be made worse by this legislation when parents are threatened with lawsuits or the loss of their children for questioning their child's gender dysphoria or objecting to life-altering therapies or surgeries.

And I would like to submit three items for the record. First, a letter he wrote outlining what he has seen and his concerns for how H.R. 5 will elevate children's feelings about their gender over biological and medical reality.

Second, a piece he wrote in the Journal of Clinical Endocrinology and Metabolism, calling for more skepticism among physicians who treat young people claiming gender dysphoria in light of the highly detrimental health consequences of gender affirmative therapy, such as increased ovarian cancer, lower bone density, and thrombosis and pulmonary embolisms.

And third, an excerpt from an NIH report, indicating that NIH has lowered the minimum age for inclusion in their studies about gender transition hormones from 13 to 8 years old, which I find truly disturbing.

I would like unanimous consent to enter those into the record.

Chairman NADLER. Without objection.

[The information follows:]

**MR. McCLINTOCK FOR THE OFFICIAL RECORD**

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Michael K. Laidlaw, MD  
Endocrinology, Diabetes and Metabolism  
4770 Rocklin Rd, Ste #1  
Rocklin, CA 95677  
Ofc: 916-315-9100  
Fax: 916-315-0141  
email: docdr\_laidlaw@gmail.com

Congressman Tom McClintock  
4th District of California  
2312 Rayburn Building  
Washington, DC 20515

03/30/2019

Subject: Gender Identity language in H.R.5 Equality Act will lead to permanent medical and surgical harms to children and adolescents with gender dysphoria.

Dear Mr. Tom McClintock:

I am all for equality for our citizens. However the gender identity language in the Equality Act poses great risks to child and adolescent health. This has to do with experimental treatments for childhood gender dysphoria.

The NIH has granted \$5.7 million to fund the research study "The Impact of Early Medical Treatment in Transgender Youth" [1]. This is a 5 year study which involves giving children with gender confusion puberty blocking hormones and cross sex hormones (meaning hormones of the opposite sex). These medications are not FDA approved for this condition and have many risks including causing sterility and cardiovascular disease [2,3]. These medications are being given not because of any objective test - but simply because of the child's self identification (i.e. gender identity) of being the opposite sex.

It has been known that the puberty blocking medications in this study are being given to kids as young as age 8. However, the youngest age for cross (opposite) sex hormones was originally set at 13 years old.

Through a Freedom of Information Act request, we were able to obtain the Protocol and Progress reports for this study. I found out something even more shocking- that in 2017

the youngest age for kids to receive cross sex hormones was reduced from age 13 to age 8.

Here is the relevant portion of the text (also see attached documents):

“the minimum age for the cross-sex hormone cohort inclusion criteria was decreased from 13 to 8 to ensure that a potential participant who could be eligible for cross-sex hormones based on Tanner Staging [meaning stage of puberty] would not be excluded due to age alone.”

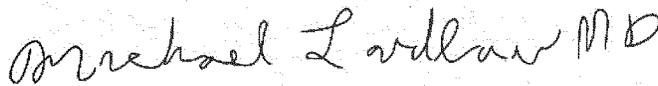
This means that girls as young as age 8 are receiving testosterone, and boys as young as age 8 or 9 are receiving estrogen. Again, these dangerous medications are being given in this experiment to 3rd and 4th graders simply on the basis of their self described gender identity and not because of any objective testing (i.e. lab tests, genetic tests, MRI, etc).

Children and adolescents cannot consent to these dangerous medications, nor can their parents consent given the irreversible side effects. These medications lead to sterility, sexual dysfunction, increased risk of death from cardiovascular disease, and increased risk for cancers of the breast and ovaries [3]. We have written a letter to the editor of our premier endocrinology journal, JCEM, describing these risks (attached) [3].

While this information is horrendous, I am still waiting for more documents from a secondary FOIA request pertaining this NIH funded study. I have enclosed the relevant portion of the Progress Reports from 2017 showing the age reduction for cross sex hormones.

H.R.5 will lead to medical protocols like this being implemented nationwide, because children and adolescents will be treated on the basis of their feelings about their gender, rather than the physical reality of their biological sex. The consequences will be absolutely devastating to kids.

Thank you very much for reviewing this material. Please contact me with any questions.



Michael K. Laidlaw, MD

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3. Michael K Laidlaw; Quentin L Van Meter; Paul W Hruz; Andre Van Mol; William J Malone. Letter to the Editor: "Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline". *The Journal of Clinical Endocrinology & Metabolism*, Volume 104, Issue 3, 1 March 2019, Pages 686–687, <https://doi.org/10.1210/jc.2018-01925>

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FINAL

## A. COVER PAGE

<b>Project Title:</b> The Impact of Early Medical Treatment in Transgender Youth	
<b>Grant Number:</b> 5R01HD082554-03	<b>Project/Grant Period:</b> 08/01/2015 - 06/30/2020
<b>Reporting Period:</b> 07/01/2016 - 06/30/2017	<b>Requested Budget Period:</b> 07/01/2017 - 06/30/2018
<b>Report Term Frequency:</b> Annual	<b>Date Submitted:</b> 05/10/2017
<b>Program Director/Principal Investigator Information:</b> JOHANNA L OLSON , BS MS MD <b>Phone number:</b> (818) 679-6757 <b>Email:</b> jolson@chla.usc.edu	<b>Recipient Organization:</b> CHILDREN'S HOSPITAL OF LOS ANGELES 4650 Sunset Boulevard Mailstop #97 LOS ANGELES, CA 900276062 <b>DUNS:</b> 052277936 <b>EIN:</b> 1951690977A1 <b>RECIPIENT ID:</b> 8011-RGF009152-00
<b>Change of Contact PD/PI:</b> N/A	
<b>Administrative Official:</b> NAGHMA AHMAD 4650 Sunset Blvd, MS# 97 Los Angeles, CA 900276062 <b>Phone number:</b> 323-361-8560 <b>Email:</b> nahmad@chla.usc.edu	<b>Signing Official:</b> KAREN SUE NIEMEIER 4650 Sunset Blvd. #84 Los Angeles, CA 90027 <b>Phone number:</b> 3233616309 <b>Email:</b> kniemeier@chla.usc.edu
<b>Human Subjects:</b> Yes HS Exempt: No Exemption Number: Phase III Clinical Trial:	<b>Vertebrate Animals:</b> No
<b>hESC:</b> No	<b>Inventions/Patents:</b> No

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Page 1

F. CHANGES

<p><b>F.1 CHANGES IN APPROACH AND REASONS FOR CHANGE</b></p> <p>Not Applicable</p>
<p><b>F.2 ACTUAL OR ANTICIPATED CHALLENGES OR DELAYS AND ACTIONS OR PLANS TO RESOLVE THEM</b></p> <p>In order to completely capture the impact on all youth undergoing treatment with GnRH agonists, recruitment will be expanded to include those youth in Tanner 4 of development. In addition, the minimum age for the cross-sex hormone cohort inclusion criteria was decreased from 13 to 8 to ensure that a potential participant who could be eligible for cross-sex hormones based on Tanner Staging would not be excluded due to age alone. The Principal Investigators assert that this will not impact the data analysis and results of the research study.</p> <p>Due to the substantial burden on participants for completing the DISC, the Principal Investigators and Co-Investigators decided to stop utilizing the DISC and implement the Mini International Neuropsychiatric Interview (M.I.N.I.) and the M.I.N.I. for Children and Adolescents (M.I.N.I. Kid), version 7.0.2 for DSM-5, as a replacement. This transition means that there is a portion of participants for whom we are missing the baseline diagnostic data due the time it takes for coordinating center and local IRBs to approve the transition in instruments.</p>
<p><b>F.3 SIGNIFICANT CHANGES TO HUMAN SUBJECTS, VERTEBRATE ANIMALS, BIOHAZARDS, AND/OR SELECT AGENTS</b></p> <p><b>F.3.a Human Subjects</b></p> <p>File uploaded: F3a Human Subjects.pdf</p>
<p><b>F.3.b Vertebrate Animals</b></p> <p>No Change</p>
<p><b>F.3.c Biohazards</b></p> <p>No Change</p>
<p><b>F.3.d Select Agents</b></p> <p>No Change</p>

### Letter to the Editor: "Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline"

Michael K. Laidlaw,<sup>1</sup> Quentin L. Van Meter,<sup>2</sup> Paul W. Hruz,<sup>3</sup> Andre Van Mol,<sup>4</sup> and William J. Malone<sup>5</sup>

<sup>1</sup>Michael K. Laidlaw, MD, Inc., Rocklin, California 95677; <sup>2</sup>Van Meter Pediatric Endocrinology, P.C., Atlanta, Georgia 30318; <sup>3</sup>Department of Pediatrics, Washington University School of Medicine, St. Louis, Missouri 63110; <sup>4</sup>Van Mol Family Practice, Redding, California 96003; and <sup>5</sup>William J. Malone, MD, Twin Falls, Idaho 83301

**ORCID numbers:** 0000-0001-6849-7285 (M. K. Laidlaw); 0000-0003-2831-6480 (Q. L. Van Meter); 0000-0002-1478-3355 (P. W. Hruz); 0000-0001-8678-0025 (A. Van Mol); 0000-0002-5150-292X (W. J. Malone).

Childhood gender dysphoria (GD) is not an endocrine condition, but it becomes one through iatrogenic puberty blockade (PB) and high-dose cross-sex (HDGS) hormones. The consequences of this gender-affirmative therapy (GAT) are not trivial and include potential sterility, sexual dysfunction, thromboembolic and cardiovascular disease, and malignancy (1, 2).

There are no laboratory, imaging, or other objective tests to diagnose a "true transgender" child. Children with GD will outgrow this condition in 61% to 98% of cases by adulthood (3). There is currently no way to predict who will desist and who will remain dysphoric. The degree to which GAT has contributed to the rapidly increasing prevalence of GD in children is unknown. The recent phenomenon of teenage girls suddenly developing GD (rapid onset GD) without prior history through social contagion is particularly concerning (4).

GnRH agonists are used in precocious puberty to delay the abnormally early onset of puberty to a physiologically normal age. The goal of PB in the healthy child, however, is to induce hypogonadotropic hypogonadism to "buy time" to confirm gender incongruence. In a study of PB in adolescents aged 11 to 17 years, 100% desired to continue GAT. They simply "bought" themselves lower bone density and the need for lifelong medical therapy (5).

Studies show that <5% of adolescents receiving GAT even attempt fertility preservation (6). Those started on PB at

Tanner stage II, as recommended by current guidelines, will be blocked prior to sperm maturation and ovum release. They will have no prospect of biological offspring while on HDGS hormones and continuing on to gonadectomy.

The Endocrine Society's guidelines recommend elevating females' testosterone levels from a normal of 10 to 50 ng/dL to 300 to 1000 ng/dL, values typically found with androgen-secreting tumors. The ovaries of women given testosterone correspond to those found in PCOS, which itself is associated with increased ovarian cancer risk and metabolic abnormalities (1). Venous thromboembolism risk is elevated fivefold in males taking estrogen (2).

The health consequences of GAT are highly detrimental, the stated quality of evidence in the guidelines is low, and diagnostic certainty is poor. Furthermore, limited long-term outcome data fail to demonstrate long-term success in suicide prevention (7). How can a child, adolescent, or even parent provide genuine consent to such a treatment? How can the physician ethically administer GAT knowing that a significant number of patients will be irreversibly harmed?

Hypothesis-driven randomized controlled clinical trials are needed to establish and validate the safety and efficacy of alternate treatment approaches for this vulnerable patient population. Existing care models based on

ISSN Print 0021-972X ISSN Online 1945-7197  
Printed in USA  
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Received 5 September 2018. Accepted 20 November 2018.  
First Published Online 23 November 2018

psychological therapy have been shown to alleviate GD in children, thus avoiding the radical changes and health risks of GAT (8). This is an obvious and preferred therapy, as it does the least harm with the most benefit.

In our opinion, physicians need to start examining GAT through the objective eye of the scientist-clinician rather than the ideological lens of the social activist. Far more children with gender dysphoria will ultimately be helped by this approach.

### Acknowledgments

**Disclosure Summary:** Q.L.V.M. is a speaker for Abbvie and is involved in clinical research with Abbvie on Depot Lupron. The remaining authors have nothing to disclose.

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Mr. MCCLINTOCK. I am hopeful that these documents, along with all of the other questions raised by my colleagues today, will give pause to those who are championing the embrace of this radical trans ideology over biological reality.

Ms. BECK, am I safe to assume that we should all agree that gender-based stereotypes about how men and women should speak or act or dress or appear should not be the basis of our interactions as a society?

Ms. BECK. I would only agree if you used the word “gender” as a synonym for “sex.” I don’t agree with—

Mr. MCCLINTOCK. I mean how somebody chooses to act, to dress, to talk really should not be an object of notice by their government, should it?

Ms. BECK. I mean, those are all personal traits that are subject to change any day, any hour. My hair grows, you know?

Mr. MCCLINTOCK. Exactly, and we wouldn’t assume that these stereotypes—well, we shouldn’t use these stereotypes to craft statutory or legal definitions on discrimination.

Ms. BECK. I agree. Like I said earlier, there is no way to tell if someone is lying about being transgender. So if a man who wears a dress is considered as a woman by Federal law, he could be lying, and there is no way for us to tell.

