



March 24, 2021

The Honorable Richard J. Durbin, Chair
The Honorable Chuck Grassley, Ranking Member
Members of the Committee on the Judiciary
United States Senate

Re: **The Equality Act, S. 393**

Dear Chairman Durbin, Ranking Member Grassley, and Members of the Committee:

We write on behalf of Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) in support of S. 393, the Equality Act, which will provide clear, comprehensive, and nationwide protections against discrimination based on sexual orientation or gender identity that are long overdue and critically important for the approximately 13 million Americans age 13 and older who identify as lesbian, gay, bisexual, or 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 LGBTQ people 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), three of the most important cases decided by the U.S. Supreme Court addressing sexual orientation and the law.

I. Introduction

It is difficult to overstate the importance of establishing clear, explicit protections against the widespread discrimination LGBTQ people still face 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-LGBTQ discrimination in employment, housing, education, healthcare services, access to credit, jury service, public accommodations and federally funded programs and services. By doing so, Congress also will make a powerful statement of principle regarding the equal place LGBTQ people of all backgrounds deserve within our American family.

The Equality Act is drafted to codify the U.S. Supreme Court’s decision last June in *Bostock v. Clayton County, Georgia*, 590 U.S. ___, 140 S. Ct. 1731 (2020), as well as the many federal court decisions and decisions of the EEOC which preceded *Bostock* and definitively recognized that the existing sex discrimination prohibitions in federal law, when properly understood, necessarily forbid discrimination based on sexual orientation or gender identity

¹ Kerith J. Conron & Shoshana K. Goldberg, Williams Inst., *LGBT People in the US Not Protected by State Non-Discrimination Statutes* (2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-nondiscrimination-statutes/>.

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, and by expanding the scope of the public accommodations law to more appropriately reflect the entities in our modern society that offer goods or services to the general public to which all of us should have equal, nondiscriminatory access.

This testimony presents data collected by Lambda Legal’s Help Desk, which confirms the urgent need for the Equality Act because anti-LGBTQ discrimination in the areas addressed by the Act remains pervasive and often is devastating. On an ongoing basis, we receive calls for help from every corner of the country showing that this discrimination is rampant in both the private sector and by state and local government. Earlier this month, we released a report entitled *The United States of Discrimination: Trends in Bias Against LGBTQ People and People Living with HIV, 2021*. The report analyzes the 4,468 calls received during 2020, which confirm not just the nationwide scope of the problem but the wide range of bias-based problems.² Given this persistent problem, our communities need the Senate to join with the House of Representatives to establish a clear, firm national policy against this scourge. Doing so will both send a powerful deterrent message that this abusive behavior must stop and provide explicit coverage and remedies for when that message is not heeded.

II. The Opposition’s Red Herrings

Before presenting Lambda Legal’s Help Desk recorded evidence of discrimination, this testimony responds to “red herring” opposition testimony given during the Committee’s March 17, 2021 hearing. Unfortunately, both Abigail Shrier and Mary Hesson amplified popular misconceptions that have been embraced by some who oppose the bill and LGBTQ equality and inclusion more generally.

For example, contrary to Ms. Shrier’s testimony, inclusion of transgender people in student athletic programs has not “destroyed” girls’ and women’s sports programs in the many states with nondiscrimination laws and policies like the Equality Act. Moreover, nondiscrimination protections for transgender people have not led to increases in assaults by cisgender men pretending to be transgender so they can prey on girls and women in sex-segregated spaces such as restrooms, locker rooms, domestic violence shelters, and prisons.³ However, the lack of those protections – and the lack of strong messages insisting upon respect for and inclusion of transgender people – reinforces the social stigma that

² Lambda Legal, *The United States of Discrimination: Trends in Bias Against LGBTQ People and People Living with HIV, 2021* (March 2021), https://www.lambdalegal.org/sites/default/files/legal-ocs/downloads/ll_legalhelpdeskreport_0310-2.pdf.

³ See Sasha Buchert, *The need for the Equality Act and transgender protections – debunking the scare tactics* (April 1, 2019), <https://www.foxnews.com/opinion/sasha-buchert-the-need-for-the-equality-act-and-transgender-protections-debunking-the-scare-tactics>.

undermines the health and wellbeing of transgender people, while abetting the too-often violent abuse which, at the margins, inevitably becomes lethal.⁴

Similarly, contrary to Ms. Hasson's testimony, state nondiscrimination laws and policies like the Equality Act have not created liability for clergy or houses of worship. Nor have those laws and policies driven faith-based organizations from the social services and medical services sectors. Ms. Hasson and those who share her religious belief that sex and gender are binary and defined by Biblical texts are fully protected in those beliefs. But their religious views must not be permitted to thwart public policy that recognizes the medical research-based understanding that human reality is more complex, and that transgender people do exist and must have equal human rights.

