



Nondiscrimination Protections for LGBTQ Communities

Securing Comprehensive and Inclusive Protections
At All Levels of Government

By Ashe McGovern, Sarah McBride, and Sharita Gruberg December 2016



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Introduction and summary

Throughout the past half century, advocates in the United States have helped build a foundation of local, state, and federal laws to protect historically marginalized communities from discrimination. Despite the significant advancements of lesbian, gay, bisexual, transgender, and queer, or LGBTQ, rights over the past decade, however, LGBTQ communities continue to be excluded from many of these protective laws.

While same-sex couples now have the freedom to marry nationwide, LGBTQ people remain at risk of being fired from their job, denied housing, profiled by law enforcement or kicked out of a restaurant or an office simply because of who they are. More than 40 percent of lesbian, gay, and bisexual workers report experiencing employment discrimination at some point in their lives, and 90 percent of transgender workers report experiencing harassment, mistreatment, or discrimination at work or have tried to hide who they are to avoid these experiences.¹ And, unfortunately, anti-LGBTQ discrimination continues after the workday ends, with LGBTQ people and families reporting discrimination in the housing market; schools; the criminal justice system; and public spaces, including restaurants, retail stores, service centers, and health care offices.²

Over the past eight years, the Obama administration has taken steps to protect LGBTQ people from discrimination in programs that receive federal funding and in federal employment. Though powerful, these administrative changes can be revoked, and achieving equality through the courts—as was done with marriage—risks a patchwork of protections that are dependent on a person's ZIP code. Thus, the need for explicit and statutory protections at the state and local level, as well as through federal legislation, remains critical for the well-being of LGBTQ people.

Nineteen states, the District of Columbia, and hundreds of localities have taken steps to protect LGBTQ people by adding sexual orientation and gender identity to their nondiscrimination laws.³ Another two states fail to explicitly protect transgender and gender-nonconforming people, but do protect residents on the

basis of sexual orientation.⁴ A majority of LGBTQ people, however, live in the 30 states that still lack clear and explicit discrimination protections, and many live in jurisdictions—such as North Carolina—where legislatures are actively fighting to pass and enforce statewide legislation that preempts localities from creating LGBTQ-inclusive protections.⁵

The effort to pass equal protections for all people continues in states and cities across the country. To secure the full scope of nondiscrimination protections that all LGBTQ people need to live and thrive, nondiscrimination bills and ordinances should seek to meet the following three benchmarks:

- Be comprehensive and inclusive in order to ensure that the entire LGBTQ community gains the protections it needs throughout daily life.
- Maintain—or, preferably, enhance—civil rights laws for other protected classes, including women, religious minorities, and people of color.
- Ensure parity between all protected communities, as no group of people should be singled out for government-sanctioned discrimination through unique exemptions or exclusions.

This report provides evidence to illustrate the importance of these benchmarks in securing the protections that all LGBTQ people need to fully and equally participate in society.

Protecting the entire LGBTQ community throughout daily life

LGBTQ nondiscrimination protections should be comprehensive and inclusive in order to ensure equal opportunity in the daily lives of all LGBTQ people. These protections must extend not only to the job application process but also to the accessibility of stable shelter and the goods and services that all people need to live and thrive. Failing to protect all LGBTQ communities in all areas of life undermines the force of existing LGBTQ protections, while often leaving the most vulnerable community members at risk of legal discrimination.

Transgender and gender-nonconforming communities, particularly transgender communities of color, remain among the most vulnerable to discrimination, and experience disproportionately high rates of discrimination as compared with the entire LGBTQ community.⁶ More than 40 percent of lesbian, gay, and bisexual workers report experiencing employment discrimination at some point in their lives, while approximately 90 percent of transgender workers report experiencing harassment, mistreatment, or discrimination at work or have tried to hide who they are to avoid these experiences.⁷ A 2014 survey of LGBTQ adults ages 45 to 75 found that 13 percent were discriminated against on the basis of sexual orientation when searching for housing and 25 percent were discriminated against due to their gender identity.⁸ Across age groups, these disparities are particularly pronounced for communities of color.