Mr. MCCLINTOCK. Well, that is the question I want to get at. H.R. 5 gives us a definition of gender identity that is based on stereotypes. Let me read from the text of the bill. It says the term “gender identity” means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual.

The drafters of this bill could have saved themselves some legalese and just said gender identity means gender stereotypes. What does that say about this movement that the lawyers drafting this bill are unable to define gender identity without relying on stereotypes?

Ms. BECK. It says not much because they haven’t written much, unfortunately. I find it really disheartening that we are debating a Federal law that is just incomplete and baseless. We have given a lot of testimony to show how this would affect women negatively, and that is just being—we were told to let it go. This would eliminate women and girls as a coherent legal category worthy of civil rights protection.

Mr. MCCLINTOCK. Well, let me ask you this. I would assume that you would support the numerous efforts by the Government over the last several decades to promote women-owned businesses, for example, by giving women-owned businesses preference when competing for Government contracts?

Ms. BECK. Sure, yes. I think that is all great on the basis of sex.

Mr. MCCLINTOCK. Well, what should we tell a woman-owned business that loses out to a Government contract because a man decided to identify as a woman in order to win that contract?

Ms. BECK. That should never happen.

Mr. MCCLINTOCK. Ms. Chandy, doesn’t that happen under this bill?

Chairman NADLER. Use your mike.

Mr. MCCLINTOCK. Yes, what would you say—

Ms. CHANDY. Transgender women are women, and so I find this sort of language about calling transgender women by some other name to be not in line with—

Mr. MCCLINTOCK. Well, whatever language you would choose—

Ms. CHANDY. Can I—can I—

Mr. MCCLINTOCK [continuing]. The question remains, what would you tell a woman-owned business that lost a contract because a man decided to identify as a woman in order to win that contract?

Ms. CHANDY. Okay. If it was a transgender woman, I would say you lost out. Another woman won. It was probably a better application.

Mr. MCCLINTOCK. Well, so let me ask this.

Ms. CHANDY. Let me finish. If it was a man who was trying to be fraudulent, I would do an investigation on fraud. But this question—

Mr. MCCLINTOCK. Yes, but how are you going to know—

Ms. CHANDY. Can I finish? Can I answer your question?

Mr. MCCLINTOCK [continuing]. if he's trying to be fraudulent? No, because the time is mine. Actually, I am out.

Ms. CHANDY. Okay.

Mr. CICILLINE. Mr. Chairman, I ask the witness be permitted to finish her answer to that last question.

Mr. MCCLINTOCK. Well, if I can have a follow-up question.

Mr. CICILLINE. No, no. Your time has expired, but the witness gets to answer the question.

Chairman NADLER. I will let—excuse me a second. Let the witness answer the question, and I will grant the gentleman an additional question.

Ms. CHANDY. Thank you.

This question of people being able to lie about their gender identity I find so interesting because I think someone raised today people can lie about being gay, people can lie about being a lesbian, and yet we need rights because we are gay or lesbian. The same rights apply. These are not things that people lie about to gain rights. These are things that are the basis of really painful discrimination as we have heard from so many of us.

And so to go ahead and mispronoun and misname people based on their true identity is—and now these questions are coming at me in a way that don't make sense. If it is a man who is pretending to be a woman, then that is fraud. If it is a transgender person, then it is a woman.

Mr. MCCLINTOCK. But under your criteria, the only way to decide if the person is lying is to read their mind, which was beyond our abilities. And I want to ask you, what if every Government contractor in America decided to identify as a woman? What mechanism is there for the Government to verify that all of these men who do Government contracting are identifying with women for genuine gender transition as compared to trying to game the system?

You can't tell unless you can read their minds, and I doubt you can.

Chairman NADLER. The time of the gentleman has expired. The witness may answer the question.

Ms. CHANDY. I would just say that is not how civil rights laws work. There are individuals who have protections based on race. You may or may not be able to tell what their race is.

I mean, there are protections based on if you are LGBTQ that have been in effect across our country in half of the States. Sometimes you can tell. Sometimes it is because of a perception. That person might not even be LGBTQ, but you think they are and you discriminate, and that would be discrimination. And so this idea of not being able to tell is not really an issue in civil rights law.

Chairman NADLER. The time of the gentleman has expired. The gentleman from Maryland, Mr. Raskin.

Mr. RASKIN. Mr. Chairman, thank you.

Sometimes when you are in the middle of the trees, you lose sight of the forest. So I want to make sure we remark upon what a great and historic day this is, that we are taking up the Equality Act. And I believe we have got a majority in the House of Representatives ready to pass it, and I think there is a majority on this committee ready to bring it to the floor.

I want to salute my colleague David Cicilline for his really passionate advocacy and stewardship of this legislation. Your name will go down in history, Mr. Cicilline, with other great members of the Judiciary Committee in our past, like Thaddeus Stevens and Peter Rodino and other great Members of Congress like Everett Dirksen and Hubert Humphrey and John Lindsay—Republicans, Democrats, both—who stood up for equal rights against always a barrage of increasingly absurd and desperate arguments mounted by the opposition.

The second thing I want to say is I would be glad at the end of my remarks to grant my colleague from California any time if he can find a case of a man impersonating a woman who received any kind of small business advantage or credit. And if there is one, I would love to know about it, either a man who impersonated and was prosecuted for it or a transgender person who was proven to have engaged in a fraud on the Government. I would be happy to yield for that purpose.

Now what I want to talk about—

Mr. MCCLINTOCK. Is the gentleman serious about yielding?

Mr. RASKIN. If you can find an actual case when I get to the end, I have got something important—

Mr. MCCLINTOCK. Well, that is—

Mr. RASKIN. Okay. I am reclaiming my time now. You are going to have to stew on that for a second. [Laughter.]

Mr. RASKIN. Okay. The H.R. 5 is going to help improve outcomes for more than 437,000 children and young people in the child welfare system. Over 120,000 children waiting to be adopted.

Now we know that the opponents of marriage equality were greatly disappointed by the Supreme Court's historic pronouncement in the Obergefell decision, which wiped away their arguments, of course, that if you allow gay people to get married, it would destroy and erode the institution of marriage. Tell that to two of my nieces and my younger sister, all of whom got married in straight marriages since Obergefell took place.

Obviously, the expansion of marriage to include all of our citizens didn't undermine marriage at all. But now they have trained their

guns on a different site. They are saying, well, these married couples should not be allowed to adopt children. Currently, 10 States, including Virginia across the river, allow discrimination against same-sex couples who seek to foster and adopt children. And two more legislatures today have bills pending before them to accomplish that same objective.

This is a profoundly troubling offense to the equality norm and to our Nation's commitment to children and to our young people. These States are placing the ideological commitments of some grown-ups over the practical welfare and happiness of tens and hundreds of thousands of children and young people. Think about that for a second.

They are saying that they would prefer to have kids either not get adopted or placed in a foster home at all than to be with a lawfully married couple that they disapprove of. That is a remarkable thing, and we are going to take care of that with the Equality Act. This is a magical moment for our country. We are expanding equality.

This is the whole history and trajectory of our Constitution, of our laws. We started as a slave republic of white male property owners over the age of 21, and through social struggle and social connection and the moral discovery of the people that all human beings really are equal, certainly in the eyes of the Constitution.

It is not in the eyes of God, according to some. It is not in the eyes of other citizens, according to some. In the eyes of the Constitution, all of us have to be equal. And so we have expanded ourselves to do that.

So we are going to—we have seen in some of these States the adoption levels go down because you are removing lots and lots of very qualified families that want to adopt. In fact, one study showed that 70 percent of same-sex couples want to form families, and 40 percent want to do it through foster and adoption.

Now why, for the life of us, would we remove them from the roster of parents who are ready to adopt? Why would we do that? Unless you have bigoted and prejudiced ideas about the ability of gay people to parent and to form families. By the way, those are bigotries and biases that are contradicted every day by LGBT parents across the country.

So let us see. I have got an embarrassment of riches here. But let me ask you, Ms. Chandy, about this. Is this not a problem today that in many States or some States, it is the minority of States. But in some States that the LGBT community is being locked out of foster care and adoption?

Chairman NADLER. The gentleman's time has expired. The witness may answer the question.

Ms. CHANDY. Yes, I mean, of course. Turning away qualified LGBTQ foster and adoptive parents, you know, limits the pool for children, and I also want to make the point that this really is harmful for the children because one in five foster youth identify as LGBTQ. And this takes away the chance that that might be put with an affirming family.

And there are over 400,000 foster kids in America, and we need to have all of the families who are willing to be in the pool to take care of them. And so I would just heartily agree with you that we

cannot exclude LGBTQ potential parents from this. And as adoptive parent myself, obviously, I take this very personally, to think that I would go to an agency, and they would turn me away.

Chairman NADLER. The gentleman's time has expired. The gentlelady from Florida, Mrs. Demings?

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

And thank you to all of our witnesses for your testimony today.

You know, just saying that you support equal rights or women's rights, I think that is more interesting what is going on over there.

Mr. RASKIN. He has no case. I would be very happy to—

Mrs. DEMINGS. Just saying that you—okay. Just saying that you support equal rights or women's rights or civil rights isn't enough because the American people are always watching what you do, not just listening what you say, but watching what you do. As great as we are as a nation, I am just amazed that we just simply cannot yet seem to get past racial discrimination, sexual discrimination, or discrimination of any kind.

For some reason, America just cannot seem to get past tearing other people down who are different in some way for us. You all know the history of our country. Our past is so ugly in this area I would think that we would all do everything within our power to make it right.

But instead, we sit here today, at least my colleagues on the other side of the aisle, and look for a technicality to continue to justify discrimination in what I do believe is the greatest country in the world. We have heard about discrimination in housing. We have heard about discrimination in employment. We have heard about discrimination on so many different areas that are necessary to living a quality life in this country.

But yet we are overruling all of that based on this belief that there may somehow be discrimination in the area of sports. Now I played sports, and I do not believe that it takes precedence over my ability to love whomever I want to, to live wherever I want to live, to work wherever my qualities as an individual take me, or to be my authentic self.

All of you have added very important testimony to this conversation, but Reverend Wiley, I want to go back to you, and I know you so eloquently in your opening statement talked about why this matters to you. But just for all of our sake as we wrestle with discrimination still yet today, you grew up in the Jim Crow era in the South, and I want you to tell me why does that motivate you so much as it pertains to this issue today, and what would you say to those who argue that it is inappropriate to equate racial discrimination with discrimination on the basis of sexual orientation or gender identity?

Rev. WILEY. First of all, I would say that injustice anywhere, as M.L. King said, is a threat to justice everywhere. And again, I have just developed a sensitivity to the fact that having gone through what I went through as in the segregated South has sensitized me to the injustice of discrimination toward anybody.

And one could say that no two discriminations are the same. I mean, racial is not the same, exact kind of a discrimination as LGBTQ discrimination or gender discrimination, but it is still discrimination. So that if any of us have—and so in moving from Win-

ston to Washington, even though Washington itself has a sordid history of discrimination as well in the past, and we are seeing some things even in the present that remind us of that.

But again, I think that if we believe in a society where all people are created equal and everyone is entitled to life, liberty, and the pursuit of happiness, either we are telling a lie when we say that, or we really mean it. And I think that if we really mean it, then we are open to whatever needs to be done to make it a reality.

Mrs. DEMINGS. Thank you. And Mr. Chairman, I yield back.

Chairman NADLER. I thank the gentlelady.

The gentlelady from Pennsylvania, Ms. Scanlon.

Ms. SCANLON. Thank you.

You know, this is a personal issue for me. We said yesterday when we were talking with some of these folks, it has been personal since my baby sister came out to me 40 years ago. And for many people in this country, that is when the fight hits home. It gets personal when someone who you love says, "This is who I am," and you know and value that person, and you will do whatever you can to make sure that your loved one can live their life to the fullest, free from hate and discrimination.

I do want to recognize and remember Shantee Tucker, a transgender woman of color from Philadelphia who lived at the intersection of racial and sex and gender identity discrimination. Last fall, she was murdered, and that is something we hear time and time again, that when all of these discriminations coalesce, that is where there is even more serious danger.

I am sad to say that my home commonwealth, Pennsylvania, is one of the 30 States that has not adopted anti-discrimination provisions in this arena. We don't have legal protections on the books for LGBTQ people. The idea that my sister or anyone else could drive across State lines and either gain or lose protections is both heartbreaking and, I think, profoundly un-American. So that is why we need this bill.

I was really interested in Ms. Silas' testimony about IBM and the other major corporations that are really taking the lead in this arena and making the business case for why this law is important.

I did want to ask a question to Ms. Chandy as we talk about the patchwork of laws across this country. In Pennsylvania, last year the State's Human Rights Commission announced that it would accept complaints dealing with sexual orientation or gender identity, discrimination, even though no Federal or Pennsylvania State law explicitly addresses those issues. So why is it important that we have a Federal law to address this issue?

Ms. CHANDY. Sure. As you have noted, there are States and localities for many, many years that have had protections based on sexual orientation and gender identity. And while—including D. C.

And while the individuals who live in that jurisdiction are able then to bring explicit complaints, as you said, if you go across the State lines, then you don't. And so I think we want to have a country where all of us have these protections as LGBTQ individuals.

As we also mentioned, some of the court cases are evolving in this way to say that the Federal protections of sex discrimination also provide protections if you are discriminated against based on

sexual orientation or gender identity. Again, that is dependent on circuits, meaning sort of regions.