These professed opposition concerns are discussed in more detail below, followed by evidence showing who truly is at risk of harm in America's contemporary public spaces.

A. Transgender Girls and Women Pose No Threat to the Opportunities, Let Alone the Safety, of Cisgender Girls and Women.

We understand that Ms. Shrier's professional training is in law, not medicine or psychology. That might explain, though not excuse, her positing as real possibilities that cisgender boys *en masse* are likely suddenly to announce a different gender identity and take over girls' sports programs, or that cisgender male sexual predators are similarly likely suddenly to announce a different gender identity and thereby gain access to carceral facilities for women. This is not how individuals come to recognize their own gender dysphoria and proceed down the usually lengthy and challenging path to come out and live authentically.

Detached from the established medical and mental health literature, Ms. Shrier's testimony instead invited panic and fear of basic nondiscrimination protections with sadly familiar tropes of male sexual predators gaining access to little girls in restrooms, older girls in locker rooms, and adult women in domestic violence shelters and prisons. Asserting that equal rights for women and LGBTQ people actually will facilitate sex-based harm to them is the same tactic used to defeat the ERA, to override nondiscrimination protections in Dade County Florida, and more recently to do the same in Houston, Texas.⁵ But as history has

⁴ Human Rights Campaign, *HRC Mourns Diamond Kyree Sanders, Black Transgender Woman Killed in Cincinnati* (March 13, 2021) (noting that HRC recorded 44 deaths of transgender and gender non-conforming people in 2020 alone), <https://www.hrc.org/news/hrc-mourns-diamond-kyree-sanders-black-transgender-woman-killed-in-cincinnati>; NYC Anti-Violence Project, *Lives Lost to Fatal Anti-LGBTQ and Intimate Partner Violence in 2020*, <https://avp.org/in-memoriam-2020/>; Human Rights Campaign, *A National Crisis: Anti-Transgender Violence* (2015) (discussing why transgender people of color are at ever greater risk of violence), <https://www.hrc.org/resources/a-national-crisis-anti-transgender-violence>.

⁵ Clyde Haberman, *Phyllis Schlafly's Lasting Legacy in Defeating the E.R.A.*, *New York Times* (Sept. 11, 2016), <https://www.nytimes.com/2016/09/12/us/phyllis-schlaflys-lasting-legacy-in-defeating-the-era.html?searchResultPosition=7>; Christopher Reed, *Phyllis Schlafly obituary: American political activist who*

shown with respect to each of these campaigns, the alarmism is defamatory fiction. For the following reasons, the three principal recurring tropes are, as in past years, utterly baseless.

1. Participation of Transgender Girls and Women Does Not “Destroy” Girls’ and Women’s Sports Programs.

The claim that the Equality Act would effectively end women’s sports dominated the discussion on the minority’s side during the Committee’s March 17, 2021 hearing. But this assertion is disproven by the lived experience of transgender athletes who have been competing in single-sex athletics consistently with their gender identity for decades in high schools, colleges, the NCAA, and intramural sports across the country, and no aspect of women’s sports has been “destroyed.” Some states have had inclusive policies for more than a decade without incident and there are now over 60,000 transgender students eligible to compete in those states. Importantly, there is no evidence of a reduction in participation among cisgender girls and women in those states where transgender students are able to participate in accordance with their gender identity.⁶

As the comments during your hearing exemplified, opponents of civil rights protections obsess about the single-digit examples of transgender athletes’ competitive success but ignore the thousands upon thousands of events in which transgender people have competed and lost, and that no openly transgender person has ever competed in the

fought against the Equal Rights Amendment, The Guardian (Sept. 6, 2016), <https://www.theguardian.com/us-news/2016/sep/06/phyllis-schlafly-obituary>; Anita Bryant’s “Save Our Children” campaign succeeded in driving repeal of the Dade County, Florida nondiscrimination ordinance in 1974. Lillian Faderman, *THE GAY REVOLUTION: THE STORY OF THE STRUGGLE*, 330-333 (Simon & Schuster, 2015); Dudley Clendinen & Adam Nagourney, *OUT FOR GOOD: THE STRUGGLE TO BUILD A GAY RIGHTS MOVEMENT IN AMERICA*, 303-307 (Simon & Schuster, 1999). Soon thereafter, proponents of the Briggs Initiative in California used similar fearmongering to try to bar lesbians, gay men and anyone who supported them from working in the state’s public schools. See Faderman, 367-370; Clendinen & Nagourney, 381, 388; Randy Shilts, *THE MAYOR OF CASTRO STREET* 238-240 (St. Marten’s Press, 1982); [https://ballotpedia.org/California_Proposition_6_the_Briggs_Initiative_\(1978\)](https://ballotpedia.org/California_Proposition_6_the_Briggs_Initiative_(1978)).