Genderqueer or gender-nonbinary people, who identify neither as men nor women, and gender-nonconforming people of all identities also experience significant discrimination in their daily lives, including high rates of poverty, violence, and other forms of discrimination that are even higher than those of their gender-conforming transgender peers.⁹ These disparities are, again, particularly pronounced for people of color. Including both gender identity and gender expression in nondiscrimination protections will have a direct impact on ensuring that these vulnerable communities are able to live and work free from discrimination.

Including sexual orientation, gender identity, and gender expression protections in nondiscrimination laws

It is vital that the text of nondiscrimination laws explicitly include protections based on sexual orientation, gender identity, and gender expression, as experiences of discrimination based on all three are strongly linked. Doing so will capture more fully the complexity of how bias against LGBTQ communities operates and the ways in which these biases are rooted in assumptions about both gender and sexuality.

For example, an employer or a landlord may assume that because a self-identified woman expresses her gender in a so-called traditionally masculine way—perhaps by wearing her hair short—she is a lesbian. As a result, the woman may be discriminated against both because she is seen as masculine presenting—thus not meeting the employer or landlord’s assumptions about how she should look or act as a woman—and because of a presumption that her perceived masculinity means she is a lesbian, whether or not this is actually the case. As a result of these interconnected assumptions, she may experience discrimination both on the basis of her gender expressions and her sexual orientation. These assumptions are so interconnected that it would be difficult to parse out which factor, if any, is more prominently at play in a given situation. As a result, it is vital that states and localities institute a broad set of protections to ensure that all LGBTQ community members are protected from the many ways in which they could experience discrimination.

Several states have successfully added explicit gender identity and gender expression protections to the text of their statewide nondiscrimination laws through legislative action. In several other states, policymakers have instead sought to clarify the proper scope of existing discrimination protections on the basis of sex—which substantial and ever growing legal precedent has confirmed includes protections on the basis of gender identity, gender expression, and, in many cases, sexual orientation.¹⁰ This legal conclusion is premised on the idea that making assumptions or casting stereotypes on an individual because of their sex—including assumptions about what gender their partner should be or how they should appear, behave, or identify—is sex discrimination, and therefore impermissible under federal law that offers protections on the basis of sex.¹¹ Typically, states issue these clarifications of law through administrative or executive action, as opposed to acting through the legislature. These legal precedents, and states’ adoption of them, affirm that discrimination on the basis of sexual orientation, gender identity, and gender expression are linked, and that all categories of protections must exist in order to ensure full protection for all LGBTQ communities.

A broad set of protections is also important because there is significant overlap within LGBTQ communities, with many LGB individuals reporting that they feel unsafe because of their gender expression¹² and many transgender people identifying as lesbian, gay, bisexual, or queer.¹³

Protecting LGBTQ people in employment

Given the high rates of discrimination that LGBTQ people experience both in the job hiring process and in the workplace, employment protections are a vital component of any statewide nondiscrimination law. Currently, only 19 states and the District of Columbia prohibit workplace discrimination on the basis of sexual orientation and gender identity, and two states prohibit workplace discrimination on the basis of sexual orientation alone.¹⁴ Additionally, New York has passed explicit sexual orientation protections and issued regulations interpreting its sex protections to include gender identity.¹⁵ Six states prohibit discrimination only against public employees based on sexual orientation and gender identity, while five states prohibit workplace discrimination against public employees on the basis of sexual orientation alone.¹⁶

Despite these protections, LGBTQ communities continue to experience high incidences of employment discrimination and mistreatment. Between 10 and 28 percent of LGB workers report being denied a promotion because of their sexual orientation.¹⁷ In a national survey of transgender people, 47 percent report experiencing an adverse job outcome, such as being fired, not hired, or denied a promotion because of being transgender or gender-nonconforming.¹⁸ A study by the Washington, D.C. Office of Human Rights found that 48 percent of employers in the District preferred at least one less-qualified cisgender applicant over a more-qualified applicant perceived to be transgender.¹⁹