And so these rights cannot be dependent on States, localities, or Federal regions. They need to be for all of us.

Ms. SCANLON. Is it fair to say that if the character of the Federal judiciary were to change, for example, if a whole host of more conservative judges were appointed, that that could imperil some of these advancements in the Federal courts?

Ms. CHANDY. Yes, that is correct because these—until we have a statute, a Federal statute that gives clear and explicit protections, some of these decisions are dependent on the discretion of Federal district judges and circuit judges. So, yes, the makeup of the judiciary can impact on these interpretations until we have a Federal statute that protects all of us.

Ms. SCANLON. Okay. I have spent the better part of the last 30 years working on issues involving public education, and I am really proud now to serve on the Transgender Equality Task Force with Congressman Kennedy. So earlier this year, we sat down and had a couple of sessions with parents and children in schools talking about their experiences as transgender or gender nonconforming youth and their struggles and the bullying and the bureaucratic roadblocks they face.

Can I ask you about how the Equality Act would affect those students?

Ms. CHANDY. Sure. And, with permission, I would love to bring in Carter Brown, if you are willing? Given that we have someone who might be able to speak to that more personally, I will just say that this law would provide additional protections. But really, I would defer, if you don't mind?

Mr. BROWN. Sure, thank you.

In my experience when working directly with the transgender community, we have heard lots of stories here today about the damage that the option to transition does to children. I have heard—I can combat those stories double with positive stories of children, personal testimonies of children and their parents stating the opportunity for their children to be able to transition and live authentically with support has given them so much fulfillment in their life and enriched their quality of life.

I can say for myself personally if I had the opportunity to transition at a much younger age, I would feel that I could have achieved much more, having not been ostracized in school settings or a negative effect on my social life overall and my ability to access opportunities in education and employment and things that every other American is afforded.

I do believe that a person's gender identity is a very personal thing, and it is not something that can be defined by anyone else, and it is definitely not something that anyone wants to perpetrate for the purpose of hurting someone else.

Chairman NADLER. The gentlelady's time has expired.

Ms. SCANLON. Thank you.

Chairman NADLER. The gentleman from Colorado, Mr. Neguse?

Mr. NEGUSE. Thank you, Mr. Chairman, and thank you to the witnesses gathered here today, for your testimony.

Fairness and equality, in my view, are core American values. Our Nation's civil rights laws protect people on the basis of race, national origin, in most cases, sex, disability, and religion. And yet when it comes to sexual orientation and gender identity, as we heard today, more than half of our States still lack explicit laws to protect people from being fired, refused housing, or denied credit simply because of who they are.

We cannot grow complacent in the quest for equal rights for all, and that is why I am very glad to be a cosponsor of the Equality Act and proud that the chairman and this committee are taking up this issue.

Prior to serving in Congress, I had the distinct honor of running our State's regulatory department in the great State of Colorado, which included the Civil Rights Commission, the Masterpiece Bakery case that the professor mentioned earlier happened to be a case that originated in that agency. I am also proud that my home State of Colorado took an important step towards equality over a decade ago by making it illegal to discriminate on the basis of sexual orientation and gender identity and employment, housing, public accommodations, education in credit. And it is long past time that we emulate those important protections at the Federal level. It is time that we get this done.

And so, again, I am very grateful to Representative Cicilline and to the many cosponsors of the Equality Act.

Mr. Brown, I want to give you a chance to talk a little bit, and if you will indulge me, I first want to say thank you for sharing your testimony and for sharing your story, which I think is just incredibly important. Your honesty and the strength that you have shown by being here this morning—I guess it is afternoon now as the hearing goes on—and ultimately, your approach I just think is incredibly admirable. And so I thank you for that.

Mr. BROWN. Thank you, sir.

Mr. NEGUSE. And I am, of course, sorry, as I know my colleagues in the committee are, to hear about the discrimination that you faced and the toll that it took on your family. Just a couple of weeks ago when I was back home in Colorado, I had a chance to meet with a group of LGBTQ individuals and allies at Out Boulder County.

And Out Boulder is the perfect example of a grassroots, locally driven organization that has made strides in our community because of its ground-up approach to building support for the community. But the first thing they brought up when I met with them with respect to the concerns that they had in the community and sort of nation at large, the issue they talked about the most was the need to have proactive support for the transgender community.

They have obviously felt, you know, been under attack quite constantly by the Trump administration, but we also want to be fighting for the transgender community even when they aren't under attack in the news. And so Mr. Brown, the question is outside of the Equality Act, which I fully support and look forward to voting for, what other steps would you recommend this committee or the Congress in general take to better support the transgender community?

Mr. BROWN. Well, my understanding of the law is that is not to persuade personal beliefs, but to provide personal protections for

all of its citizens, period. So I feel that to have more support for the transgender community, to be made into law, simply gives all Americans equal citizenship.

For me personally, I feel that if the Equality Act is passed, that allows me—it not only protects my identity as a black person, and not only it protects my identity or—I am sorry, my faith in God, but it also protects my gender identity, which is innately all of me and my characteristics. None of those characteristics are less than or more than. They all make me.

And as a hard-working American citizen and as a taxpayer, I deserve the same rights as my neighbors, and that's simply put. So I feel that not only familial support, where we are talking about suicide and suicide ideation in the trench or in the community, that is generally due to lack of support, due to lack of access to healthcare, due to lack of being integrated into society as anyone else creates depression and mental health problems for many people.

And I would equate that to, you know, as the Reverend Doctor stated, with the discrimination against black people where we are talking about separating the black people from schools or separating them in sports because it was believed that they could jump higher or stronger, or separating them, you know, or even gay people, separating them in school lockers because we were afraid that the gay boys would attack the straight boys, et cetera.

This is the same thing of just hate mongering and inflaming fear for isolated incidences where a crime was committed by someone who happened to be transgender, and then flipping that prejudice onto a whole community of people does nothing but continue to divide us as Americans, as opposed to actually bring us all together as the United States, as we say we are.

Mr. NEGUSE. Thank you, Mr. Brown. And I see my time has expired.

If the chairman would indulge me in 4 seconds to just simply say thank you to Ms. Silas in particular and to IBM's voice. I happen to represent Boulder, Colorado, where IBM is headquartered, and so I just want to—I am grateful for your support of the Equality Act and leading in the business community on this front.

Chairman NADLER. I thank the gentleman. The gentleman from Arizona, Mr. Stanton.

Mr. STANTON. Thank you very much, Chairman Nadler.

And I want to thank the outstanding witnesses here today for your testimony. I also want to thank my friend, Congressman Cicilline, for your long-term leadership in drafting this Equality Act and shepherding it through this process. And with the help of the new Members of Congress this year, we are going to get it passed through Congress. So thank you for your leadership, Congressman.

Cities across the country recognize the importance of ensuring all people have the ability to live and work without fear of discrimination because of who they are. We certainly understood that in Phoenix, and during my time as mayor, we sent the message that everyone is welcome, regardless of sexual orientation or gender identity.

To me, it is simple. Our communities are stronger when they are inclusive and welcoming, and what is more, our economy is stronger.

So today I want to underscore the Equality Act's potential economic impact. In three specific cases in Phoenix, we saw that taking action to prevent discrimination had a positive economic impact. In 2013, we passed a citywide nondiscrimination ordinance to prohibit discrimination on the basis of gender, sexual orientation, and disability in employment, housing, and public accommodations.

As a result, Phoenix earned national recognition as a city promoting equality. Socially conscious companies look to our region as a place that aligns with their vision for inclusivity, and they are expanding to create jobs and do business in our city. In 2014, we stood up against a proposed State law that would have allowed businesses to discriminate against customers on the basis of religious belief, the so-called bathroom bill.

We joined businesses across Arizona and the country to demand that the governor reject the bill, and major corporations, including Apple, AT&T, American Airlines spoke out, too. Even the National Football League considered moving the 2015 Superbowl if the bill were to become law, a clear example that pushing discriminatory policies puts us at economic risk. Under pressure, the governor did ultimately veto that bill.

In 2016, Phoenix joined other U.S. cities in offering transgender-inclusive healthcare benefits to city employees and their families. This sent a strong message to our transgender public servants: you matter and we value you. Providing those benefits was vital to the wellbeing of our city employees and continues to make the City of Phoenix a more sought-after employer. We learned in Arizona that inaction has consequences. Allowing discrimination to take place or not being proactive about outlawing discrimination that pushed out the talented people our cities need to thrive economically.

More proof. A study from the William Institute found that "When LGBTQ people are targets of violence, denied equal access to education, stigmatized in communities, and discouraged from pursuing jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy." The bottom line is that LGBTQ individuals want to live and work in places that embrace them. States and cities have been doing the heavy lifting when it comes to preventing discrimination, and it is time for this Congress to act. The Equality Act is the overarching legislation that our country needs right now.

Here is my question. It is for Ms. Silas. You mentioned in your testimony that IBM is a place to create a supportive and inclusive environment for all of your employees, and I want you to speak a little more, maybe expand upon that a little bit. Can you speak to the importance of having inclusive policies in terms of recruiting and retaining talent? I believe corporate America has been way ahead of the political side in terms of promoting inclusivity. Please.

Ms. SILAS. Yes, thank you for that question. So, you know, the reality that we sit in today is there are half a million technical jobs open right now, right? And certainly when we think about IBM and our talent needs and venturing into spaces, such as blockchain and cybersecurity and quantum computing, all of which are incredibly

important spaces for innovation and advancement in the technical field, we are not in a position where we aspire to handpick people based on anything other than skills. I have no interest in discriminating against people based on personal attributes. It doesn't make good business sense.

Beyond that, I am proud to work for a company where we are grounded in the belief that our actions need to absolutely result in business growth, and it is why we are focused on skills. But we also have a 100-year history focused on societal impact and how do we use our role and our impact on society to drive fairness and equality. That is also good business.

Mr. STANTON. All right. Thank you. The Equality Act is good for the American economy, good for business. Mr. Chairman, I ask unanimous consent to insert into the record the Williams Institute study that I referenced called "The Relationship Between LGBTQ Inclusion and Economic Development: An Analysis of Emerging Economies."

Chairman NADLER. Without objection, the document will be admitted.

Mr. STANTON. Thank you.  
[The information follows:]

**MR. STANTON FOR THE OFFICIAL RECORD**

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Mr. Stanton for the record, USAID Williams Institute report:

<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD009.pdf>

Chairman NADLER. The gentleman's time has expired. The gentlelady from Pennsylvania, Ms. Dean.

Ms. DEAN. Thank you, Mr. Chairman, and I thank all of you for coming and talking with us today on this important conversation about how we create a more perfect union. If you notice, some of us are leaving this room. We are going in and out to other hearings. And I happen to be going to a hearing across the hall, not very far away, and it is not far away in terms of what we are talking about. It is the Financial Services hearing on fair housing.

And as I stepped in there to have my opportunity to listen in and to ask some questions, Ms. Johnson, who is an expert on LGBTQ issues, said, "We must name sexual orientation as a protected class." It is interesting how these two conversations are meshing. And so in the frenzy of running between and in the sausage-making that you are all watching, I just want to commend the chairman for hosting this committee because in the search of a more perfect union, we have these messy conversations, these uncomfortable conversations, and I thank the chairman. I thank Mr. Cicilline for his extraordinary leadership on this legislation.

Some things that I wanted to examine, and, Ms. Silas, in terms of IBM, we sometimes talk about we don't want to discriminate because it is not the right thing to do. But economically, it is the right thing to do to make your workforce as diverse as possible because our diversity actually makes us stronger. Our diversity comes up with creative solutions. Is that IBM's experience?

Ms. SILAS. It certainly is. I mean, it is not abnormal when we talk about the benefits of how our teams work and embedding diversity, that we strongly believe that diversity helps us do things like, you know, mitigate group think, or identify errors more efficiently, or innovate more effectively. And that is core to how we work, and ultimately it is how we thrive as a business, so it is absolutely normal and core to how we work.

Ms. DEAN. So it is not only the right thing to do, it is the economically smart thing to do to come up with more creative solutions. And, Reverend Doctor, I really appreciate your experience and your testimony and your years of pastoring to so many. Before you even had your very personal connection, you were already pastoring on this subject because you understood it as a subject about our common humanity, and you understood it as a core subject of love. How we love one another is actually what should guide us.

So you might imagine that I am extraordinarily puzzled by the conversation that has been going on by some of the testimony here, but also by some of my colleagues on the other side of the aisle that throw up what I think are rather phantom fear-mongering examples of fear of invasions of bathrooms, invasions of shelters, invasions of sport. I don't understand that in the balance, even if any of those, anecdotally, things were true, on whole, on the measure, in the balance of how we move forward in this country, are we to be held back those phantom anecdotes, or are we to look for a more perfect union and to stop discriminating?

And so I wanted to give whomever the opportunity, and I really commend Mr. Brown, Ms. Contreras, and Professor for your compelling personal testimony. And as I am one of the last to question

you, is there anything you realize in this conversation we really haven't heard about in personal discrimination, because I was a township commissioner a long time ago—not so long ago—in Abingdon Township, Pennsylvania in 2012 when we passed this as an ordinance, this bill as an ordinance. And people kept saying to me, come on, is there really discrimination in housing? Is there really discrimination in accommodation? Well, your testimony shows beyond measure the extraordinary heartbreaking discrimination. What else have we missed? What else should people know so they understand the importance of this law?