Nearly forty years later, a shockingly similar “child predator” campaign achieved success much like Anita Bryant’s against the Houston Equal Rights Ordinance. [https://ballotpedia.org/City_of_Houston_Anti-Discrimination_HERO_Veto_Referendum_Proposition_1_\(Nov.2015\)](https://ballotpedia.org/City_of_Houston_Anti-Discrimination_HERO_Veto_Referendum_Proposition_1_(Nov.2015)). This time the anti-LGBT campaign painted transgender women with the slanderous brush previously used against gay men, lesbians and bisexuals. See Alexa Ura, *Bathroom Fears Flush Houston Discrimination Ordinance*, TEXAS TRIBUNE (Nov. 3, 2015), <https://www.texastribune.org/2015/11/03/houston-anti-discrimination-ordinance-early-voting/>; Mimi Swartz, *The Equal Rights Fight Over Houston’s Bathrooms*, NEW YORK TIMES (Oct. 28, 2015); <https://www.nytimes.com/2015/10/28/opinion/the-equal-rights-fight-over-houstons-bathrooms.html>.

⁶ Shoshana K. Goldberg, *Fair Play: The Importance of Sports Participation for Transgender Youth*, Center for American Progress (Feb. 8, 2021), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair-play/>.

Olympics. In fact, when confronted recently about the supposed need for state legislation barring transgender participation, state legislators failed to cite a single incident or a single competitive transgender athlete in their state.⁷

The failure of transgender athletes to “dominate” women’s sports is unsurprising. Transgender people make up only 0.6 percent of the population and, of course, not all are engaged in competitive sports. It would be astonishing if this tiny population ever had a statistically meaningful impact on the opportunities for non-transgender girls and women. The reality of countless competitions over decades in many states shows this is a non-issue.

And of course it does. Women, like men, come in a vast variety of shapes, sizes, and athletic abilities. And for most people, both transgender and non-transgender alike, the reason to join in sports activities is that doing so contributes so much to their physical, social and emotional well-being. Especially for young people, it is important that everyone who wants to participate can do so and that all have the opportunity to absorb the important life lessons that athletics can teach about hard work, self-discipline, both winning and losing gracefully, self-confidence, leadership skills, and what it means to be part of a team.

This is why athletics is a such a valuable part of the school experience for many students. And transgender youth who want to participate want to do so for the same reasons as all children. They want to play. They want the unique opportunities to bond with their peers and be a part of a group where they feel that they belong and are accepted for who they are. Excluding them is stigmatizing and harmful. It robs them of their connection to the larger school community and to their community at large.

There is no factual basis for characterizing these young people as a threat to their peers and doing so unjustifiably makes their path to adulthood that much rockier.

2. Civil Rights Protections for Transgender People Do Not Increase Safety Risks in Restrooms, Locker Rooms, Domestic Violence Shelters or Prisons.

Another misconception voiced repeatedly during the hearing is that transgender people in sex-specific spaces – such as restrooms, locker rooms, domestic violence shelters and prisons – place cisgender girls and women at risk. It is well established, however, that respecting the gender identity of transgender people and protecting them from discrimination does nothing to compromise the safety and privacy of anyone in these facilities.

⁷ Associated Press, *Lawmakers opposed to trans girls in sports unable to cite local examples*, NBC News (Mar. 4, 2021), <https://www.nbcnews.com/feature/nbc-out/lawmakers-opposed-trans-girls-sports-unable-cite-local-examples-n1259622>.

First, the decades of experience in places where transgender people have been protected under the law proves this. Twenty-six states and over 200 cities protect transgender people from discrimination in public accommodations,⁸ meaning that transgender people may use facilities consistent with their gender identity, and there has been no resulting increase in public safety incidents in any of these cities or states. Police departments around the country have verified this.

In addition, more than 300 of the nation's leading sexual assault and domestic violence prevention organizations issued a statement calling for an end to legislation that would exclude transgender people from restrooms and other facilities that match who they are. Lastly and most importantly, nothing about legal protections for transgender people changes the fact that sexual assault remains a crime which can and should be treated as such.

In reality, it is transgender people who are at risk of harassment and violence in restrooms and other facilities. In a study conducted by the UCLA School of Law's Williams Institute, nearly 70 percent of transgender people reported having experienced verbal harassment in gender-segregated restrooms, and nearly 10 percent reported having been physically assaulted.⁹ The Equality Act will reinforce that transgender people are entitled to the same safety, respect, and inclusion as everyone else in public spaces.

3. Cisgender Men and Boys Do Not Falsely Claim to be Transgender, Let Alone Actually Transition, In Order To Violate Others' Rights.

