



April 22, 2019

The Honorable Robert C. “Bobby” Scott, Chair
The Honorable Virginia Foxx, Ranking Member
Members of the Committee on Education and Labor
U.S. House of Representatives

Re: **The Equality Act, H.R. 5**

Dear Chairman Scott, Ranking Member Foxx, and Members of the Committee:

We write on behalf of Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) in support of H.R.5, the “Equality Act,” which will provide clear, immediate, comprehensive, and national protections against discrimination based on sexual orientation and gender identity that are long overdue and critically important for the approximately 11.3 million American adults who identify as lesbian, gay, bisexual and transgender (“LGBT”).¹ Founded in 1973, Lambda Legal is the nation’s oldest and largest legal organization dedicated to achieving full recognition of the civil rights of LGBT individuals through impact litigation, policy development and advocacy, and public education. We were counsel in *Lawrence v. Texas*, 539 U.S. 558 (2003), co-counsel in *Romer v. Evans*, 517 U.S. 620 (1996), and co-counsel in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2017 (2015), the three most important cases ever decided by the U.S. Supreme Court addressing sexual orientation and the law.

It is difficult to overstate the importance of establishing clear, explicit protections against the widespread discrimination still faced by LGBT people throughout their daily lives and in all corners of the United States. By passing the Equality Act, Congress finally will provide both comprehensive protections and effective remedies for anti-LGBT discrimination in employment, housing, education, healthcare services, access to credit, jury service, public accommodations and federally funded programs and services. By doing so,

¹ The Williams Institute, *Adult LGBT Population in the United States* (UCLA School of Law, Feb. 2019), available at <https://williamsinstitute.law.ucla.edu/research/lgbt-adults-in-the-us/>.



Congress also will make a powerful statement of principle regarding the equal place LGBT people of all backgrounds deserve within our American family.

The Equality Act is drafted to codify the many federal court decisions and decisions of the EEOC, which recognize that the existing sex discrimination prohibitions in federal law, when properly understood, must forbid discrimination based on sexual orientation or based on gender identity as forms of sex discrimination. The Act also updates the existing federal civil rights laws by adding “sex” to the nondiscrimination provisions governing public accommodations and federally funded programs and services.

Recent actions by the Supreme Court underscore the importance and the urgency of enacting the Equality Act. Just today, the Supreme Court granted review in three Title VII cases addressing whether the Civil Rights Act’s prohibition against sex discrimination applies to discrimination on the basis of sexual orientation and gender identity:

- In *Altitude Express Inc v. Zarda*, the Second Circuit held *en banc* that Title VII does provide a claim that may be brought on behalf of a now-deceased skydiving instructor Donald Zarda, who was fired from his job because of his sexual orientation. 883 F. 3d 100 (2nd Cir. 2018). In so doing, the Second Circuit agreed with the Seventh Circuit’s *en banc* ruling in *Hively v. Ivy Tech Community College*, 853 F.3d 339 (2017), and the EEOC’s analysis in *Baldwin v. Foxx*, EEOC Decision No. 0120133080, 2015 WL 4397641 (July 15, 2015).
- In *Bostock v. Clayton County*, the Eleventh Circuit disagreed, holding that Title VII provides no claim to Gerald Lynn Bostock, who was fired from his job as a county child welfare services coordinator when his employer learned he is gay. 723 Fed. Appx. 964 (11th Cir. 2018), *rehg. en banc* denied, 894 F.3d 1335 (2018).
- *R.G. & G.R. Harris Funeral Homes v. EEOC and Aimee Stephens*, was filed by Aimee Stephens, a transgender woman, who was fired as a funeral director when she took steps to express her female gender identity. The Sixth Circuit agreed with Ms. Stephens, the EEOC, and numerous circuits that discrimination based on gender identity is a form of unlawful sex discrimination. 884 F.3d 560 (2018).



The Supreme Court’s agreement to consider these questions at least raises the specter of a decision reversing the considerable and growing body of federal court case law recognizing that federal protections against sex discrimination protect LGBT people.

The Supreme Court’s denial of review in *Rhines v. Young*, Case No. 18-8029, on April 15, 2018, presents another example of urgent need for passage of the Equality Act because it appears that Mr. Rhines may well have been sentenced to death, rather than to life in prison, due to anti-gay bias on the part of members of the jury. Multiple jurors explained after the fact that they had concluded, based on knowing him to be gay, that he would enjoy being sentenced to a lifetime of imprisonment with other men. As a result, they voted to impose the death penalty. Ensuring that LGBT people are treated equally with respect to jury service is essential for all participants in our jury system – prospective jurors, attorneys, witnesses, civil litigants, and, indeed, criminal defendants.

The Urgent Need

Lambda Legal operates a legal help desk, through which we respond directly to members of the communities we serve who are seeking legal information about and assistance regarding discrimination related to sexual orientation or gender identity. While Lambda Legal has always received such requests throughout its 46-year history, we now have four full-time lawyers dedicated solely to handling the thousands of calls we receive each year.