Ms. BECK. We should understand that sexual orientation is not the same thing as gender identity. These two things are very different, and, in fact, one invalidates the other. Gender identity language obfuscates sex. One of my colleagues in the Baltimore City LGBTQ Commission, before I was kicked off for using male pronouns to talk about a male rapist, one of my colleagues said that sex was fake. Sex was a thing of the past, that science had progressed so far that we didn't even need to worry about it. And I asked him how could we be gay if sex is fake. Gender identity obfuscates sex, so we can't legislate one thing while it invalidates the other.

Ms. DEAN. I thank you, Ms. Beck. I thank you, Ms. Beck. And I understand you do not understand this as a civil right, so I actually was asking for some other input. Thank you.

Mr. YOSHINO. Great. So just a couple of things that I think might be useful, Representative. One is thinking about the assault issue that you raised and that one of your colleagues on the other side of the aisle raised with the Karen White case. It is interesting that we need to travel abroad to the U.K. to find that example because we have seen no examples of that, to my knowledge, on this side of the pond. That was a case of really unfortunate assault, but of both men and of women. So the only thing that could have prevented that assault are the things that we have in our criminal law and in our tort law that abolish and punish assault and criminal behavior as such rather than sex segregation per se.

And, in fact, that individual, it was interesting that no one thought to mention, is serving a life sentence in jail, right, so that we do have redress within our criminal law for egregious actions of that kind without having to resort to excluding trans individuals from sex-segregated spaces. And, in fact, one of the painful ironies of this entire hearing is that we hear over and over again trans individuals being cast as the perpetrators of assault and harassment, whereas statistically there is no evidence that trans individuals are more likely to perpetrate assault or harassment. And, in fact, exactly the opposite is true. Trans individuals are much more likely to be the victims of assault and harassment, and that is exactly what this Equality Act would cure.

The only other thing that I would like to mention has to do with the freedom of religion issues that have been raised. I was a bit puzzled to hear one of the representatives say that, you know, the First Amendment is one of our first freedoms, and, therefore, should be enshrined, you know, given that this act under the supremacy clause does nothing to disturb and could not disturb the free exercise clause jurisprudence that the Court has articulated.

So that is a constitutional amendment. There is nothing that ordinary legislation can do to alter that or the protections in place under the free exercise clause.

Chairman NADLER. The time of the gentlelady has expired. The gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman. And I just want to say thank you so much to so many of you that have given beautiful, beautiful testimony today. I have my pack of Kleenex here because I found it deeply moving. And I want to remind anybody that might be watching what we are talking about today. The Equality Act is a landmark civil rights bill to make clear that discrimination against LGBTQIA people has no place in our society. It rectifies an unacceptable situation, and sets forth comprehensive protections against discrimination on the basis of sexual orientation or gender identity.

As I listened to some of you today, I was struck by this push to presume that these provisions would somehow be manipulated or used by people in ways that would hurt existing sex protections. And I was struck so much, Reverend Wiley, by your beautiful testimony, and it occurred to me that we are talking about fear versus love. We are talking about fear versus freedom. And I didn't intend to say this today, but—excuse me.

My beautiful now 22-year-old child told me last year that they were gender nonconforming. And over the last year, I have come to understand from a deeply personal mother's perspective—I have always been a civil rights activist. I have always fought for my constituents and my communities to have equal rights. But from a mother's perspective, I came to understand what their newfound freedom—it is the only way I can describe what has happened to my beautiful child—what their newfound freedom to wear a dress, to rid themselves of some conformist stereotype of who they are, to be able to express who they are at their real core.

And since this deeply impactful moment last year, my child, who has always done well in school, but has carried what a mother can only describe as a heavy burden of conflict in their own being that I could not fully identify or help to express. Since this deeply impactful moment last year, my child's embracing of their nonconforming gender identity and all that it has allowed, all that it allows in terms of their creativity, their brilliance, their self-expression, the only thought I wake up with every day is my child is free. My child is free to be who they are. And in that freedom comes a responsibility for us as legislators to protect that freedom to be who they are and to legislate, as Dr. Wiley so beautifully said, to legislate our behavior towards all people in our society.

So let me go to some questions. Washington State has had protections for transgender people since 2006, and we have never had issues such as those that are being raised today as fears. So, Ms. Beck, I know you have described yourself as a lesbian radical feminist. You last appeared before this committee during the hearing for the reauthorization for Violence Against Women Act, which incorporates gender identity in its non-discrimination provision, and you criticized these protections saying that "Predatory men will do anything to gain access to victims." And you went on to say that, "Acknowledging biological sex is not inhumane. It is actually inhu-

mane to force women to share intimate spaces with male people who call themselves women.” Is that correct?

Ms. BECK. Correct.

Ms. JAYAPAL. Thank you. Ms. Chandy, as legal director at the National Women’s Law Center, you are an expert not only on LGBTQ rights, but also on gender and women’s issues. In your expert opinion, is it problematic to have inclusive spaces that provide safe spaces for transgender people?

Ms. CHANDY. No. As we have talked about here today, sexual assault happens across all kinds of workplaces and schools and many, many settings, and does not require some, you know, sex-segregated spaces for that. There is no evidence that having trans-inclusive, sex-segregated spaces would lead to more sexual assault. And I can also say on a personal note, I have so many South Asian LGBTQ organizations and would love to connect with you around that to provide support if that is useful for you.

Ms. JAYAPAL. And I am a proud Keralite, by the way.

Ms. CHANDY. Oh, wow, so.

Ms. JAYAPAL. So happy to have you here.

Ms. CHANDY. You can talk to my parents then.

Ms. JAYAPAL. So let me just add my time is expiring, but I wanted to ask, Mr. Brown, if you could just share what these protections for transgender people in the Equality Act would mean for you and your family. Ms. Beck has said that she opposes protections for transgender people, and I would just like to hear from you from a very personal perspective. What would it mean to have us pass the Equality Act with these transgender protections?

Chairman NADLER. The gentlelady’s time has expired. The witness may answer the question.

Mr. BROWN. From a personal perspective, having the Equality Act passed would provide safety for me. We hear a lot about, well, we have heard a lot today, about transgender people being a threat in the bathroom, in sports, in the workplace, so forth. My experience, I need protections. I do not feel safe in the workplace. I do not feel safe in the bathroom if someone knows that I am transgender. I know a lot of transgender men that have been harassed and attacked in the bathroom because they were transgender. I need protections for me as a trans person.

My identity is not a threat to anyone else. As it stands, it is a threat to me and my ability to provide for my family, to work hard. And in the intersections of my gender identity and my race and my class, it is not a level playing field as an American, as a person who has worked hard to complete school, to buy a home, to pay taxes, and all the things that America promised me as a freedom. And my right, an inalienable right, to pursue my road to happiness is now being threatened because I have no protections.

Ms. JAYAPAL. Thank you, Mr. Brown. And, Mr. Chairman, thank you. I just want to say that this is such an important bill. I thank Mr. Cicilline and you, Mr. Chairman, for having this critical discussion on how we move forward as a country.

Chairman NADLER. I thank the gentlelady. The gentlelady from Florida, Ms. Mucarsel-Powell.

Ms. MUCARSEL-POWELL. Thank you, Mr. Chairman, and I truly applaud the courage from the members of the panel that are here

with us today. Thank you for being here. The courage of a mother, my colleague, Representative Jayapal, who with her words truly touches each and every one of us. And David Cicilline, who has been fighting every battle to ensure that we finally protect every individual regardless of gender identity or whom they love. This is the United States of America. Equality is equality.

And I have to say that every time I come to this committee and I sit through hours of hearings, whether it is passing the universal background checks bill, the Violence Against Women Act, I hear from my colleagues across the aisle things that make absolutely no sense. And I just wonder if these comments are based on fear or is their masculinity being threatened. Are they scared that all of a sudden by passing the Equality Act, their favorite sports team is going to lose to some female sports team that now has males that are pretending to be women so that they can participate in female sports? It makes absolutely no sense.

I can tell you that I am very proud to represent a community where our motto is "One human family," and that is Key West. We have elected our mayor back in November who is an openly gay mayor. We have a police chief who is openly gay. We welcome over 450,000 tourists who are members of the LGBTQ community. Our rates of violence are lower than any other community in Florida. I am proud to represent Key West. We should all learn from that community what it means to be a member of one human family.

And since I hear a lot of words from my Republican colleagues about, you know, fear, bad actors, I am going to talk to them on terms that maybe will grab their attention, and that is the economy and money in their pockets and what it means to lose businesses or employment opportunities if we discriminate against our brothers and sisters from the LGBTQ community. I would like to, Mr. Chairman, ask for unanimous consent to include in the record the list of companies that are endorsing the Equality Act.

Chairman NADLER. Without objection.

[The information follows:]

**MS. MUCARSEL-POWELL FOR THE OFFICIAL  
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## Debbie Mucarsel-Powell (D-FL26)

### Companies in or near congressional district endorsing the Equality Act

ADP	IKEA Holding US Inc.
American Airlines	Intel Corp.
Bayer U.S. LLP	Lyft Inc.
Booz Allen Hamilton Inc.	Marriott International Inc.
Choice Hotels International Inc.	Microsoft Corp.
Cisco Systems Inc.	Mitchell Gold + Bob Williams
Deloitte LLP	Oracle Corp.
Diageo North America	SAP America Inc.
Ernst & Young LLP	Shook, Hardy & Bacon LLP
Estée Lauder Companies Inc., The	Spotify USA Inc.
Expedia Group	Symantec Corp.
Facebook Inc.	Takeda Pharmaceuticals USA Inc.
General Electric Co.	TIAA
Gilead Sciences Inc.	Twitter Inc.
Google Inc.	Uber Technologies Inc.
Hughes Hubbard & Reed LLP	Warby Parker
Hyatt Hotels Corp.	

### Other companies endorsing the Equality Act with operations in Florida

Advanced Micro Devices	KPMG LLP
Alaska Airlines	Navigant Consulting Inc.
Ally Financial Inc.	Nuance Communications
Amazon.com Inc.	Procter & Gamble Co.
Brown-Forman Corp.	QUALCOMM Inc.
Cargill Inc.	Salesforce
Coca-Cola Co., The	Synchrony Financial
Dell Technologies Inc.	TransUnion
E. I. du Pont de Nemours and Co. (DuPont)	Ultimate Software Group Inc.
Evolut Health Inc.	Under Armour Inc.
Insight Enterprises Inc.	Univision Communications Inc.
JP Morgan Chase & Co.	

Ms. MUCARSEL-POWELL. ADP, American Airlines, Speyer U.S., LLP, Boos Allen Hamilton, Choice Hotels International, Cisco Systems, Deloitte, LLP, Diageo North America, Ernst & Young, Google, Hyatt, IKEA, Intel, Lyft, Marriott. The list goes on and on and on. So it is not just a social justice issue. This is an economic issue. So maybe that will bring attention to my colleagues across the aisle.

So to that effect, I would like to ask some questions for Tia Silas, Ms. Silas. According to the Human Rights Campaign 2019 Corporate Equality Index, 93 percent of Fortune 500 companies have non-discrimination policies that include sexual orientation, and 85 percent of Fortune 500 companies have non-discrimination policies that include gender identity. Why are businesses proactively adopting explicit LGBTQ non-discrimination policies?

Ms. SILAS. Thank you for the question. So I stated a little bit earlier that it really is around access to skills that allow our business to thrive, and the fact that we have, you know, at least a half a million, in my space, technical jobs open. And so we need to care about skills. I also touched on something else I haven't been able to speak on, which is why a company would care about protections beyond the four parameters of our wall, so thinking about things like housing and credit. And for IBM, our particular story is one where we understand that if we are only concerned about protections within our four walls, then that puts us at a competitive disadvantage in recruiting people.

I often reference, you know, my predecessor, a guy by the name of Ted Childs, led during an era where we were really progressive around the recruitment of minorities, Hispanic, blacks into our Westchester, New York area. It was important for our headquarter. We found that while we were fairly aggressive working with HBCUs and incredibly successful in recruiting people, that when we want to relocate them in the Westchester community, that they were unable to access to things like housing or credit to get a car.

And we had to go out into the community—we are one of the founders of an organization called WRO—so that we could advocate for holistic and 360-degree fairness and equality for our employees. So we have learned through our 100 years, right, that it is important for us to care about what we can control within our four walls, but we rely really on you, right, to ensure that there are protections across State lines and beyond employment.

Ms. MUCARSEL-POWELL. Thank you, Ms. Silas. Thank you, Mr. Chairman.

Chairman NADLER. The time of the gentlelady has expired. There are 8-and-a-half minutes left in the vote. We are going to try to finish the hearing and ask them to hold the vote open, so I am going to be more strict on the 5-minute rule. The gentlelady from Texas, Ms. Jackson.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and thank you for this hearing. David Cicilline, the journey is continuing, but thank you for the passion, and we commit to you and all of you that we will not give up the fight.

Let me indicate that I want to acknowledge and associate myself with the personal testimonies of all of you, including the members on the dais who spoke eloquently about their concerns. You heard

the time element, and so, Reverend, just give me just a quick two-word, what is imperative, Reverend, of having equality be a moral imperative, because you started a church on that basis.

Rev. WILEY. Let me just share a quote from Howard Thurman, and it is very simple: "I have always wanted to know how to be me without making it difficult for you to be you."

Ms. JACKSON LEE. I think it is stunningly true. Jami Contreras, all of us have looked at that baby and that bouncing baby with such joy, and I just want to congratulate you. And I know that this child will be wonderfully beloved and as well as accepting. Tell me how deep the pain was rejected by a physician who takes the Hippocratic oath.