Another ostensible women's-safety concern pressed during the hearing was that predatory men will pretend to be transgender women for nefarious purposes, and that the Equality Act will protect that behavior. Both aspects of this familiar trope are mistaken. First, there is no factual basis for the absurd notion that individuals who are not transgender will falsely claim that identity – let alone undergo a gender transition – just to gain access to facilities designated for women or an advantage in athletics. The suggestion is disconnected from the harsh reality that most transgender people experience.

Indeed, the social stigma and overt hostility against transgender people is intense and often dangerous. And transitioning is a painful and difficult process that no one undertakes lightly. Most everyone has seen or experienced bullying at some point in their life due to someone else's opinion about "appropriate" masculine or feminine behavior, however, transgender people willingly face that antagonism directly in order to transition so that they can live authentically—and they often pay a high price. For many, it leads to harassment and violence, and loss of one's livelihood, friendships, and parental support.

⁸ Movement Advancement Project, *Nondiscrimination Laws* (visited March 20, 2021), https://www.lgbtmap.org/equality-maps/non_discrimination_laws/public-accommodations.

⁹ Jody L. Herman, *Gendered Restrooms and Minority Stress*, Williams Institute (June 2013), <https://williamsinstitute.law.ucla.edu/publications/gendered-restrooms-minority-stress/>.

There is simply no evidence or real-life basis for the assertion that some cisgender men will pretend to be transgender to gain improper facilities access or an advantage in athletic competition, let alone that existing fraud controls, tort and trespass remedies, and other laws would be unavailing and that the Equality Act's nondiscrimination protections somehow would make things worse.

B. The Equality Act Maintains the Longstanding, Respectful Relationship Between Civil Rights Protections and Religious Liberty Protections.

Ms. Hasson warned that, by including nondiscrimination protections for women and LGBTQ people within the long-settled framework preventing federal subsidizing of private discrimination, the Equality Act poses a grave threat to religious organizations. Her fear is misplaced. The Act simply honors the decades-old principle that public services underwritten with public funding should be equally available to all members of the public, free of discrimination based on religious or any other sincerely held beliefs about who should be turned away or treated poorly because of who they are or who they love.

1. The Equality Act Is Consistent with the Core American Principle That Taxpayer Dollars Should Not Subsidize Private Discrimination, With or Without Religious Motivation.

Alongside the statute forbidding discrimination in federally funded programs, a long series of presidential executive orders governing federal contracting and grantmaking has similarly honored and affirmed this principle as an appropriate safeguard of our open public marketplace and consistent with the Establishment Clause. This history matters. Most faith-based agencies today surely would protest indignantly that they would never claim a religious right to discriminate against African Americans, or any people of color, in a federally funded program. But contemporary clarity on this point owes a debt to our federal laws and policies that offered private agencies a choice and an incentive to welcome and serve *all* strangers *equally* by attaching nondiscrimination strings to desirable public funds.

Religious motives for discrimination generally have not mattered in public accommodations cases. In *Masterpiece Cakeshop*, for example, the Supreme Court majority of six justices observed that, while “religious and philosophical objections [to same-sex couples marrying] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.”¹⁰ The Court supported that general rule with reference to its 1968 *per curiam* opinion in *Newman v. Piggie Park Enterprises, Inc.*¹¹ *Piggie Park* considered this principle in the context of a White proprietor of a chain of barbeque restaurants whose religious beliefs called for

¹⁰ *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 584 U.S. ___, 138 S. Ct. 1719, 1727 (2018).

¹¹ 390 U.S. 400 (1968).

segregation of White and Black people.¹² Black would-be patrons generally were refused service, though occasionally were served from a kitchen window and directed to take their food from the premises before eating.¹³ The Supreme Court not only affirmed the lower courts' rejection of the owner's religious liberty defense against the Black would-be patron's Civil Rights Act claim, but deemed the defense "patently frivolous."¹⁴

As noted above, the clarity and forcefulness of the *Piggie Park* decisions might be expected today, given the legal and social consensus against race discrimination that has evolved since then. But the federal law was still new in 1968. And despite contemporary denialism, sincere religious justifications for race discrimination have been far from rare historically.¹⁵ No surprise, then, that *en route* to the current national consensus that our civil rights laws serve essential public interests, the Civil Rights Act faced not only serious challenges to its novel exercise of federal power¹⁶ but religion-based objections as well.

In multiple contexts thereafter, the Court has been called upon to recognize the importance of distinguishing between protected freedom of religious belief and limits on the right to invoke those beliefs to justify discrimination in publicly regulated activities.¹⁷ By citing *Piggie Park* as it did in *Masterpiece Cakeshop*, the Supreme Court has confirmed there is to be consistent application of the general principle that religious beliefs do not excuse unlawful discrimination whether the discrimination is based on race or sexual orientation.