Our staff retains records of these assistance requests, which are kept in a searchable electronic database spanning five years. Between 2014 and 2018 (our current data set), we received 9463 inquiries concerning the areas of law covered by the Equality Act. On average, we received 1892 inquiries per year on covered issues, and these inquiries came from every state in the country. It is notable that, during this period, calls to the Help Desk seemed to reflect growing violence against members of the LGBT community. Although workplace discrimination continued to rank consistently at or near the top of the problem areas for all demographic groups, harassment and violence now are among the top issues for African American, Caucasians and Latinx callers. Twelve percent of callers overall reported an income level below the federal

poverty line, with those percentages markedly higher for LGBT African American and Latinx callers than for Caucasian callers. These racial disparities are consistent with results of studies conducted by Lambda Legal² and by leading researchers in this field³ which have found both disproportionate poverty affecting LGBT people and still further elevated rates affecting LGBT people of color.

In the pages that follow, we aim to provide a more detailed picture of the denials of service, loss of jobs and homes, and other discrimination problems – ranging from indignity to violence – that confront LGBT people who are simply trying to make it through the day. We do so with aggregate Help Desk figures for the 2014-2018 time period, together with a representative sampling of the help requests received during 2018 alone, concerning problem areas covered by the Equality Act. Confidentiality concerns preclude our providing names or other identifying information about individual Help Desk callers, let alone details of the information or guidance we provided. However, this compilation of specific problems reported to us nonetheless can provide this Committee a fuller understanding of the nature and pervasiveness of the discrimination against LGBT people, even though this method of illustrating the problem provides only sketches and necessarily understates the overall situation.

An overview of discrimination in the private sector is provided first, with examples grouped by category in the following order: employment, education, healthcare, public accommodations, housing, access to credit, and federally

² See, e.g., Lambda Legal, *Protected and Served?* (2012) (publishing results of national survey exploring discrimination by police, courts, prisons and school security against LGBT people and people living with HIV in the United States), available at <http://www.lambdalegal.org/protected-and-served>.

³ See, e.g., *LGBT Demographic Data Interactive* (Williams Institute, UCLA School of Law, Jan. 2019), available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#about-the-data>; Taylor N.T. Brown, et al., *Food Insecurity and SNAP Participation in the LGBT Community* (Williams Institute, UCLA School of Law, July 2016), available at <https://williamsinstitute.law.ucla.edu/research/lgbt-food-insecurity-2016/>; Angeliki Kastanis, *The LGBT Divide in California: A Look at the Socioeconomic Well-being of LGBT People in California* (Williams Institute, UCLA School of Law, Jan. 2016), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/California-LGBT-Divide-Jan-2016.pdf>.

funded programs and services. Examples of discrimination by government are provided in a separate compilation thereafter.

Employment Discrimination

Throughout this period, we consistently received more calls regarding anti-LGBT workplace discrimination than any other single issue, with the inquiries totaling just under 3,700. In 2018 alone, these calls included:

- the Arizona psychiatrist fired when his boss learned he is gay, with the boss calling him "a sinner who would compound his sins to his eternal peril" and a "vile sociopath."
- the California woman who is a teacher and transgender, who repeatedly was told to cut her hair and not to wear a skirt, and then had her contract not renewed.
- the gay Georgia man who was working for McKesson and then was fired upon reporting harassment based on his sexual orientation.
- the transgender woman who was working at a car detail shop in Illinois, and was told she was not allowed to transition socially on the job.
- the New Mexico lesbian who was told by her supervisor that she "should be sucking dick because of Adam and Eve."
- the Omaha, Nebraska resident who was promoted repeatedly until he came out as a transgender man, after which he was passed over nine times.
- the transgender woman who was hired by the Boys and Girls Club of Greensboro, North Carolina based on her application papers filled out with her legal name (which was still male), for whom the employment offer was revoked when her transgender identity was understood.
- the auto insurance agent in Texas who had been steadily climbing within the business until she came out as a transgender women, at which point co-worker harassment began and escalated until she felt driven out.

In addition, numerous examples of discrimination in public sector employment are detailed on page 19 below.

Moreover, based on our experience with our Legal Help Desk, we can say with confidence that the 3,700 help request figure understates the problem. Over the years, we have learned many reasons why employees choose not to seek legal guidance and remedy, including that many have known that legal remedies are limited in their jurisdiction, and many others are afraid to disclose their LGBT identity and thus refrain from even considering legal action.

Furthermore, this issue's resonance goes far beyond numbers. People define themselves in large part by the work they do. They spend significant portions of their time in the workplace, and they depend on their jobs to support themselves and their families and to gain access to health care and other benefits. The emotional investment people have in their jobs means that it not only is devastating when one loses a job, is denied a promotion or otherwise is subjected to adverse job actions due to discrimination, but it also takes a significant toll simply to know that one can face harassment or discrimination at any moment and have no redress. The Equality Act would strengthen the workforce of tomorrow by establishing that everyone has the ability to pursue the career of their choosing and be judged based on their performance and that alone.

Discrimination in Educational Settings

From 2014-2018, our Legal Help Desk received 2224 calls for help concerning discrimination problems in education. Many of these incidents arose in public education settings, representative examples of which are set forth at pages 16-19 below. Examples of discrimination problems in private educational settings during 2018 alone include:

- a boy expelled from his private school in Florida upon coming out as gay.
- a trans male student in middle school in Coeur d'Alene, Idaho, who experiences bullying in the locker room, has been physically attacked, and receives no support from teachers or school staff.