Ms. CONTRERAS. It is a pain that is indescribable, and it sticks with me to this day. And I think that is why I have to keep sharing my story to make sure it doesn't happen to anybody else because it was horrifying. And this question that really keeps me up at night, and me any wife, that just haunts us is, what if that had been an emergency? What if we were in an emergency room and that on-call doctor didn't want to see us? How long until we get another surgeon or an EMT showing up at our house? So the Equality Act can give us finally a sense of peace of mind to just provide for our children and keep them safe like any other parent wants to do.

Ms. JACKSON LEE. What a powerful statement. Mr. Brown, you hail from the State of Texas. We call it great, and that means it should be great for you. And I can't imagine the pain. You wear the color of black skin who have seen such segregation and devastation and now in your life. So would you be kind enough just to say again the piercing impact that you were fearful of not being able to take care of your family?

Mr. BROWN. Yes, absolutely. And as I stated, when I was outed as a transgender man at work, my known transgender identity, I did not harass or discriminate against anyone. I was harassed and discriminated against. When I went to the bathroom, I didn't harass or try to make anyone feel uncomfortable. However, I was harassed and made to feel uncomfortable because of my transgender identity. So, again, the Equality Act is important because it provides safety for everyone, not excluding transgender people.

And also being fired from my job so abruptly because of my identity, again, left me in a very vulnerable place in a very perplexed mind state and wondering will I be able to secure employment again because I am still going to be me. And I didn't feel that I should be reprimanded for living authentically in my personal life.

Ms. JACKSON LEE. Thank you. I have dealt with through a young man that I have come to love and have tried to help. My good friends in the audience remember when we were dealing with hate crimes and David Richardson was a young man in my constituency. I visited him at home, and so this is his story very briefly. As horrific and painful as the past year had been for hate crime survivor David Richardson, his future seemed brighter: a chance to attend college for free, to devote his life to public service, and leave behind a troubled past. The past 15 months of Richardson's life was focused on recovering physically and emotionally from a brutal attack in which he was beaten unconscious and sodomized in the backyard with a plastic pole by a man shouting "white power."

Sometimes these things overlap. David Richardson was a person who testified during our hate crimes hearing many years ago, but ultimately David Richardson leaped to his death in the Gulf of Mexico from the upper deck of a Carnival cruise ship. These are the stories that are unheard, and this simple legislation, H.R. 5, that is congruent with our civil rights laws and our hate crime laws is long overdue. And I hope, Mr. Chairman, that we will be able to pass that expeditiously.

I ask unanimous consent to submit these into the record.

Chairman NADLER. Without objection.

[The information follows:]

**MS. JACKSON LEE FOR THE OFFICIAL RECORD**

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SHEILA JACKSON LEE  
18<sup>TH</sup> DISTRICT, TEXAS

WASHINGTON OFFICE:  
2252 Rayburn Office Building  
Washington, DC 20515  
(202) 225-3816

DISTRICT OFFICE:  
1919 South Street, Suite 1180  
Houston, TX 77002  
(713) 655-0050

ACRES HOME OFFICE:  
6719 West Montgomery, Suite 204  
Houston, TX 77091  
(713) 691-4882

HEIGHTS OFFICE:  
420 West 19th Street  
Houston, TX 77008  
(713) 861-4070

FIFTH WARD OFFICE:  
4300 Lyons Ave., Suite 200  
Houston, TX 77020  
(713) 227-7740

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515

COMMITTEES:  
JUDICIARY  
SUBCOMMITTEES:  
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Cybersecurity, Infrastructure Protection, and  
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Border and Maritime Security

SENIOR WHIP  
DEMOCRATIC CAUCUS

**CONGRESSWOMAN SHEILA JACKSON LEE**  
**HOUSE JUDICIARY COMMITTEE**  
**COMMITTEE STATEMENT IN SUPPORT OF**  
**H.R. 5, THE EQUALITY ACT**  
**2141 RAYBURN HOUSE OFFICE BUILDING**  
**APRIL 2, 2019**  
**10:00AM**

- I am proud to be an original cosponsor of H.R. 5, the “Equality Act,” and I am proud that today, the House Judiciary Committee is holding the first hearing on this landmark legislation.
- Mr. Chairman, the Equality Act is historic legislation and when enacted into law will do for LGBTQ Americans and for the country what the landmark Civil Rights Act of 1964 did for African Americans.
- The Equality Act extends anti-discrimination protections to LGBTQ Americans in the areas of employment, education, access to credit, jury service, federal funding, housing, and public accommodations.
- An estimated 8.1 million LGBT workers age 16 and older live in the United States, about half of whom—4.1 million people—live in states

without statutory protections against sexual orientation and gender identity discrimination in employment.

- There are over 3.5 million LGBT students age 15 and older in the United States, 2.1 million of whom live in states without statutory protections against sexual orientation and gender identity discrimination in education.
- There are an estimated 13 million LGBT people age 13 and older in the U.S., approximately 6.9 million of whom live in states that do not prohibit sexual orientation and gender identity discrimination in public accommodations.
- There are an estimated 11 million LGBT adults in the U.S., over 5.6 million of whom live in states without statutory protections against sexual orientation and gender identity discrimination in housing and 8 million lack such protections in credit.
- H.R. 5 is vital for persons living in states that do not have legislation that protect members of the LGBT community from this sort of discrimination.
- My homestate of Texas, to its shame, does not prohibit discrimination against members of the LGBT community in the fields of employment, education, public accommodations, housing or credit.
- **This is despite the fact that, according to a study conducted by researchers at UCLA, in Texas there are 647,000 LGBTQ individuals at risk of discrimination in employment; 316,000 LGBTQ individuals at risk of discrimination in education; over 1 million LGBTQ individuals at risk of discrimination in public accommodations, 858,000 LGBTQ individuals at risk of discrimination in housing or credit**

- The truth is, Mr. Chairman, that no American should ever be treated as less than equal in the eyes of the law or fear that they can be discriminated against because who they are or who they love.
- The Equality Act guarantees that LGBTQ Americans in Texas and across the country cannot be discriminated against because of who they are or who they love.
- It is long past time for this legislation to become law and that is why I proudly joined my colleagues today on the Judiciary Committee in taking the next step in the journey of this legislation and I look forward to working towards final passage on this matter, and enshrining in our federal civil rights legislation
- Despite significant legal advances over the past several years – including marriage equality, LGBTQ Americans remain vulnerable to discrimination on a daily basis and too often have little recourse.
- Fifty percent of the national LGBTQ community live in states where, though they have the right to marry, they have no explicit non-discrimination protections in other areas of daily life.
- In most states, a same-sex couple can get married one day and legally denied service at a restaurant, be fired from their jobs or evicted from their apartment the next.
- In some areas, federal law prohibiting sex discrimination has already been properly interpreted by federal courts and administrative agencies to include discrimination on the basis of sexual orientation or gender identity.
- The Equality Act affirms these interpretations of existing law and makes the prohibition against discrimination on the basis of sexual orientation or gender identity explicit, in order to provide greater

clarity to members of the public, employers, schools, businesses and others.

- In areas where sex discrimination is not already prohibited, the bill amends existing law to bar discrimination on the basis of sex, as well as sexual orientation and gender identity.
- This is why the Equality Act has the bipartisan support of Members of Congress, the strong support of the business community, and the overwhelming support of the American people – with more than 7 in 10 supporting the Equality Act.
- Mr. Chairman, we have come a long way as we realize what it means to be equal in the eyes of the law and one another.
- It was only 4 years ago that our nation realized marriage equality in the Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015).
- But it is important that we not be complacent and keep propelling forward this country's destiny towards a more perfect union
- **As the civil rights pioneer Harvey Milk once said: rights are won only by those who make their voices heard.**
- Today, the House Judiciary Committee joins that chorus.
- **I want to thank and commend my colleague from Rhode Island, Mr. Cicilline, on his efforts on this bill, and shepherding it from concept to introduction.**

- On behalf of LGBTQ Texans and all Americans, I am proud to be one of the original co-sponsors of H.R. 5, the Equality Act and I look forward to voting this bill out of committee, supporting it on the House floor, and working to ensure its enactment.
- With this critical legislation, we will finally, fully end discrimination against LGBTQ Americans, and move our nation closer to fulfilling the promise of equality, opportunity and justice for every American.
- Thank you, Mr. Chairman, and with that I yield back.

CBS News

## Hate Crime Survivor Jumps Off Cruise Ship

By: Sean Alfano

July 3, 2007

As horrific and painful as the past year had been for hate-crime survivor David Ritcheson, his future seemed brighter — a chance to attend college for free, to devote his life to public service and to leave behind a troubled past. The past 15 months of Ritcheson's life were focused on recovering physically and emotionally from a brutal attack in which he was beaten unconscious and sodomized with a plastic pole by a man shouting "White Power!"

But Ritcheson leaped to his death in the Gulf of Mexico from an upper deck of a Carnival Cruise ship on Sunday morning, according to several witnesses. Although his family has declined to speak publicly about the death, the family's attorney scheduled a news conference for Tuesday.

Ritcheson had endured more than two dozen painful surgeries and relied on a colostomy bag. Perhaps worse, virtually everyone he met knew who he was and what had happened to him that terrifying night in April 2006.

But many who knew him say he appeared to have emerged from that time with a newfound clarity. Thanks to the Anti-Defamation League, he had a full scholarship to the college of his choice. Like many 18-year-olds, he had not yet decided on a career path, but thought he wanted to help prevent attacks like the one he had endured.

"My sense is that he was doing relatively well," said Martin Cominsky, the regional director for the southwest region of the ADL. "We were very optimistic. It was a rather miraculous recovery."

Or so it seemed.

Ritcheson rarely discussed his feelings and declined to get counseling after being attacked at the drug-fueled teen party in April 2006. A year later, he testified before Congress in support of a hate crimes bill.

Ritcheson, a Mexican-American, was beaten and sodomized with a patio umbrella pole. He also was stomped on and burned with cigarettes, and his attackers poured bleach on him before leaving.

He was hospitalized for more than three months and endured some 30 operations. Two men were convicted of aggravated sexual assault in the attack.

Mike Trent, the assistant district attorney who prosecuted Ritcheson's attackers, said the small, quiet youth always seemed positive and upbeat about his recovery.

"He certainly wanted to see justice done in the case and wanted his attackers punished, but I thought that — considering everything that had happened to him — he had come through things remarkably well," Trent said.

He said Ritcheson had used drugs before the attack but realized drug use played a role in his assault and had promised to quit. According to testimony, the attack was triggered by Ritcheson's drunken pass at another teen's 12-year-old sister.

Ritcheson's death is "just very tragic because I thought he had turned a corner and was trying his best to make something positive out of what happened to him," Trent said. "He thought that he could handle everything on his own."

Although he remembered nothing of the four-hour attack, Ritcheson testified about it during congressional hearings in April on a hate-crimes bill. That bill passed the House and is pending in a Senate committee.

Rep. Sheila Jackson Lee, a Democrat from Texas, said she hopes to have the measure formally named "David's Bill" in Ritcheson's honor.

"I could not have been more moved by his commitment to getting things right," Jackson Lee said Monday. "He was able to dig deep over all of the pain and all the humiliation and try to be of help to someone else."

Houston Chronicle

**Teen who survived pipe attack dies after leap from ship**

By: Bill Murphy

July 1, 2007

A Spring teen who survived a brutal beating with a pipe last year jumped to his death from a Cozumel-bound cruise ship on Sunday.

**Carnival Cruise Lines** officials would not confirm his identity, but **Rick Dovalina**, head of **LULAC** in Houston, said Sunday night that he learned through the family's attorney, **Carlos Leon**, that 18-year-old **David Ritcheson** has died.

"Carlos said that the family confirmed it, that it was true," Dovalina said. "The family heard from the captain of the ship. He went overboard."

An 18-year-old was observed by "a bunch of people" jumping over the railing of the upper deck of Carnival Cruise Lines' Ecstasy around 7:35 a.m. Sunday, said **Coast Guard** spokesman **Adam Eggers**. The ship's crew pulled the body from the water and he was pronounced dead at 9:10 a.m. The ship had departed Galveston on Saturday and was a "couple of hundred" miles out, Eggers said.

A written statement from the cruise line also said the 18-year-old appeared to jump from the ship.

Ritcheson's death comes less than three months after he testified before Congress about how two teens nearly killed him on April 23, 2006, by repeatedly kicking a patio umbrella stand into his rectum while shouting "white power!"

About a dozen cars were parked outside the family's home Sunday night. A woman who answered the door with tears in her eyes declined to comment when asked if Ritcheson had died.

"We're not commenting on anything," the woman said.

**Albert Galvan**, Ritcheson's father, also declined to comment when reached by phone.

Ritcheson's relatives will fly to the Mexican resort town of Cozumel on Monday to identify the body, Dovalina said. Ritcheson went on the cruise with a friend's family and several other friends, Dovalina said.

Dovalina said he thought Ritcheson was holding up fairly well.

"He just got back from Washington not that long ago. He went through a lot. He endured two trials," Dovalina said.

In an April interview, Ritcheson said he was still struggling with being identified as the victim of the pipe attack. A skinhead named David Tuck, 19, was sentenced to life in prison for his part in the attack. **Keith Turner**, 18, received a 90-year sentence.