¹² See 256 F. Supp. 941, 944 (D.S.C. 1966) (noting that the owner's "religious beliefs compel him to oppose any integration of the races whatever"), *rev'd in part*, 377 F.2d 433, 437-438 (4th Cir. 1967) (reversing to hold that the Civil Rights Act applied to defendant's restaurants), *aff'd*, 390 U.S. at 400.

¹³ 256 F. Supp. at 944, 946-947.

¹⁴ 390 U.S. at 402, n.5.

¹⁵ See generally Anthea Butler, *WHITE EVANGELICAL RACISM: THE POLITICS OF MORALITY IN AMERICA* (2021) (documenting how White evangelicals have used scripture to defend slavery, then racial segregation, and opposition to civil rights); Robert P. Jones, *WHITE TOO LONG: THE LEGACY OF WHITE SUPREMACY IN AMERICAN CHRISTIANITY* (2020) (unearthing the long-repressed history of the relationship between Christianity and White Supremacy in American); Max Perry Mueller, *RACE AND THE MAKING OF THE MORMON PEOPLE* (2017).

¹⁶ See, e.g., *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964) (rejecting argument that Commerce Clause provided insufficient authorization for Title II of the Civil Rights Act's prohibition against racial segregation of business establishments); *Katzbach v. McClung*, 379 U.S. 294 (1964) (finding discrimination by places of public accommodation imposed sufficient burdens on interstate commerce to affirm constitutionality of Civil Rights Act).

¹⁷ See, e.g., *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983) (religious school's freedom to teach religious doctrine against interracial relationships did not entitle it to preferential tax status if it acted on that doctrine to the detriment of students); *United States v. Lee*, 455 U.S. 252 (1982) (business owner had religious right to refuse to participate in Social Security system on his own behalf but could not impose that belief on employees by refusing to pay on their behalf). See also *Loving v. Virginia*, 388 U.S. 1 (1967) (rejecting religious justification for laws banning interracial marriage).



2. RFRA Does Not Excuse Civil Rights Violations.

Ms. Hasson protested that the Equality Act creates new threats to religious freedom by precluding defenses based on the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* (“RFRA”). She is mistaken and those who share her concern need not worry.

First, although Ms. Hasson is correct that RFRA was enacted in 1993 with strong, bipartisan support, she fails to acknowledge that this was because it was designed as a shield for minority faiths against unjustified government action, NOT as a sword for private parties to use against each other in violation of civil rights laws. The Congressional Record confirms this. *See, e.g.*, Sen. Rep. No. 111, 103d Cong., 1st Sess. (1993) at 12; HR. Rep. No. 103-88, at 9 (1993) (“[n]othing in this bill shall be construed as affecting Title VII of the Civil Rights Act of 1964.”).

Even if that legislative history did not preclude use of RFRA as a defense against federal civil rights claims, such defenses fail under RFRA’s multi-part test for religious liberty claims. This is because courts consistently have held that the government has a compelling interest in preventing and addressing discrimination. As just one example, the Supreme Court found there to be a compelling government interest in eliminating sex discrimination in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987).¹⁸ Because discrimination based on sexual orientation or gender identity inherently is a form of sex discrimination, *Bostock v. Clayton County*, it likewise is established that the Equality Act furthers a compelling government interest.

As illustrated by the examples provided later in this testimony, the legal rule that the government’s interest in protecting persons from discrimination is compelling is consistent with the serious harms of discrimination the Equality Act addresses, including but not limited to injuries to mental and physical health, financial security and wellbeing, civic participation, freedom of movement and opportunity, personal dignity, and physical safety.

These harms reduce life opportunities for those who experience discrimination directly. They also affect indirectly those with similar personal characteristics. Discrimination also harms society as a whole, for example, by limiting the careers of talented, productive employees; by undermining the nation’s business interest in workforce diversity,

¹⁸ *See also EEOC v. RG & GR Harris Funeral Homes, Inc.*, 884 F.3d 560, 590 (6th Cir. 2018), *aff’d on other grounds, Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020) (“Failing to enforce Title VII against [the employer] means ... allowing a particular person ... to suffer discrimination, and such an outcome is directly contrary to the [] compelling interest in combating discrimination in employment.”); *EEOC v. Pac. Press Publ’g Ass’n*, 676 F.2d 1272, 1280 (9th Cir. 1982) (“By enacting Title VII, Congress clearly targeted the elimination of all forms of discrimination as a ‘highest priority.’ Congress’ purpose to end discrimination is equally if not more compelling than other interests that have been held to justify legislation that burdened the exercise of religious convictions.”), *abrogation on other grounds recognized by Am. Friends Serv. Comm. Corp. v. Thornburgh*, 951 F.2d 957, 960 (9th Cir. 1991).