- a Boston University student enduring constant harassment from roommates due to the student’s gender identity, without assistance from university housing authorities.
- a Michigan girl with multiple disabilities experiencing bullying because her parents are a gay male couple.
- a transgender student in Missouri who was terrified of parental rejection after a trusted teacher outed the student to the student’s parents without the student’s knowledge or consent.
- a 6th-grade girl in Texas being bullied because her father is gay.
- a gay boy in Texas who was picked on continuously by other students and school officials for behavior seen as gender nonconforming.
- a 17-year-old Virginia girl removed from her school’s color guard team when she came to be known as a lesbian.

Discrimination in Healthcare Services

From 2014-2018, our Legal Help Desk received 1568 calls for help concerning discrimination in healthcare services. In 2018 alone, the callers included these examples:

- a trans man in Arkansas who was receiving in-patient psychiatric care, but was housed as a female with a female roommate despite having a full beard, deep voice and in other ways being indistinguishable from cisgender men; this placement caused the patient enormous anxiety and distress.
- a married lesbian couple in Colorado, both of whom are nurses, one of whom needed six weeks of hospital recovery for preeclampsia after delivery of their child, during which the hospital staff refused to keep her wife informed about her condition or to consult with her wife about their baby’s care.
- a gay man who was a patient at a cancer hospital in New Haven, Connecticut. During his post-surgical recovery, his husband came in to visit. When Caller mentioned to a couple of the medical staff that the person visiting was his husband, one staff laughed, the mood changed, and the quality Caller’s care deteriorated. Caller was not

bathed, given utensils with his food, helped to operate his bed, or given proper pain medication.

- a gay male couple in Florida whose daughter needed pediatric care for a high fever, and who were required to provide legal proof of their parentage for care would be provided, unlike how the office treats different-sex parents.
- a Georgia resident transgender man who went to the hospital due to severe stomach pain. He received friendly, respectful care until he revealed his transgender identity. Thereafter, the staff largely abandoned him in the hospital room for hours, while referring to him audibly from outside his room as "he/she."
- a transgender woman in Indiana who had gone into anaphylactic shock and was brought to the emergency room of a Methodist hospital; upon reviving, she saw the nursing staff parading by her room and staring at her; she overheard one say about her, "Yeah, I knew what it was when it came through the door." Then, another nurse pulled the IV drip out of her arm forcefully and left it to bleed.
- a lesbian couple who went to a health clinic in Maryland because one of them felt ill and was running a fever; upon revealing their relationship, the doctor insisted the woman had an STD. The couple left and sought care at an emergency room, where the ill one was diagnosed with a kidney infection requiring a blood transfusion.
- a Michigan-resident transgender man who was getting a routine screening at his insurance company's request, which was abruptly terminated when the doctor learned the man is transgender.
- a transgender man admitted to a New York hospital for a week of essential care, during which he was ridiculed by the staff, consistently addressed with improper pronouns, and his requests to have inaccurate information removed from his chart were refused. Upon discharge, he saw the primary diagnosis in his chart was noted as "female to male transgender person."
- a gay man in Texas who was admitted to the hospital for an infection in his hand, which then spread and became serious; the nursing staff

shunned him for long periods, withheld the food he requested, and at one point refused to help him up when he had fallen.

- a Texas woman who is transgender, who was admitted to a hospital following a car accident. When she answered the nurse’s question about menstruation dates by explaining why she does not menstruate, she was given a patient wrist band identifying her as male and the nurse began calling her “sir.”
- a lesbian couple in Wisconsin who took their son to an Ascension Health urgent care center and presented their insurance information, only to have the front desk clerk ask, “but who is the parent?” and refuse to admit the child for care unless they produced either his birth certificate or an adoption order.
- a married gay man who was transported to a hospital in Kenosha, Wisconsin, which then refused to let the man’s husband visit him once he was admitted.

These examples are not outliers. Over the years, we have seen such problems arise persistently both in private medical practices and clinics when individual doctors or other health care providers refuse to provide care based on the patient’s sexual orientation or gender identity, and also when institutional medical providers enforce blanket denials of certain services that are of particular importance to LGBT patients.⁴

Discrimination in Places of Public Accommodation

From 2014-2018, our Legal Help Desk received 803 calls for help concerning discrimination in places of public accommodation. The rate of these calls has been fairly consistent year-to-year. In 2017, we reviewed more than 800 Help Desk records of public accommodation complaints for the

⁴ See the discussions in Letter of Jennifer Pizer, *et al.* to Office of Civil Rights, U.S. Dep’t of Health & Hum. Svcs. (Sept. 30, 2013)(responding to HHS Requests for Information 0945-AA02 & 0945-ZA01), *available at* http://www.lambdalegal.org/in-court/legal-docs/ltr_hhs_20130930_discrimination-in-health-services, and in Lambda Legal, *When Health Care Isn’t Caring* (2010)(analyzing results of first-ever national survey to examine refusal of care and barriers to healthcare among LGBT and HIV communities), *available at* <https://www.lambdalegal.org/publications/when-health-care-isnt-caring>.

preceding five-year period, together with discrimination reports compiled by the Family Equality Council. A representative sampling of these reports is presented and discussed in Lambda Legal’s *amicus* brief to the U.S. Supreme Court in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.⁵