"I shouldn't care what people think," David Ritcheson said earlier this year. "But it's like everyone knows I'm 'the kid.' I don't want to be a standout because of what happened."

**Jolyn Hammonds**, a classmate at **Klein Collins High School**, said she was shocked by Ritcheson's death.

"I want to throw up. It's horrible," she said. "I honestly couldn't see David's pain. If he was in pain, he hid it really, really well. He was always smiling, joking around, being himself."

Tuck's mother, **Sharon Tuck**, found out about the incident late Sunday night.

"What?" she said. "Oh my God. I'm so sorry. That shocks me. I feel for them. I'm in shock."

Trial testimony revealed Ritcheson and Gus Sons, whom he'd befriended at an alternative school for students with disciplinary problems, met up with Tuck and Turner at a crawfish festival in Spring the night of the attack. From there, they went to Sons' house, where they drank vodka, smoked marijuana and used cocaine and Xanax, an anti-anxiety drug.

Sons testified that Tuck and Turner attacked Ritcheson because they believed he stole some drugs and tried to kiss Sons' 12-year-old sister.

Tuck and Turner dragged Ritcheson, who was Hispanic, into the backyard, where they taunted him with racial slurs, punched and kicked him in the head and burned him 17 times with cigarettes. They tried to carve a swastika into his chest.

His attackers poured bleach on his face and body and left him for dead. No one called for an ambulance until well after daybreak.

The former Klein Collins High School running back and freshman homecoming prince spent three months and eight days in the hospital and endured more than 30 surgeries.

He was coping with the past, he said last spring, "by not thinking about it." He declined psychiatric help.

Ritcheson called on Congress to strengthen U.S. hate crime laws.

"I appear before you as a survivor," Ritcheson told members of a **House Judiciary** subcommittee April 17. "I am here before you today asking that our government take the lead in deterring individuals like those who attacked me from committing unthinkable and violent crimes against others because of where they are from, the color of their skin, the God they worship, the person they love, or the way they look, talk or act."

## LGBT People in the U.S. Not Protected by State Nondiscrimination Statutes



March 2019

At the federal level and in most states, nondiscrimination statutes do not expressly enumerate sexual orientation and gender identity as protected characteristics. Twenty-two states and Washington, D.C. expressly enumerate either or both of these characteristics in their nondiscrimination statutes, although not necessarily in all settings. This research brief estimates the number of LGBT people who are protected by such statutes in the areas of employment, education, public accommodations, housing, and credit—and the number who are not.<sup>7</sup>

### KEY FINDINGS

- An estimated 8.1 million LGBT workers age 16 and older live in the United States. About half of these workers—4.1 million people—live in states without statutory protections against sexual orientation and gender identity discrimination in employment.
- There are over 3.5 million LGBT students age 15 and older in the U.S. About 2.1 million live in states without statutory protections against sexual orientation and gender identity discrimination in education.
- There are an estimated 13 million LGBT people age 13 and older in the U.S. Approximately 6.9 million live in states that do not statutorily prohibit sexual orientation and gender identity discrimination in public accommodations.
- There are an estimated 11 million LGBT adults in the U.S. Over 5.6 million live in states without statutory protections against sexual orientation and gender identity discrimination in housing and 8 million lack such protections in credit.

Our estimates are conservative in that state statutes also protect LGBT children and younger youth; however, due to limited knowledge about the size of these groups in the population, we could not include them in our calculations.

	EMPLOYMENT		EDUCATION		PUBLIC ACCOMMODATIONS		HOUSING		CREDIT	
	Has Statute	LGBT Workers (Age 16+)	Has Statute	LGBT Students (Age 15+)	Has Statute	LGBT People (Age 13+)	Has Statute	LGBT Adults (Age 18+)	Has Statute	LGBT Adults (Age 18+)
Alabama	No	78,000	No	53,000	No	147,000	No	117,000	No	117,000
Alaska	No	15,000	No	7,000	No	25,000	No	21,000	No	21,000
Arizona	No	179,000	No	75,000	No	286,000	No	242,000	No	242,000

LGBT People Not Protected by State Nondiscrimination Statutes

	EMPLOYMENT		EDUCATION		PUBLIC ACCOMMODATIONS		HOUSING		CREDIT	
	Has Statute	LGBT Workers (Age 16+)	Has Statute	LGBT Students (Age 15+)	Has Statute	LGBT People (Age 13+)	Has Statute	LGBT Adults (Age 18+)	Has Statute	LGBT Adults (Age 18+)
Arkansas	No	50,000	No	31,000	No	95,000	No	76,000	No	76,000
California	Yes	1,194,000	Yes	471,000	Yes	1,859,000	Yes	1,615,000	No	1,615,000
Colorado	Yes	156,000	Yes	59,000	Yes	234,000	Yes	200,000	Yes	200,000
Connecticut	Yes	82,000	Yes	43,000	Yes	133,000	Yes	111,000	Yes	111,000
Delaware	Yes	24,000	No	11,000	Yes	40,000	Yes	34,000	No	34,000
Washington DC	Yes	45,000	Yes	9,000	Yes	58,000	Yes	56,000	No	56,000
Florida	No	545,000	No	212,000	No	886,000	No	772,000	No	772,000
Georgia	No	271,000	No	116,000	No	425,000	No	356,000	No	356,000
Hawaii	Yes	34,000	Yes	13,000	Yes	59,000	Yes	52,000	No	52,000
Idaho	No	25,000	No	18,000	No	48,000	No	36,000	No	36,000
Illinois	Yes	326,000	Yes	140,000	Yes	506,000	Yes	426,000	Yes	426,000
Indiana	No	165,000	No	72,000	No	272,000	No	229,000	No	229,000
Iowa	Yes	59,000	Yes	35,000	Yes	106,000	Yes	87,000	Yes	87,000
Kansas	No	56,000	No	33,000	No	92,000	No	73,000	No	73,000
Kentucky	No	82,000	No	45,000	No	144,000	No	117,000	No	117,000
Louisiana	No	94,000	No	49,000	No	169,000	No	139,000	No	139,000
Maine	Yes	35,000	Yes	13,000	Yes	60,000	Yes	53,000	Yes	53,000
Maryland	Yes	151,000	No	67,000	Yes	234,000	Yes	198,000	Yes	198,000
Massachusetts	Yes	224,000	Yes	87,000	Yes	335,000	Yes	296,000	Yes	296,000
Michigan	No	229,000	No	112,000	No	373,000	No	311,000	No	311,000
Minnesota	Yes	135,000	Yes	60,000	Yes	210,000	Yes	175,000	Yes	175,000
Mississippi	No	48,000	No	34,000	No	99,000	No	79,000	No	79,000
Missouri	No	131,000	No	64,000	No	217,000	No	180,000	No	180,000
Montana	No	18,000	No	10,000	No	30,000	No	24,000	No	24,000
Nebraska	No	45,000	No	22,000	No	67,000	No	55,000	No	55,000
Nevada	Yes	92,000	No	27,000	Yes	145,000	Yes	127,000	No	127,000
New Hampshire	Yes	35,000	No	14,000	Yes	59,000	Yes	51,000	No	51,000
New Jersey	Yes	205,000	Yes	97,000	Yes	343,000	Yes	288,000	Yes	288,000
New Mexico	Yes	47,000	No	22,000	Yes	85,000	Yes	72,000	Yes	72,000
New York	Yes	588,000	Yes	221,000	Yes	913,000	Yes	800,000	Yes	800,000
North Carolina	No	238,000	No	111,000	No	382,000	No	319,000	No	319,000
North Dakota	No	12,000	No	8,000	No	20,000	No	16,000	No	16,000
Ohio	No	298,000	No	123,000	No	462,000	No	389,000	No	389,000
Oklahoma	No	74,000	No	42,000	No	138,000	No	113,000	No	113,000
Oregon	Yes	129,000	Yes	41,000	Yes	207,000	Yes	183,000	No	183,000
Pennsylvania	No	307,000	No	133,000	No	490,000	No	416,000	No	416,000
Rhode Island	Yes	29,000	No	14,000	Yes	44,000	Yes	38,000	Yes	38,000
South Carolina	No	99,000	No	50,000	No	167,000	No	137,000	No	137,000

## LGBT People Not Protected by State Nondiscrimination Statutes

	EMPLOYMENT		EDUCATION		PUBLIC ACCOMMODATIONS		HOUSING		CREDIT	
	Has Statute	LGBT Workers (Age 16+)	Has Statute	LGBT Students (Age 15+)	Has Statute	LGBT People (Age 13+)	Has Statute	LGBT Adults (Age 18+)	Has Statute	LGBT Adults (Age 18+)
South Dakota	No	15,000	No	9,000	No	25,000	No	20,000	No	20,000
Tennessee	No	133,000	No	67,000	No	223,000	No	182,000	No	182,000
Texas	No	647,000	No	316,000	No	1,053,000	No	858,000	No	858,000
Utah	Yes	67,000	No	40,000	No	104,000	Yes	80,000	No	80,000
Vermont	Yes	19,000	Yes	7,000	Yes	30,000	Yes	26,000	Yes	26,000
Virginia	No	197,000	No	96,000	No	308,000	No	257,000	No	257,000
Washington	Yes	226,000	Yes	72,000	Yes	342,000	Yes	300,000	Yes	300,000
West Virginia	No	40,000	No	17,000	No	68,000	No	58,000	No	58,000
Wisconsin**	LGB only	110,000	LGB only	57,000	LGB only	186,000	LGB only	152,000	No	171,000
Wyoming	No	10,000	No	6,000	No	18,000	No	15,000	No	15,000
<b>Total unprotected</b>		<b>4,115,000**</b>		<b>2,132,000**</b>		<b>6,854,000**</b>		<b>5,626,000**</b>		<b>7,976,000</b>
<b>Total protected</b>		<b>4,012,000</b>		<b>1,425,000</b>		<b>6,188,000</b>		<b>5,420,000</b>		<b>3,070,000</b>
<b>Total</b>		<b>8,127,000</b>		<b>3,557,000</b>		<b>13,042,000</b>		<b>11,046,000</b>		<b>11,046,000</b>

\*Our estimates do not take into account administrative and judicial decisions that have interpreted sex discrimination laws to cover sexual orientation or gender identity discrimination. Rather, we have limited our analysis to statutes that facially include the words "sexual orientation" or "gender identity."

\*\*Nondiscrimination statutes in Wisconsin prohibit discrimination based on sexual orientation but not gender identity. An estimated 14,000 transgender people in the state lack employment protections based on gender identity, 6,000 are unprotected in education, 21,000 lack protections in public accommodations and 19,000 lack protections in housing. These numbers were added to the total unprotected in each domain.

Suggested Citation: LGBT People in the United States Not Protected by State Nondiscrimination Statutes. (March 2019) The Williams Institute, UCLA, Los Angeles, CA.

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## METHODOLOGICAL NOTES

### LGBT Workers

To estimate the number of LGBT people in the labor force in each state, we relied upon the [Gallup Daily Tracking Survey](#), a population-based survey, for information about the percentage of respondents in the labor force (defined as employed full-time or part time, or were unemployed, but actively looking for work and able to work) who identified as LGBT. These estimates correspond to information reported in the Williams Institute's [LGBT Demographic Data Interactive](#). We then applied (multiplied) this percentage to estimates provided by the U.S. Census Bureau of the number of people age 16 and older in the labor force in each state (and rounded to the nearest 1,000). The number of people ages 16 and older in the labor force was derived from the [2017 American Community Survey 1-Year Estimates](#) (Table DP03 "Selected Economic Characteristics").

The estimated percentages of adults age 18 and older in the labor force who identify as LGBT is derived from the [Gallup Daily Tracking Survey](#). The Gallup Daily Tracking survey is an annual list-assisted random digit dial (70% cell phone, 30% landline) survey, conducted in English and Spanish, of approximately 350,000 U.S. adults ages 18 and older who reside in the 50 states and the District of Columbia. LGBT identity is based on response to the question, "Do you, personally, identify as lesbian, gay, bisexual, or transgender?" Respondents who answered "yes" were classified as LGBT. State estimates use 2015-2017 data unless otherwise noted. Due to small overall population sizes, 2012-2017 data were aggregated for the following states: Alaska, Delaware, Hawaii, Idaho, Mississippi, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming.

To determine the number of LGBT people in the labor force protected and not protected under current state statutes, we used information from the [Movement Advancement Project](#) on whether a state did or did not have a statute that explicitly prohibits discrimination on the basis of sexual orientation and gender identity, or in the case of Wisconsin, only on the basis of sexual orientation. In total, 21 states, plus Washington DC, have a statute that extends protections to workers on the basis of both sexual orientation and gender identity. We then counted the rounded estimates of LGBT workers in states with and without protective statutes.

For Wisconsin, we counted cisgender LGB workers as protected and transgender workers as unprotected (on the basis of gender identity). To estimate the numbers of cisgender LGB and transgender workers in Wisconsin, we first calculated the percentages of LGBT adults in the state that are cisgender LGB and transgender (of any sexual orientation), 88.8% and 11.2%, respectively, using the data sources described above, and then applied those percentages to the estimated number of LGBT workers in the state.

### LGBT Students

To estimate the number of LGBT students enrolled in U.S. schools, we relied upon population-based surveys for information about the percentage of the population that is LGBT and applied it to U.S. Census Bureau estimates of the number of students enrolled in school (public and private) in each state. Given that the Census Bureau's estimates of the number of students enrolled in school was only available by sex and for students in specific age groups, we identified percentage LGBT for corresponding sex and age groups to derive estimates of the number of LGBT students enrolled in each state.