productivity, and stability; by causing young people to leave school prematurely, and to experience greater involvement with the legal system, higher rates of homelessness, substance abuse, and diverse, negative impacts on physical and mental health; and by increasing the vulnerability of those dependent on others for care in nursing homes, rehabilitation facilities, addiction recovery programs, specialized and temporary housing of many kinds, nutrition support and emergency services, and the many, diverse human services programs supported with federal funding. Consistent with the role nondiscrimination laws play in protecting lives and livelihoods, alleviating suffering, and improving individual and public health, the Supreme Court long has recognized that these laws also benefit society as a whole by ending the “disruptive effect” discrimination has on travel and commerce, and by creating a level field for all participants in a given sector. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 257 (1964).

Moreover, as with all prohibitions on invidious discrimination, the Equality Act furthers the government’s compelling interest in the least restrictive way because only by forbidding discrimination is it possible to prevent the financial and often physical, as well as the psychological and dignitary, harms of discrimination. It is well recognized that discriminatory mistreatment at work or in school, denial of housing, and refusal of equal services because of one’s personal characteristics all cause public humiliation and emotional distress in the immediate term, and often cause adverse mental and physical health effects in the longer term. Thus, it is essential that that all persons have equal access to the same full range of opportunities and services. The Supreme Court confirmed this point more than half a century ago, noting that “the fundamental object” of the Civil Rights Act was “to vindicate ‘the deprivation of personal dignity that surely accompanies denials of equal access to public establishments.’” *Heart of Atlanta Motel*, 379 U.S. at 250.

3. RFRA Does Not Provide A Defense Against Private Discrimination.

Ms. Hasson and others also have objected that the Equality Act deprives faith-based agencies of RFRA-based defenses against discrimination claims brought by members of the public when, for example, they have been denied equal services in a publicly funded program. RFRA provides no such defenses. Instead, the statute provides that, “A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief *against a government.*” 42 U.S.C. § 2000bb-1(c) (emphasis added). This statutory language has been considered frequently enough that the point is not subject to reasonable dispute.¹⁹

¹⁹ See, e.g., *R.G. & G.R. Harris Funeral Homes*, 884 F.3d at 584 (“[I]f Stephens had initiated a private lawsuit against the Funeral Home to vindicate her rights under Title VII, the Funeral Home would be unable to invoke RFRA as a defense because the government would not have been party to the suit.”); *Listecki v. Off. Comm. of Unsecured Creditors*, 780 F.3d 731, 736 (7th Cir. 2015) (“Based on RFRA’s plain language [and] its legislative history, ... RFRA is not applicable in cases where the government is not a party.”); *Gen. Conf. Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402, 410 (6th Cir. 2010) (“McGill cannot claim the benefit of RFRA ... because as we explain, the defense does

Because under RFRA's test, its protection for religious free exercise does not excuse violation of federal civil rights laws, and because RFRA does not even apply in disputes among private parties, the Equality Act does not void any rights faith-based agencies have under that statute to discriminate against LGBTQ people, women, or anyone else.

4. The Equality Act Does Not Turn Houses of Worship into Public Accommodations.

The Equality Act lists the types of commercial enterprises and public agencies that would be considered public accommodations, modernizing the Civil Rights Act's coverage to resemble the Americans with Disabilities Act. Like the ADA, it covers retail outlets, transportation services, banking and other financial services, and social service agencies that provide important, often life-sustaining services to the general public. As discussed above regarding sports programs in the many states with civil rights protections like those in the Equality Act, the public accommodations laws of many states and the ADA itself have not stripped houses of worship of their core, treasured First Amendment protections. There has been no surge of liability on the part of churches or clergy resulting from nondiscrimination laws. As the Supreme Court has reaffirmed, houses of worship and religiously affiliated schools are constitutionally entitled to discriminate against those they designate as clergy.²⁰

5. The Equality Act Does Not Promise an End to Sex-Separated Facilities and Programs, Especially Not in Religious Spaces.

With concerns similar to those voiced by Ms. Shrier, Ms. Hasson warned that the Equality Act would outlaw sex-segregated spaces within a range of faith-based settings, even including religious services. This concern is baseless for the same reasons discussed above. As we have seen under existing federal law and the many state laws forbidding sex discrimination, requiring equal treatment regardless of sex does not mean an end to separate facilities for women and for men. Phyllis Schlafly's call-to-arms against the ERA notwithstanding,²¹ sex discrimination litigation has not brought an end to the separation of public restrooms. Like the similar state laws in force for many years now, the Equality Act

not apply in suits between private parties."); *Rweyemamu v. Cote*, 520 F.3d 198, 204 n.2 (2d Cir. 2008) ("[W]e do not understand how [RFRA] can apply to a suit between private parties, regardless of whether the government is capable of enforcing the statute at issue.").