The records of public accommodation discrimination problems for the following year, 2018, included:

- a gay man and his husband, who were considering buying a membership in a private RV resort in Menifee, California. When they bought their membership from a different property owned by the same company, the head sales person at the first location called them “faggots.” When they tried to use their membership soon thereafter, the manager told them it had been canceled and they had to leave immediately. They were deeply distressed by the experience, especially Caller’s husband, an Iraq veteran with PTSD.
- a transgender woman, who was chased out of the women's restroom at a California Greyhound bus station by staff asserting she is a man.
- a transgender woman who visited a McDonald’s in Hollywood, California, and was using the women’s restroom when she was dragged out physically by a security guard, who told Caller she did “not look female enough.” Caller asked to talk to the manager who reiterated the same position, that she did not “pass” as a woman in their view.
- a woman who is transgender and was denied access to a public unisex restroom as a paying customer at a grocery store in Florida, while her cisgender friend was allowed to use the restroom without incident.
- a gay man who was walking around holding hands with his boyfriend at Sally Beauty, a cosmetics chain, in Dawsonville, Georgia; the general manager told them to stop holding hands or they would be

⁵ Brief of *Amici Curiae* Lambda Legal Defense and Education Fund, Inc., Family Equality Council, *et al.*, In Support of Respondents, in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111 (Oct. 30, 2017), available at <https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/16-111bsaclambdalegaletal.pdf>.

ejected from the store because, the manager said, she didn't "want customers to get the wrong impression."

- a gay father in Illinois, who was refused enrollment of his son with a day care provider when they realized the father is gay.
- a married gay man, who was shopping with his husband in a Habitat for Humanity resale shop in Illinois. When Caller's husband put his arm around Caller, a woman approached them and said "We don't allow homosexual behavior in this store." Caller complained and received an apology from management, but then was advised not to return to the shop.
- a Caller who worked for a startup in Chicago that was awarded an "LGBT Chamber of Illinois" award. But, when the company tried to submit the award to a public relations distribution service, the service rejected it, saying they do not work with any LGBT-related content.
- a transgender woman who had changed her legal name and notified her Illinois bank of the change, only to have the bank place a hold on her accounts anyway, claiming a concern about fraud. Caller had to produce all of her legal paperwork in order to regain access to her accounts.
- a transgender woman who was working as a truck driver, and suffered severe harassment and abuse at one of her refueling stops in Louisiana, which caused her to have a panic attack. She contacted local management, but they told her not to come back, forcing her to go out of her way to another fuel stop and pay out of her own pocket. She then contacted the truck stop company, which refused to do anything.
- a transgender woman who had been refused service multiple times by local managers of fast food restaurants in New Jersey because of her gender identity.
- a lesbian couple in New York, who were refused service by staff at Walmart's auto department because of their sexual orientation, and who reported the problem to management but with no results.

- a lesbian who was discriminated against by a funeral home hired for her father’s funeral in Ohio. One of the funeral home’s employees engaged in so much homophobic verbal abuse that the police had to be called. Yet, the funeral home still excluded Caller and her partner from the planning of her father’s funeral.
- a transgender individual who was refused a refill of a hormone replacement therapy prescription by a pharmacist in Oregon, who claimed a religious objection to that therapy.
- a Texas man with a 13-year-old son who is transgender and whose primary joy was karate. But the owner of the dojo was hostile and sent an email to all parents stating that the dojo was being overrun with “transgender talk” and “he would not tolerate it.” In order to continue with his favorite activity, Caller’s son agreed to answer to his previous female name in the dojo. Then the dojo owner ejected a family with a transgender mother, sending her vulgar threats by text. Then the owner expelled Caller’s son, saying “...our values are not in alignment & this has become an unhealthy relationship. Your family is no longer welcome here.”
- a transgender teenager who had full family support and had been filling his testosterone prescription at a local Albertson’s near the family home in Battle Ground, Washington. But when a new pharmacist arrived, the teen’s prescription suddenly was repeatedly refused and flu-shots also were denied.
- a gay man in Wisconsin, who was rudely denied when he tried to make an appointment with his dentist for his husband; he was told that office policy only permitted immediate family members to make appointments for others.

In addition, examples of discrimination in public and governmental settings are detailed in pages 19-21 below.

Housing Discrimination

From 2014-2018, our Legal Help Desk received 700 calls for help concerning housing discrimination. In 2018 alone, the callers included:

- a woman who is transgender and her partner, who live in a trailer park in Arizona. Neighbors within the park harass them, often urged on by the property manager, who yells things about them such as, "who the hell are these two gay men dressed in women's clothing?"
- a caller who lived in Connecticut and was evicted from her home because she is transgender; the eviction left her homeless.
- a gay man in Florida, who was living in a 55+ mobile home park, and was told by park management that his husband could not move into the park with him after they married.
- a gay man and his husband, who went to a Florida retirement community to hear the presentation for potential new members, and then were told they would have to purchase separate condos because they would not be permitted to live together, despite being married.
- a gay man and his boyfriend, who had made an appointment to see an apartment advertised for rent in Coral Gables, Florida. The owner did not appear and did not answer the phone. The person showing the apartment then told them the owner said he would not show them the apartment because he did not rent to gay couples.
- an older same-sex couple who had been together for at thirty years and were living in a mobile home/RV park in Florida. They were told to remove the gay pride flag hanging on their trailer. When they refused, they were evicted.
- a gay man in Chicago, who had been living in a senior living center for ten years when a new manager came in and began to harass him. His rent check was returned. He was denied the services provided to everyone else. Eventually he gave up and moved out.
- a disabled gay man in in Illinois lived in the same building as his partner, but in separate apartments. Caller had to endure constant harassment by a neighbor, who left notes under his door saying things like "get out fag." Feeling threatened, Caller requested police help multiple times, but to no avail. Caller also sought help from the building management, without success. The management then started retaliating against the couple, serving Caller's partner with arbitrary lease violations.