To estimate the percentage of youth age 15-17 that identify as LGBT, separately for males and females:

- To estimate the percentage of males and females age 15-17 who identify as LGB, we averaged the national estimates from the 2015 and 2017 Youth Risk Behavior Surveillance Survey (YRBS), a nationally representative sample of school-enrolled high school students in grades 9-12.
  - Among males age 15-17, we estimated that approximately 4.8% identify as GB, based on an average of 4.4% of males in 2015 who identified as gay or bisexual (2% identified as gay; 2.4% identified as bisexual), and 5.1% of males in 2017 who identified as gay or bisexual (2.3% gay; 2.8% bisexual).
  - Among females age 15-17, we estimated that approximately 13.6% identify as LB, based on an average of 11.8% of females in 2015 who identified as LB (2.0% identified as lesbian; 9.8% identified as bisexual), and 15.4% of females in 2017 who identified as lesbian or bisexual (2.3% lesbian; 13.1% bisexual).
- To estimate the percentage of males and females age 15-17 who are transgender, we used the recent national estimate reported in Age of Individuals who Identify as Transgender in the United States of the percentage of 13 to 17 year old adolescents who are transgender (0.73%). To estimate the percentage of transgender adolescents who were heterosexual/not-LGB (and thus avoid double-counting sexual minority transgender adolescents in our estimate of the total count of LGB+T adolescents) we used data from the 2015-2017 Behavioral Risk Factor Surveillance System (BRFSS). Among BRFSS respondents age 18-24 (the youngest age group for which data were assessed) categorized as transgender by answering "yes, transgender, male-to-female", "yes, transgender, female-to-male," and "yes, transgender, gender-nonconforming" to the question "do you consider yourself to be transgender?", 46.3% identified their sexual orientation as "straight" or other and were categorized as heterosexual/non-LGB. Applying this 46.3% to the 0.73% of youth who were transgender, we estimated that 0.3% of youth age 13-17 were transgender and not LGB-identified.
- We next added this percentage (0.3%) to the percentage GB (4.8%) among males and LB (13.6%) among females to arrive at an estimate of percentage LGBT for males (5.1%) and females (13.9%).

To estimate the percentage of adults (age 18-64) that identify as LGBT, separately for males and females:

- To estimate the percentage of males and females that identify as LGBT in specific age groupings that correspond to estimated numbers of enrolled students reported by the U.S. Census Bureau, we used data from the 2017 [Gallup Daily Tracking Survey](#) which is an annual list-assisted random digit dial (70% cell phone, 30% landline) survey, conducted in English and Spanish, of approximately 341,000 U.S. adults ages 18 and up who reside in the 50 states and the District of Columbia. LGBT identity is based on response to the question, “Do you, personally, identify as lesbian, gay, bisexual, or transgender?” Respondents who answered “yes” were classified as LGBT.
  - Age 18-19: 7.2% of males and 16.2% of females identified as LGBT
  - Age 20-24: 7.3% of males and 15.3% of females identified as LGBT
  - Age 25-34: 5.7% of males and 10.1% of females identified as LGBT
  - Age 35-64: 3.5% of males and 3.4% of females identified as LGBT

To estimate the number of LGBT youth (age 15-17) and adults (age 18-64) enrolled in school:

The numbers of students enrolled in U.S. schools by age, sex, and state were obtained from the [2017 American Community Survey 1-Year Estimates](#) (Table B14003 “Sex by School Enrollment By Type of School By Age for the Population 3 Years and Over”).

- To estimate the number of LGBT students age 15-17 by state, we applied (multiplied) the sex-specific percentage LGBT to the ACS reported sex-specific estimates of public and private enrollment for youth aged 15-17 in each state, and summed counts across males and females.
- To estimate the number of LGBT students age 18-64 by state, we applied (multiplied) the age- and sex-specific percentage LGBT from Gallup to each state’s age- and sex-estimate of public and private school enrollment (from ACS), and summed counts across sex and age groups.
- To estimate the number of LGBT students 15+ by state, we summed the total estimated number of youth and adult students by state and rounded to the nearest 1,000.

To determine the number of LGBT students protected and not protected under current state statutes, we used information from the [Movement Advancement Project](#) on whether a state did or did not have a statute that explicitly protected students “from discrimination in school, including being unfairly denied access to facilities, sports teams, or clubs” on the basis of sexual orientation and gender identity, or, in the case of Wisconsin, only on the basis of sexual orientation. In total, 14 states, plus Washington DC, had a statute that extended protections to students (at all levels of schooling, enrolled in public and private schools) on the basis of sexual orientation and gender identity. We then summed up the rounded estimates of LGBT students in states with and without protective statutes.

For Wisconsin, we counted cisgender LGB students as protected and transgender students as unprotected (on the basis of gender identity). To estimate the numbers of cisgender LGB and transgender students in the state, we first calculated the percentages of LGBT youth and adults in the state that are cisgender LGB and transgender (of any sexual orientation), 95.0% and 5.3%, respectively, among youth, and 88.8% and 11.2%, respectively, among adults, using the data sources described above. We then applied those percentages to the estimated numbers of LGBT youth and adult students in the state (and then summed and rounded the cisgender LGB and transgender estimates to the nearest 1,000).

#### LGBT People

To estimate the number of LGBT people in each state, we relied upon population-based surveys for information about the percentage of the population that is LGBT and applied it to U.S. Census Bureau estimates of the numbers of youth (ages 13-17) and adults (18+) in each state.

- To estimate the percentage of youth age 13-17 that identify as LGBT, we used information from the Youth Risk Behavior Surveillance Survey (YRBS) and recent estimates from The Williams Institute reported in [Age of Individuals who Identify as Transgender in the United States](#) that utilized Behavioral Risk Factor Surveillance Survey (BRFSS) data.
- To estimate the percentage of youth age 13-17 who identify as LGB (9.2%), we averaged the national estimates from the 2015 (8.0%) and 2017 (10.4%) Youth Risk Behavior Surveillance Survey (YRBS), a nationally representative sample of school-enrolled high school students in grades 9-12. Then, we applied (multiplied) this percentage to 2017 population estimates produced by the U.S. Census Bureau (based on projections from the 2010 Census) for youth ages 13 to 17 and rounded to the nearest 1,000. Census estimates were obtained via [American FactFinder Table PEPSYASEX, "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017."](#) Next, to estimate the number of youth age 13-17 who are transgender, we used recent estimates from [Age of Individuals who Identify as Transgender in the United States](#) with a slight correction to avoid double-counting sexual minority transgender youth (adding a total of 46.3% of the estimated number of transgender youth per state to our estimate of the number of LGB youth to arrive at a total estimate of the number of LGBT youth per state).
- The estimated percentages of adults age 18 and older who identify as LGBT is derived from the [Gallup Daily Tracking Survey](#). The Gallup Daily Tracking survey is an annual list-assisted random digit dial (70% cell phone, 30% landline) survey, conducted in English and Spanish, of approximately 350,000 U.S. adults ages 18 and up who reside in the 50 states and the District of Columbia. LGBT identity is based on response to the question, "Do you, personally, identify as lesbian, gay, bisexual, or transgender?" Respondents who answered "yes" were classified as LGBT. Respondents who answered "no" were classified as non-LGBT. Estimates derived from other measures of sexual orientation and gender identity will yield different results. State estimates of the percentage of the population that is

LGBT-identified use 2015-2017 data unless otherwise noted. Due to small overall population sizes, 2012-2017 data were aggregated for the following states: Alaska, Delaware, Hawaii, Idaho, Mississippi, Montana, New Hampshire, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming. All percentages correspond to those reported in the Williams Institute's [LGBT Demographic Data Interactive](#).

- To estimate the number of LGBT adults age 18 and older by state, the weighted percentage of LGBT Gallup Daily Tracking respondents was applied to 2017 population estimates produced by the U.S. Census Bureau (based on projections from the 2010 Census) for adults ages 18 and older and rounded to the nearest 1,000. Census estimates were obtained via [American FactFinder Table: PEPSYASEX, "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2017."](#) The estimated number (rounded to the nearest 50) of adults ages 18 and older who identify as transgender are reported in [Age of Individuals who Identify as Transgender in the United States](#).

To determine the number of LGBT people that are protected and not protected in public accommodations under current state statutes, we used information from the [Movement Advancement Project](#) on whether a state did or did not have a statute that explicitly prohibits discrimination on the basis of sexual orientation and gender identity, or, in the case of Wisconsin, only on the basis of sexual orientation. In total, 20 states, plus Washington DC, had a statute that extended protections in public accommodations on the basis of sexual orientation and gender identity. We then counted the numbers of LGBT people in states with and without protective statutes.

For Wisconsin, we counted cisgender LGB people as protected and transgender people as unprotected (on the basis of gender identity). To estimate the numbers of cisgender LGB and transgender people (of any sexual orientation) in Wisconsin, we used estimates of the numbers of transgender youth and adults in the state as reported in [Age of Individuals who Identify as Transgender in the United States](#) and subtracted them from our estimates of all LGBT youth and adults in the state. We then rounded all LGB and transgender estimates in to the nearest 1,000.

#### LGBT Adults (18+)

The methodological notes for our estimates of the number of LGBT adults per state are reported in [Adult LGBT Population in the United States](#).

To determine the number of LGBT people that are protected and not protected in housing under current state statutes, we used information from the [Movement Advancement Project](#) on whether a state did or did not have a statute that explicitly prohibits discrimination on the basis of sexual orientation and gender identity, or in the case of Wisconsin, only on the basis of sexual orientation. In total, 21 states plus Washington DC, had a statute that extended protections in housing on the basis of sexual orientation and gender identity. We then counted the numbers of LGBT people in states with and without protective statutes.

For Wisconsin, we counted cisgender LGB people as protected and transgender people as unprotected (on the bases of gender identity). To estimate the numbers of cisgender LGB and transgender people (of any sexual orientation), we used an estimate of the number of transgender adults in the state as reported in *Age of Individuals who Identify as Transgender in the United States* and then subtracted them from our estimate of all LGBT adults in the state. We then rounded all LGB and transgender estimates in to the nearest 1,000.

To determine the number of LGBT people that are protected and not protected in credit under current state statutes, we used information from the [Movement Advancement Project](#) on whether a state did or did not have a statute that explicitly prohibits discrimination on the bases of sexual orientation and gender identity. In total, 14 states had a statute that extended protections in credit on the bases of sexual orientation and gender identity. We then counted the numbers of LGBT people in states with and without protective statutes.

April 1, 2019

The Honorable Jerrold Nadler  
 Chairman, Committee on the Judiciary  
 U.S. House of Representatives

The Honorable Doug Collins  
 Ranking Member, Committee on the Judiciary  
 U.S. House of Representatives

Dear Chairman Nadler, Ranking Member Collins, and members of the Committee on the Judiciary,

I am writing in support of H.R. 5 which proposes to extend nondiscrimination protections to all U.S. residents in many domains of life, including education. As a social epidemiologist, my research focuses on sexual orientation and gender identity-based differences in socioeconomic status. According to my estimations, there are over 3.5 million LGBT students ages 15 and up in the United States [1].

Of these, 2.1 million students across 36 states would obtain protection from sexual orientation and gender identity discrimination through the passage of H.R. 5, because their state currently does not have a civil rights law that explicitly includes sexual orientation and gender identity. Research documents that these students are vulnerable to discrimination, harassment, and bullying that negatively impacts not only their education, but has lasting negative consequences for lifelong economic well-being, health, and civic engagement [1-15].

Several studies find higher rates of bullying in high school [2-4], and sexual and other physical violence victimization in college[5-9], among LGBT compared to heterosexual peers. Research also notes harassment of LGBT students by school staff and administrators at secondary and post-secondary levels [10-12]. Lastly, institutional policies and climate have also been found to vary widely in their inclusion and protection of LGBT students [10, 13-16].

Harassment and discrimination at multiple points in the life course are among the leading contributors to sexual orientation- and gender identity- based differences in educational attainment and economic well-being. For example, lower levels of education and higher rates of poverty have been observed among lesbian and bisexual women, bisexual men, and

transgender adults compared to heterosexual, cisgender (non-transgender) peers in several population-based studies [17-24].

In summary, it is critical to extend for H.R. 5 to extend federal protections to LGBT students.

Sincerely,



Kerith Jane Conron, ScD, MPH  
Blachford-Cooper Research Director and Distinguished Scholar

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Ms. JACKSON LEE. LGBT——

Chairman NADLER. Without objection, they are admitted.

Ms. JACKSON LEE [continuing]. And others whose names they want me to call, but I will have them, and UCLA. And I hope that the tone of this meeting will be that we will never, never forget. With that, I yield back within the time. Thank you.

Chairman NADLER. I thank the gentlelady for yielding back. Ms. Garcia of Texas.

Ms. GARCIA. Thank you, Mr. Chairman, and I am going to just ask a couple of questions and then yield about 1 minute of my time to my colleague, Mr. Cicilline, who will have the final words on this bill. My questions will be directed to you, Professor. And I actually have a lot of other questions, but we are in a hurry to get to our votes.