²⁰ *Our Lady of Guadalupe v. Morrissey-Berru*, 591 U.S. ___, 140 S. Ct. 2049 (2020) (holding the ministerial exception, rooted in the First Amendment, precluded teachers' claims of age and disability discrimination against their former Catholic school employers).

²¹ Clyde Haberman, *Phyllis Schlafly's Lasting Legacy in Defeating the E.R.A.*, New York Times (Sept. 11, 2016), <https://www.nytimes.com/2016/09/12/us/phyllis-schlaflys-lasting-legacy-in-defeating-the-era.html?searchResultPosition=7>; Christopher Reed, *Phyllis Schlafly obituary: American political activist who fought against the Equal Rights Amendment*, The Guardian (Sept. 6, 2016), <https://www.theguardian.com/us-news/2016/sep/06/phyllis-schlafly-obituary>.



simply requires that transgender people be allowed to participate according to their gender, not an abolition of gender distinctions.²²

Moreover, the many state laws banning sex discrimination in public accommodations have posed no threat to religious traditions that call for gender separation in houses of worship, religious activities, and religious societies. The core First Amendment protections are alive and well, and rightly so. And our federal constitutional guarantees are no less protective against federal laws than they have been against state laws.

The concerns expressed by the opposing witnesses certainly may have been sincere, however, they are without foundation in either fact or law. The Equality Act will not destabilize the settled relationship between civil rights and religious freedom, nor create new threats to girls, women, or anyone else. There is enough equality to go around. And with the Equality Act, our common rights to equal treatment in public life will continue to coexist with our settled rights to free exercise of our own religion without imposition of anyone else's.

III. The Urgent Need

As noted above, 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 48-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 and keeps them in a searchable electronic database. Between 2014 and 2020 (our current data set), we received 12,520 inquiries concerning the areas of law covered by the Equality Act. On average, we received 1,789 inquiries per year on covered issues, and these inquiries came from every state in the country, as well as the District of Columbia and Puerto Rico. It is notable that, during this period, calls to the Help Desk seemed to reflect continued violence against members of the LGBTQ 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. Fully one-third of callers overall reported an income level of less than \$20,000 per year, with those percentages markedly higher for LGBTQ African American and Latinx callers than for Caucasian callers. These racial and ethnic disparities are consistent with results of studies

²² *Accord RG & GR Harris Funeral Homes, supra*, 884 F.3d at 560.



conducted by Lambda Legal²³ and by leading researchers in this field²⁴ which have found both disproportionate poverty affecting LGBTQ 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 LGBTQ people who are simply trying to make it through the day. We do so with aggregate Help Desk figures for the 2014-2020 period, together with a representative sampling of the help requests 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 a fuller understanding of the nature and pervasiveness of the discrimination against LGBTQ 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 funded programs and services. Examples of discrimination in faith-based settings or attributed to explicit religious motives are provided next, and examples of discrimination by government are provided in a separate compilation thereafter.

²³ See, e.g., Lambda Legal, *Protected and Served?* (2012) (publishing results of national survey exploring discrimination by police, courts, prisons and school security against LGBTQ people and people living with HIV in the United States), available at <http://www.lambdalegal.org/protected-and-served>.

²⁴ 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>.

A. Anti-LGBTQ Discrimination in the Private Sector

Employment Discrimination

Throughout this period, we consistently received more calls regarding anti-LGBTQ workplace discrimination than any other single issue, with the inquiries totaling just under 5,000. 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 working at a car detail shop in Illinois, who 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 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 job 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 25-26 below.

Moreover, based on our experience with our Legal Help Desk, we can say with confidence that the approximately 5,000 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 LGBTQ 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 2014-2020, our Legal Help Desk received 2,655 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 23-24 below. Examples of discrimination problems in private educational settings 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 2014-2020, our Legal Help Desk received 2,048 calls for help concerning discrimination in healthcare services. The callers included these individuals:

- 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 of 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 LGBTQ patients.²⁵

Discrimination in Places of Public Accommodation

From 2014-2020, our Legal Help Desk received 1,165 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 preceding five-year period, together with discrimination reports compiled by the Family Equality Council. A representative sampling of these reports was presented and discussed in Lambda Legal's *amicus* brief to the U.S. Supreme Court in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.²⁶

²⁵ 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), 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), <https://www.lambdalegal.org/publications/when-health-care-isnt-caring>.

²⁶ Brief of *Amici Curiae* Lambda Legal Defense and Education Fund, Family Equality Council, *et al.*, In Support of Respondents, in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111 (Oct. 30, 2017), https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/16-11bsaclambda_legaletal.pdf.