- a married lesbian couple in Illinois, who were threatened with eviction because they are married to each other.
- a gay man in Mississippi, who applied to live in a mobile home park and was denied; he asked for a written explanation and was refused. The seller of the trailer then was recorded cursing at Caller, calling him "cxxxk-sucker." The property manager also told Caller that "people like him" are not wanted in the park.
- a married lesbian couple in Ohio, who attempted to buy a house together. After the initial contract was signed, the seller's realtor told Caller's realtor that the seller "had prayed about it," would not accept the offer, and it was not about the money. Caller surmised that the rejection must have been due to their sexual orientation.
- a lesbian in Pennsylvania who was pushed out of her elder care facility due to her sexual orientation.
- a gay man in Pennsylvania who was harassed and then evicted due to having posted material in his window indicating he is gay. He had lived there for a year without incident but a new property manager said he was making neighbors uncomfortable. The manager began harassing Caller in various ways and then evicted Caller.
- a lesbian in Pennsylvania who was told she could not have her wife move into her trailer in the park where she had been for seven years. Caller reported that the park managers falsified information in their background check of her wife, and took other steps to drive Caller out. Caller lost her trailer and the couple became homeless.
- a transgender woman in Texas who had moved into a trailer park, only to have the landlord tell her not to wear "girly shorts" and that she had to present as male outside of her trailer, and who also withheld the key to the communal bathroom for weeks. The landlord told other tenants he "can do whatever he wants" because there were no legal rules preventing his behavior.

In addition, examples of discrimination in public sector housing are detailed on page 21 below.

Discrimination in Access to Credit

From 2014-2018, our Legal Help Desk received 414 calls for help concerning discrimination in access to credit. In 2018 alone, the callers included:

- multiple transgender individuals in California, Maryland and Texas who were denied credit because their credit reports were flagged as fraudulent due to names and gender markers not matching the earlier years of their reports, despite matching Social Security numbers, as tracked by TransUnion, Experian and Equifax. The callers reported impossibly difficult experiences attempting to get their credit reports updated and the fraud alerts lifted.
- a trans man in Pennsylvania had a similar experience, being denied a credit card by Chase bank, and then being told by Chase that TransUnion had said he had only had credit for six months (due to having only one credit card with his new legal name). Despite having the one Social Security number, TransUnion did not credit him for his prior twenty years of good credit history.
- a transgender woman in Texas was denied an apartment lease because Equifax had flagged her Social Security number for fraud due to a disconnect between her prior name and her new legal name.
- a gay man in Illinois, who had excellent credit and a large income, was applying for a new car loan; the loan agents were approving his application smoothly and quickly, until they learned he is gay, at which point the agents simply stopped speaking with him.
- a transgender woman in Illinois who was refused a car lease, with GMAC financing telling her that her credit score has dropped due to her legal name change.
- a gay man in Maryland, who reported that changing his bank account to a joint account with his partner caused his credit score to drop considerably; his bank also ended his line of credit after he added his partner to his checking account.
- a gay couple in Texas, who already had a mortgage for their home and farm, applied for an additional loan for which they had ample

assets as security. Unlike their prior, uneventful experience, after having mentioned to a loan agent that they now are married, they had to put in multiple new applications, endure protracted delays, deal with “the run-around,” and hear continual comments discouraging them from pursuing the loan.

Discrimination in Federally Funded Programs and Services

From 2014-2018, our Legal Help Desk received 63 calls for help concerning discrimination in federally funded programs and services. In 2018, homeless shelters featured prominently among them, including these typical examples:

- a lesbian couple in a homeless shelter in New York, who were being bullied by the staff and other clients, including being called “faggot” by an intimidating former prisoner housed in the same shelter. The staff refused to take action.
- a transgender woman staying at a homeless shelter in Anaheim, California, who asked to use all-gender restrooms but was told she had to have medical documentation. Eventually she had to leave the program.

Anti-LGBT Discrimination by State and Local Government

When evidence of discriminatory practices in the public sector is abundant, it is proper for Congress to enact remedies that abrogate the sovereign immunity of the states. Evidence of discrimination in the private sector is relevant to this inquiry when the congressional record reflects that the problems are similar in the private and public sector.⁶ Unfortunately, it most certainly is the case that the public sector discrimination problems are strikingly similar to those in the private sector, although they perhaps have even worse impacts because they occur with the imprimatur of official government policy.

⁶ *Tennessee v. Lane*, 541 U.S. 509, 528 (2004); *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 728-733 (2003).