This whole issue of the deeply-held religious beliefs and the way, in my view, some folks appear to be using it to hide behind discrimination. I know that one of your panel members talked about how there was no way of knowing who is lying when they say they are transgender. I would submit to you that we never know any way who is lying that they really have a deeply-held religious belief, and that, therefore, they are going to do X. And how deep is deep and how held is that belief? So can you just tell us in like a minute or two what your analysis is of what that really means and where that whole theory is evolving and where it may take us?

Mr. YOSHINO. Absolutely, Representative Garcia. The exact same thought was going through my head as I heard about this faking it notion of thinking we wouldn't abolish protections for religious minorities simply because it is very easy for you or me to say I have a particular religious belief, so I should be able to avail myself of that religious exemption. We don't do that even though the courts have been very loath to inquire into the sincerity or the coherence of somebody's religious beliefs, as well they should.

So if we don't worry about it in that context, if we are not saying let's repeal, you know, religion as a Title 7 category, then why should we have any pause about people faking it in this context? The fact that some people may opportunistically use it is no reason to deny protection for the people who really need it. So I would say that much.

The only other thing I would add here is that the reason that we are quite leery about putting too many religious exemptions into this act is the sad history of the use of religion, sometimes sincerely, sometimes opportunistically, in order to undermine the edifice of civil rights. After the passage of the Civil Rights Act of 1964, there was a restaurateur, a barbecue owner, who said that he refused to serve African-Americans on the basis of his deeply-held religious beliefs. The Supreme Court said that that was patently frivolous, right, but he was not alone. There are others who said my religious beliefs compel me to not serve across racial lines. So what we are seeing today is individuals who are saying our businesses are otherwise open to the public, saying that on the basis of my religious beliefs, I will not actually serve you even though I am otherwise open to the public.

And to answer the question that was posed to Ms. Contreras about whether or not the physician on deeply-held religious

grounds should have to serve a Nazi patient if they were Jewish, you know, I would respond the same way, that I heard Mr. Cicilline respond before he was cut off, which is to say Nazis are not a protected class. What we are trying to do here is make sure that transgender individuals and individuals who are gay, lesbian, or bisexual, are that protected class, that they do not have to suffer the searing indignity that Ms. Contreras went through because for her to have to go another doctor is the same as for that black patron who was refused from Piggie Park to have to go another restaurant. It doesn't matter that there is another barbecue down the block. The memory of being denied that service simply on the basis of your race, or on the basis of your sexual orientation, on the basis of your gender identity lives with you for the rest of your life.

Ms. GARCIA. Well, thank you for that because it has troubled me because I come from Texas, and we fought the bathroom bill, you know, just tooth and nail. And it seems that more bills have crept up, whether it is for, you know, faith-based organizations denying, you know, any LGBTQ members from adopting, from foster care, you know, the pharmacists not dispensing medicine. In my view, it is sort of like they are getting carried with it. But so thank you for that, and, Mr. Chairman, again, I yield the remainder of my time to my colleague, who has worked so hard on this bill, Mr. Cicilline.

Mr. CICILLINE. I thank the gentlelady for yielding. Mr. Chairman, I would just ask, I know Congresswoman McBath went down to vote and had a very eloquent statement that she intended to give. I would ask unanimous consent that it be put into the record twice to reinforce the power of it.

Chairman NADLER. It will be put into the record 3 times.

Mr. CICILLINE. And, Mr. Chairman, I have nine articles that I would ask be made part of the record.

Chairman NADLER. Without objection for all nine of them.

[The information follows:]

**MR. CICILLINE FOR THE OFFICIAL RECORD**

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McBath Statement for the Record:

“Thank you to each of you for being here to share your perspective. I am particularly pleased to hear from Reverend Wiley. I think some people misunderstand what LGBTQ equality means for many people of faith. While there are disagreements across Christianity on many issues, there is agreement when it comes to how we are called to treat our neighbor: we are called to love our neighbor as we would love ourselves.

This message has no exceptions. We must love our neighbors whether they look like us or not, whether they pray like us or not, and whether they love like us or not.

In spite of our differences in a country that encompasses many beliefs, we have common ground in a desire to be treated with dignity—and our neighbors deserve that same dignity, no matter who they are.”

Mr. Cicilline for the record, news articles:

<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD001.pdf>

Mr. CICILLINE. And finally, I just want to end where I began my comments in thanking you, Mr. Chairman, for this historic hearing for these extraordinary witnesses. And for any young, gay, lesbian, bisexual, transgender youth out there who is worried or feels discriminated against or fearful, help is on the way. Thank you, Mr. Chairman.

[Applause.]

Chairman NADLER. I thank the gentleman. I thank the gentleman for introducing the bill. This concludes today's hearing. Thank you to our distinguished witnesses.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

The hearing is adjourned.

[Whereupon, at 1:35 p.m., the committee was adjourned.]

**APPENDIX**

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April 24, 2019

Memorandum for Chairman Jerrold Nadler

From: Doriane Lambelet Coleman, Professor of Law, Duke Law School

Re: Questions for the Record of the April 2, 2019 Hearing on H.R. 5, the "Equality Act"

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Following are my responses to the three questions you posed to me following my testimony at the hearing.

*1. Apart from the discussion points you raised at the April 2, 2019 hearing about issues of access to sex-segregated athletic programs, do you otherwise believe that people should not be subject to discrimination based on their sexual orientation or gender identity in employment, housing, public accommodations, credit, jury service, or programs that receive federal funds?*

This is generally correct, subject to the following two caveats:

The first is that, to the extent we continue to find them useful, programs designed specifically to remedy discrimination against females based in facts or stereotypes about their sex-specific biology should be permitted to continue to discriminate on the basis of that biology. (We might otherwise describe these as affirmative action programs for females.) As Justice Ginsberg wrote in *United States v. Virginia*, 518 U.S. 515, 533 (1996), "[i]nherent differences' between men and women . . . remain a cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity." Thus, "[s]ex classifications may be used to compensate women 'for particular economic disabilities [they have] suffered,' to 'promot[e] equal employment opportunity,' [and] to advance full development of the talent and capacities of our Nation's people." *Id.* at 532.

The second caveat is detailed in my response to question 2 on the next page.

*2. Testimony given by your fellow witness, Julia Beck, implied that if the federal government guaranteed equal access to federally-funded facilities and programs under the Equality Act, transgender people would be a threat to the safety of others. Do you believe that transgender people are a threat to public safety? Do you believe that ensuring equal access to programs serving people experiencing homelessness or intimate partner violence on the basis of gender identity threatens the personal safety of women and their families?*

I do not believe that transgender people are a threat to public safety. And I believe that transgender people should have equal access to programs serving people experiencing homelessness or intimate partner violence. But I also believe that we should not be forced by anti-discrimination law to ignore that in highly sensitive situations, it will sometimes be necessary to distinguish among people based on their presentation as male- or female-bodied.

For example, someone who has just been violently raped by a male may well be traumatized to the point where -- at least in the moment -- they may not be able to overcome their fear of another obviously male-bodied person. The law should not require those who run domestic violence shelters and rape crisis centers to ignore these facts when they arise, or the commonsense solutions which may include sex- rather than identity-based segregation.

*3. You have publicly stated that North Carolina's HB 2 law "is bad law because it allows the government to discriminate against vulnerable populations in ways that are morally wrong, constitutionally incurable, and contrary to our collective self-interest." Do you support ensuring equal access to public facilities like restrooms on the basis of gender identity?*

I do.



**New York University**

*A private university in the public service*

School of Law  
Faculty of Law

40 Washington Square South, Room 501  
New York, NY 10012-1099  
Telephone: (212) 998-6421  
Facsimile: (212) 995-3662  
E-mail: kenji.yoshino@nyu.edu

**Kenji Yoshino**

*Chief Justice Earl Warren Professor of Constitutional Law*

Chairman Jerrold Nadler  
2109 Rayburn House Office Bldg  
Washington, DC 20515

April 24, 2019

Dear Chairman Nadler,

Please find below my responses to your Questions for the Record of the April 2, 2019 Hearing on H.R. 5, the “Equality Act.” Thank you for the opportunity to testify on this important bill.

1. Some of your fellow witnesses testified that H.R. 5’s definition of “gender identity” was “circular” and, therefore, problematic. What is your response?

The Equality Act defines “gender identity” as “the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.”<sup>1</sup> One of my fellow witnesses testified: “This is a circular definition, a logical fallacy . . . .”<sup>2</sup>

In the narrowest sense, a circular definition is one in which the definition of a term employs the term itself. While the Equality Act certainly refers to “gender” to define “gender identity,” this aspect of the Act is by no means unique. To take one of many instances, Title VII states that “[t]he term ‘religion’ includes all aspects of religious observance and practice, as well as belief . . . .”<sup>3</sup>

As the analogy to provisions protecting individuals against religious discrimination makes clear, this form of word parsing does not advance our inquiry. We must ask instead *why* we object to circular definitions, which is that if a term is used to define itself, we risk obtaining

<sup>1</sup> Equality Act, H.R. 5, pg. 20, 116th Cong. (2019).

<sup>2</sup> Testimony at 1:01:07, Statement of Julia Beck.

<sup>3</sup> 42 U.S.C. § 2000e(j).

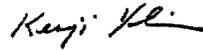
no new information about it. The Act's definition of gender identity suffers from no such debility. It separates "gender identity" from an "individual's designated sex at birth." It makes clear that a woman who is transgender is a woman even if she was not earlier assigned that gender, and that she should not be subjected to discrimination as a result.

Similarly worded protections from discrimination based on a person's gender identity exist in states and localities across the country.<sup>4</sup> They ensure that transgender people can work, find housing, and participate in public life. Jurisdictions with similar provisions have not had issues with implementation of this definition. No witness who testified about the putative circularity of its definition showed otherwise.

2. If there is anything that you would like to add to your testimony that you did not have a chance to address adequately during the hearing, please do so here.

Representative Buck asked whether a university with theological objections would have "to open its student housing." I replied in the negative but misspoke in providing the ground for my answer in stating that "I don't believe [the Equality Act] alters Title VI." The Equality Act does amend Title VI. What I intended to say is that the Equality Act does not alter the religious exemptions that already exist under the Fair Housing Act. To the extent that the university's student housing is owned or operated for non-commercial purposes, the university would continue to be able to limit housing to or give a preferences to members of its own religion.<sup>5</sup>

Sincerely,



Kenji Yoshino

Chief Justice Earl Warren Professor of Constitutional Law

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<sup>4</sup> See, e.g., Cal. Civ. Code 51(e)(5) ("Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."); Iowa Code § 216.2(10) ("Gender identity" means a gender-related identity of a person, regardless of the person's assigned sex at birth."); Nev. Rev. Stat. Ann. § 613.310(4) ("Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth."); R.I. Gen. Laws § 34-37-3(8) ("The term "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression; whether or not that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.").

<sup>5</sup> 42 U.S.C. Sec. 3607 (a).

## Items for the Record:

- American Association for Access Equity and Diversity letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD010.pdf>
- American Atheists statement:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD012.pdf>
- Professor Lee Badgett letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD013.pdf>
- Doriane Lambelet Coleman article “Sex in Sport”:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD017.pdf>
- LGBTQ Organizations letter to U.S. Commission on Civil Rights:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD018.pdf>
- Ilhan Meyer letter: <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD020.pdf>
- National Center for Transgender Equality testimony:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD022.pdf>
- National Center for Transgender Equality submission to U.S. Commission on Civil Rights:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD023.pdf>
- Ria Tabacco Mar Op-Ed, New York Times:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD024.pdf>
- U.S. Transgender Survey 2015 Report:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD025.pdf>
- U.S. Transgender Survey 2015 State Reports:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD026.pdf>
- U.S. Transgender Survey 2015 Report on American Indian & Alaska Native Respondents:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD027.pdf>
- U.S. Transgender Survey 2015 Report on Experiences of Asian, Native Hawaiian, and Pacific Islander Respondents: <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD028.pdf>
- U.S. Transgender Survey 2015 Report on the Experiences of Black Respondents:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD029.pdf>

- U.S. Transgender Survey 2015 Report on the Experiences of Latino/a Respondents:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD030.pdf>
- Black and Pink Reports:
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD031.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD032.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD033.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD034.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD035.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD036.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD037.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD038.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD039.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD040.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD041.pdf>
  - <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD042.pdf>
- National Partnership for Women & Families statement:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD044.pdf>
- Ms. Garcia statement: <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD045.pdf>
- University of Michigan School of Public Health faculty statement:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD046.pdf>
- C12 Group statement: <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD047.pdf>
- Human Rights Watch letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD048.pdf>
- Movement Advancement Project letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD049.pdf>

- Jocelyn Samuels, J.D., UCLA School of Law letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD049.pdf>
- Deborah J. Vagins, Senior Vice President, Public Policy and Research, AAUW letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD052.pdf>
- Religious Institute statement:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD053.pdf>
- Julia Beck statement to Baltimore LGBTQ Commission:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD054.pdf>
- Julia Beck testimony supplement:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD055.pdf>
- Women's Liberation Front article:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD056.pdf>
- National LGBTQ Task Force Action Fund testimony:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD057.pdf>
- Faith-based higher education organizations letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD058.pdf>
- Diego Miguel Sanchez PFLAG Equality Act Written Testimony:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD061.pdf>
- Johns Hopkins faculty and staff letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD062.pdf>
- Center for American Progress written testimony:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD063.pdf>
- Lambda Legal testimony ISO Equality Act:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD064.pdf>
- Bianca Wilson, UCLA, letter:  
<https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-20190402-SD068.pdf>