Our records of public accommodation discrimination problems include these additional examples:

- 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 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 26-27 below.

Housing Discrimination

From 2014-2020, our Legal Help Desk received 899 calls for help concerning housing discrimination. These 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 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 “cxxk-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 27 below.

Discrimination in Access to Credit

From 2014-2020, our Legal Help Desk received 448 calls for help concerning discrimination in access to credit. These 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 2014-2020, our Legal Help Desk received 83 calls for help concerning discrimination in federally funded programs and services. 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.

B. Anti-LGBTQ 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.²⁷ 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.

As noted above on page 13 at note 23, Lambda Legal conducted a national survey in 2012 of the experiences of LGBTQ 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.²⁸ The rates of discrimination against LGBTQ 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-LGBTQ discrimination in the public sector described by callers to Lambda Legal’s Help Desk attorneys.

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 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.

²⁷ *Tennessee v. Lane*, 541 U.S. 509, 528 (2004); *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721, 728-733 (2003).

²⁸ Visit <http://www.lambdalegal.org/protected-and-served>.

- *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."

IV. Social Science Research Confirms Anti-LGBTQ Discrimination Is Pervasive

The accounts of discrimination set out above are consistent with years of social science research documenting pervasive, persistent, harmful discrimination against LGBTQ people in this country.²⁹ Recent surveys continue to report similar, deeply troubling

²⁹ For an encyclopedic compilation of accounts of discrimination by state and local government together with dozens of authoritative discrimination studies, please see the testimony submitted for this hearing record by the Williams Institute at UCLA School of Law. For an overview of research studies as of 2012, see Jennifer C. Pizer, *et al.*, *Evidence of Persistent and Pervasive Workplace Discrimination*

findings.³⁰ Moreover, the thousands of calls to Lambda Legal’s Help Desk confirm that there is widespread, persistent discrimination in the areas covered by the Equality Act by state and local governments, with no discernable differences between the patterns of anti-LGBTQ 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.

V. Congress Must Act

The Equality Act appropriately codifies the Supreme Court’s *Bostock* decision and the substantial body of case law before and since that decision, 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.”³¹ Congressional action to codify this case law is needed for at least three reasons:

- 1) Although the Supreme Court’s reasoning in *Bostock* should apply similarly under the other federal laws against sex discrimination and the Biden administration is taking steps to do so, there are many who disagree and would insist that those who experience discrimination must litigate coverage in every non-employment area and any issues arguably not resolved in *Bostock*;
- 2) The opposition testimony before this committee, and statements by some leading members of this body seemingly voicing what they believe are the concerns and wishes of their constituents, confirmed the alarm, hostility toward, and desire on the part of many to evade the protections for LGBTQ people that should flow from *Bostock*; and

Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits, 45 Loy. L.A. L. Rev. 715 (2012).

³⁰ 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 23 and discussion on page 23.

³¹ 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: *Bostock v. Clayton County*, 140 S. Ct. 1731 (sexual orientation and gender identity discrimination in employment); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc) (sexual orientation discrimination in employment); *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (gender identity discrimination in employment); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020) (gender identity discrimination in education); *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020) (same); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017) (same); *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).

- 3) Without the protections written explicitly into statute, public confusion remains.

In addition, this appropriate understanding of federal bans on sex discrimination does not protect LGBTQ 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.³² The Equality Act's provisions updating those titles to include this protection are urgently needed by society at large, not just by LGBTQ Americans.

It is beyond dispute that great progress has been made with the passage of many state and local laws protecting LGBTQ Americans from discrimination. However, it could take years, or even decades, to protect *all* LGBTQ Americans without Congressional action. While roughly half the states and the District of Columbia now provide explicit protection against both sexual orientation and gender identity discrimination,³³ in some of those states the coverage is incomplete³⁴ and in others the remedies provided are limited.³⁵ 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 jurisdictions covered by state sexual orientation nondiscrimination statutes,³⁶ fewer than 35% of African Americans do.³⁷ Because there are compounding impacts of the multiple forms of discrimination that reinforce and disproportionately burden LGBTQ people of color, these impacts create an urgent moral cry to pass this bill as soon as possible.

³² See 42 U.S.C. 2000a, 42 U.S.C. 2000b(a), and 42 U.S.C. 2000d, respectively.

³³ Movement Advancement Project, *Non-Discrimination Laws*, available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

³⁴ For example, Utah's nondiscrimination protections cover employment and housing, but not places of public accommodation.

³⁵ 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.

³⁶ See Movement Advancement Project, *Non-Discrimination Laws*, *supra* note 33.

³⁷ See <http://www.census.gov/compendia/statab/ranks/rank12.html>



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VI. 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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