As noted above on page 2 at note 2, Lambda Legal conducted a national survey in 2012 of the experiences of LGBT people which set out to determine whether our governmental institutions – including police, courts, prisons and school security – are properly protecting and serving members of this community. A total of 2,376 people completed the survey, which was a national first of its kind and included questions and an opportunity to share accounts of one’s own experiences when interacting with these agencies of government. The results are presented in the report entitled *Protected & Served?*, which includes both individual stories and analysis of the aggregate data.⁷ The rates of discrimination against LGBT people by each of these areas of government activity are alarming, with even more disturbing disparities correlated to race and ethnicity, transgender status, low-income status, and HIV status.

To update and complement the findings of the *Protected & Served?* report, what follows here is a representative sampling of instances of anti-LGBT discrimination in the public sector described by callers to Lambda Legal’s Help Desk attorneys during 2018.

Education

- *Adverse action = verbal harassment and physical intimidation:* Caller attends a public high school in Arizona. Since coming out as transgender, he has been verbally harassed repeatedly including in front of teachers, with no protection or support. When attempting to use the boys’ restroom during a high school football game, he was stopped by a group of 12 other boys, threatened and kept from entering the restroom. His repeated requests to school administrators for help have yielded nothing. Because he and other LGBT students on campus hear other people say “awful things” about them, they don’t feel safe. Caller says, “I’m scared to go to school, even to walk the halls by myself.”
- *Adverse action = ejection from school lacrosse team:* Caller’s daughter is a student-athlete at a public university in Arizona. She was a pre-med bio major and on the women’s lacrosse team. She, along with other student-athletes, heard that their coach had asked the team’s captain to compile a list of the gay players on the team. After caller’s daughter was outed to the coach as

⁷ Visit <http://www.lambdalegal.org/protected-and-served>.

a lesbian, she began to be subjected to harsh criticism by the coach. At the end of the season, Caller's daughter was cut from the team.

- *Adverse action = refusal to use proper name and pronouns:* Caller's partner is transgender and is encountering ongoing problems as a medical student at a public university in Florida, with improper pronoun usage, use of partner's deadname, and lack of access to the school's free mental health services.
- *Adverse action = bullying and other discrimination:* Caller's daughter is transgender with Asperger's in Prince George's County, Maryland. She has been unable to attend the public school due to bullying and discrimination. She is anxious and has needed in-patient treatment for suicidal ideation due to the bullying at her schools.
- *Adverse action = bullying and threats:* Caller is a transgender boy attending a public high school in Ohio. Male classmates made "jokes" about raping him and beating him if he went into "their" restroom, causing Caller to fear entering the gender-appropriate restroom. A teacher who overheard the threats also made "jokes" about hurting Caller. Although the students' and the teacher's conduct was reported to the principal, no action was taken against either the teacher or those students.
- *Adverse action = verbal abuse and ostracism:* Caller is a transgender boy attending a public high school in Ohio, who reported, "I was bullied throughout my entire life at school. People always called me every name in the book they could think of. ... The hardest moment was when I first entered High School the kids started making an awful comment that's still stuck with me. They would say whenever I walked by, "What is that, what do we call it?" and then went on to laugh and high five each other while they mentally beat down another human being like I'm nothing." Caller could not participate in sex-segregated activities including sports. School officials refused to use Caller's preferred name. He was denied appropriate restroom use. When fellow students made anti-LGBT comments, Caller's teacher supported them, saying things like "there's no room for those people in heaven, I hope those poor souls will realize this someday."
- *Adverse action = bullying and other discrimination:* Caller is a transgender boy who attends an inner-city public high school in Ohio. He reports that some school officials are accepting of transgender students, but the other students are not. Caller has been choked 3 times at school and reports that a transgender girl at the school had her face bashed into a wall because she is trans. Caller reported the attacks on him and provided video

evidence, but the school officials merely admonished the student body as a whole over the school intercom. Caller had a bible thrown at him with other students yelling that he is "going to hell." He is scared to use the men's restroom because he has been threatened with rape if he does, so he only feels safe using the restroom at my home and "always [does his] best to stay hidden when [he's] at school."

- *Adverse action = denial of access to gender-appropriate facilities:* Caller is a transgender boy who attends a public high school in Pennsylvania. He is being denied usage of the boys' locker room and the boys' restroom, though he had done both things previously without incident. He was told to stop using the boys' restroom because an adult teacher said he was "in the wrong bathroom."
- *Adverse action = physical abuse and verbal harassment:* Caller has a 15-year-old son who is a student in a public school in Texas. Her son was perceived as gay and forcibly dry humped by another student. Later, after the son came out as gay on social media, the other students were vicious. They told him they would "beat his ass" and that he should kill himself. School officials were made aware of the threats but did nothing for a long time. Eventually, after numerous complaints, the school resource officer filed a police report.
- *Adverse action = refusal to use proper name and pronouns:* Caller has an adopted 8-year-old son. She says the adults at the Texas public school he attends refuse to call him by his male pronoun or use his preferred name, even though the parents are in the process of changing his name legally. His counselor and doctor wrote a letter asking the school to refer to the child as male because it is detrimental to his mental health to continue to refer to him as a female. The son has had suicidal ideation and suicide attempts. Per caller, son looks like a boy. Another boy in his class referred to him with male pronouns and in front of the class, the teacher reprimanded the other boy for doing so. The school officials said they would be abusing caller's son if they referred to him as male, and that they won't do so until they receive a court order changing his name. But caller says even after the name change, the school will not refer to the child as male because his gender marker would not have been changed.

Employment

- *Adverse action = harassment; physical assault:* Caller is a gay male who worked for a school district in Southern California. When he began wear an “Out for Safe Schools” badge, he became the target of certain students, and subject to verbal and physical assaults. His complaints to school officials were unavailing.
- *Adverse action = discriminatory clothing allowance policy:* Caller works for a small Georgia town. Prior to her gender transition, she was allowed to purchase clothes/uniforms with city funds. Once caller transitioned and purchased a skirt, caller was disciplined and the town retrieved the money for the purchase from caller’s next paycheck.
- *Adverse action = marginalization:* Caller identifies as transgender and works in the public works department of the City of Des Moines, Iowa, where co-workers treat Caller with hostility which interferes with Caller’s ability to work. The City’s human rights specialist has ignored Caller’s requests for help.
- *Adverse action = termination:* Caller was fired from a program managed by Iowa State University for helping to ensure the rights of LGBT youth. See USA news article <https://www.usatoday.com/story/news/nation-now/2018/08/03/lgbtq-policy-iowa-4-h-alarms-conservatives-director-fired/900070002/>
- *Adverse action = termination:* Caller was fired from her job teaching at a public charter school in Texas because of her sexual orientation.

Public Facilities

- *Adverse action = ejection from shelter:* A gay male caller and his husband were ejected from a homeless shelter in Colorado after reporting anti-LGBT discrimination. A municipal police officer assisted the management of the private agency which ejected the couple based on the agency’s religious beliefs, leaving the couple at risk of severe weather.
- *Adverse action = denial of access to all-gender restroom:* The caller is a transgender woman who was sheltered at the Pahoia public shelter on Hawaii during the volcanic eruption, together with 700 other evacuees. The shelter was established in a county gymnasium and staffed by county employees. It had a unisex/disability access restroom, which Caller repeatedly asked to

use. The staff refused to open it for her, instead keeping it locked and using it as a closet.

- *Adverse action = public humiliation by gratuitously revealing transgender identity:* Caller is a transgender woman who reports having been badly mistreated at two Social Security offices in Kansas by staff who gratuitously revealed her transgender identity, subjecting her to public humiliation, and who refused to handle her case appropriately.
- *Adverse action = denial of parental visit with child:* A lesbian couple living in New Mexico have an adopted child, but Caller is the only parent on the adoption decree. Their son is now 17 years old and has been incarcerated at a juvenile detention center, which is refusing to allow the non-adoptive mother to visit their son.
- *Adverse action = ejection from Amtrak train:* Caller and her friends were harassed by an Amtrak employee who overheard them use the word "lesbian" in their private conversation. The Amtrak employee then called local police officers, who required that Caller and her friends leave the train.
- *Adverse action = verbal assault:* Caller reported that a U.S. postal worker verbally assaulted him and his partner with homophobic language and told them the Postal Service would never deliver their mail again. Caller reported the incident was covered on the local news.
- *Adverse action = harassment:* Caller's daughter is transgender and was harassed when going through TSA security at Portland International Airport.
- *Adverse action = harassment and refusal to change gender marker on driver's license:* Caller is a transgender man who was refused proper service and treated in a hostile manner by staff of the Texas Department of Public Safety in Houston. Caller's new license had been issued properly with an updated "male" gender marker consistently with his updated Social Security information. The DPS employee changed the gender marker back to "female," creating a discrepancy with caller's name, refused to consider caller's full set of documents confirming his gender change, and treated caller in a harassing manner throughout the interaction.
- *Adverse action = refusal of ability to board train to meet wife:* Caller, a lesbian, was blocked from boarding an Amtrak train in Washington after mentioning to the ticket taker that her wife was saving her a seat. The ticket taker made her wait, while letting others who had arrived later board the train. The

train then left the station without Caller having been permitted to board. Caller was re-ticketed for a later train, which ended up being delayed for nearly 8 hours, leaving Caller to wait in the rural train station area until nearly midnight before the delayed train finally arrived. Her wife, who been on the original train, was panicked when Caller did not board and meet her on the first train as they had planned.

Housing

- *Adverse action = eviction threats:* Caller is a transgender woman who is a Section 8 recipient living in Indiana. After having rented her home without incident for more than a year, the management changed. The new manager began harassing her immediately, sending frequent eviction notices and attempting to drive her out.
- *Adverse action = denial of housing:* Caller, a Texas resident, reported that the local HUD Housing Authority property manager kept skipping over Caller, who had been at the top of the list for nearly two years. But the manager kept finding reasons to not place Caller in one the many available apartments. Caller reports, “I have tried not to believe that she is discriminating against me, but it is painfully obvious that she is and I am one step from homeless.”

Social Science Research Confirms Anti-LGBT Discrimination Is Pervasive

The accounts of discrimination set out above are consistent with years of social science research documenting pervasive, persistent, harmful discrimination against LGBT people in this country.⁸ More recent surveys have resulted in similar, deeply troubling findings.⁹ Moreover, the thousands of calls to Lambda Legal’s Help Desk confirm that there is widespread, persistent

⁸ For an overview of research studies as of 2012, see Jennifer C. Pizer, *et al.*, *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A. L. Rev. 715 (2012).

⁹ For example, see Sandy James, *et al.*, *The Report of the 2015 U.S. Transgender Survey* (National Center for Transgender Equality, 2016), available at <http://www.ustranssurvey.org/report>; Lambda Legal, *Protected & Served?*, *supra* note 2 and discussion on page 16.

discrimination in the areas covered by the Equality Act by state and local governments, with no discernable differences between the patterns of anti-LGBT discrimination in the public sector and in the private sector, and no notable differences in the patterns of such discrimination by state versus local government agencies.

Congress Must Act

The Equality Act appropriately codifies the substantial body of case law confirming that existing federal prohibitions on sex discrimination, properly understood, necessarily forbid discrimination because of sexual orientation or gender identity because such adverse treatment cannot be understood as other than “because of sex.”¹⁰ Congressional action to codify this case law is needed for at least three reasons:

- 1) Although these court decisions apply Supreme Court precedent, the Court has not yet taken up these specific questions and ruled definitively upon them;
- 2) Because the Trump administration now disagrees with these court decisions, having reversed the positions taken by the Obama administration, which had been consistent with both these courts and with the EEOC;¹¹ and
- 3) Because public confusion remains.

¹⁰ As examples, consider the application of the sex discrimination bans in Title VII, Title IX, the Fair Housing Act, the Equal Credit Opportunity Act, and the Affordable Care Act in: *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2nd Cir. 2018) (en banc) (sexual orientation discrimination in employment); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc) (same); *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (gender identity discrimination in employment); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017) (gender identity discrimination in education); *Wetzel v. Glen St. Andrew Living Community, LLC*, 901 F.3d 856 (7th Cir. 2018) (sexual orientation discrimination in housing); *Smith v. Avanti*, 249 F.Supp.3d 1194 (D. Colo. 2017) (gender identity discrimination in housing); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir.2000) (gender identity discrimination in credit); *Rumble v. Fairview Health Services*, No. 14–cv–2037, 2015 WL 1197415 (March 16, 2015, N. D. Ill. 2015) (gender identity discrimination in health services).

¹¹ See, e.g., *Macy v. Holder*, No. 0120120821, 2012 WL 1435995 (E.E.O.C. Apr. 20, 2012); *Baldwin v. Foxx*, No. 0120133080 (E.E.O.C. July 15, 2015); *Lusardi v. McHugh*, No. 0120133395 (E.E.O.C. March 27, 2015).

In addition, this appropriate understanding of federal bans on sex discrimination does not protect LGBT people from discrimination in public accommodations, public facilities, or federally funded programs and services, because Titles II, III, and VI of the Civil Rights Act of 1964 do not currently forbid discrimination based on sex.¹² The Equality Act’s provisions updating those titles to include this protection are urgently needed by society at large, not just by LGBT Americans.

It is beyond dispute that great progress has been made with the passage of many state and local laws protecting LGBT Americans from discrimination. However, it could take years, or even decades, to protect *all* LGBT Americans without Congressional action. While 20 states and the District of Columbia now provide express statutory protection against sexual orientation discrimination and 19 plus the District of Columbia expressly forbid discrimination based on gender identity as well,¹³ in some of those states the coverage is incomplete¹⁴ and in others the remedies provided are limited.¹⁵ In still others, progress has been agonizingly slow.

In sum, congressional action is imperative not only because the right to pursue one’s livelihood, secure housing, an education, and life’s necessities free from discrimination is a shared American value, but also because the current gaps in discrimination protection most severely affect the most vulnerable. For example, while approximately half of the overall population lives in

¹² See 42 U.S.C. 2000a, 42 U.S.C. 2000b(a), and 42 U.S.C. 2000d, respectively.

¹³ Movement Advancement Project, *Non-Discrimination Laws*, available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

¹⁴ For example, Utah’s nondiscrimination protections cover employment and housing, but not places of public accommodation.

¹⁵ See, e.g., *Herman v. United Broth. of Carpenters and Joiners of America, Local*, 60 F.3d 1375, 1386 (9th Cir. 1995) (“. . . we have construed Nevada law as precluding emotional distress claims in the employment context.”); Wisconsin Department of Workforce Development, “Remedies at a Glance” (neither compensatory damages for emotional harm nor punitive damages are available under the Wisconsin Fair Employment Law); available at http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_11055_p.htm#3.



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jurisdictions covered by state sexual orientation nondiscrimination statutes,¹⁶ fewer than 35% of African-Americans do.¹⁷ As noted repeatedly above, there are compounding impacts of the multiple forms of discrimination that reinforce and disproportionately burden LGBT people of color. They create an urgent moral cry to pass this bill as soon as possible.

Conclusion

For all of the above reasons, Lambda Legal gives its strongest possible support to the Equality Act and respectfully urges you to support its passage. We would be pleased to answer any questions you may have about the information provided herein, and to provide any further information that might be of assistance to you.

Respectfully submitted,

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¹⁶ See Movement Advancement Project, *Non-Discrimination Laws*, *supra* note 13.

¹⁷ See <http://www.census.gov/compendia/statab/ranks/rank12.html>