These disparities are especially significant for communities of color, and in particular, for transgender communities of color. Thirty-two percent of black transgender respondents, 36 percent of American Indian transgender respondents, and 30 percent of Latino/a transgender respondents report having been fired from a job because of their gender identity or expression.²⁰

These experiences of workplace discrimination and subsequent job insecurity contribute to higher rates of poverty in the entire LGBTQ community, particularly in transgender communities and communities of color. Transgender people

report being four times more likely to live on an income of \$10,000 per year compared with the general population. They also report experiencing unemployment at twice the rate of the general population, with the rates being four times as high for transgender people of color.²¹

African Americans in same-sex relationships report more than twice the poverty rate of African Americans in different-sex marriages as a result of intersecting experiences of discrimination on the basis of both sexual orientation and race.²² African American women in same-sex couples—who no doubt experience wage disparities as a result of race, gender, and sexual orientation—are more than three times more likely to live in poverty than white women in same-sex relationships.²³ African American men in same-sex relationships are six times more likely to live in poverty than white men in same-sex relationships.²⁴

Protecting LGBTQ people in housing

It is equally important that nondiscrimination statutes include housing protections, given the high incidence of discrimination that LGBTQ people experience when attempting to access and maintain safe housing. Currently, 22 states and the District of Columbia offer protections against housing discrimination based on sexual orientation.²⁵ Twenty states and the District of Columbia also offer protections against housing discrimination based on gender identity, and among those 20 states, all but Illinois, Iowa, and Vermont protect residents against discrimination on the basis of gender expression.²⁶

In June 2013, the U.S. Department of Housing and Urban Development released data from a national study showing that gay and lesbian couples are significantly less likely to receive a positive response when applying for housing than similarly situated heterosexual couples.²⁷ A national survey of transgender people found that 19 percent had been refused a home or apartment, and 11 percent had been evicted because of their gender identity.²⁸ In the same survey, only 32 percent of transgender respondents reported being homeowners, compared with 67 percent of the general population.²⁹

LGBTQ people of color report significantly higher rates of housing discrimination than their white counterparts. For example, 37 percent of transgender African American respondents to the same survey reported being evicted because of

their gender identity, compared with 8 percent of transgender white respondents. Twenty-nine percent of transgender Latino/a respondents have been refused a home or apartment outright upon applying, compared with 15 percent of transgender white respondents.³⁰

These experiences contribute to high rates of housing insecurity and homelessness in LGBTQ communities. In a 2013 survey of San Francisco residents, 29 percent of respondents who identified as LGBTQ reported experiencing homelessness at some point in their lives.³¹ Nationally, it is estimated that 40 percent of homeless youth are LGBTQ.³²

Protecting LGBTQ people in public accommodations

LGBTQ people also report high rates of discrimination in attempting to safely access public accommodations in the spaces that they move through every day. Twenty-one states and the District of Columbia expressly prohibit discrimination in public accommodations on the basis of sexual orientation.³³ Nineteen of those states and the District of Columbia also expressly prohibit discrimination in public accommodations on the basis of gender identity.³⁴ Even with these protections, however, more than half of LGBTQ adults in the United States are not protected by any type of state-level public accommodations protections.

A survey of gay and lesbian New York residents found that 27 percent experience inappropriate treatment or hostility in places of public accommodation, while 6 percent reported being denied service outright when eating at a restaurant, entering a store, or staying at a hotel.³⁵ Another national survey found that 44 percent of transgender respondents had been denied equal treatment or service at a hotel or restaurant because of their gender identity,³⁶ and more than half of transgender people reported being verbally harassed or disrespected in a place of public accommodation because of their gender identity or expression.³⁷

It is important that nondiscrimination statutes include protections in public spaces where LGBTQ people are most vulnerable, including access to sex-segregated facilities, homeless shelters, and healthcare facilities. A study by the Center for American Progress and The Equal Rights Center found that only 30 percent of homeless shelters tested were willing to house transgender women in spaces in accordance with their gender identity. The study also found that states with protections were twice as likely to house transgender women in appropriate spaces.³⁸

Access to health care and health care facilities is particularly important. According to national data, 70 percent of transgender and gender-nonconforming respondents and nearly 56 percent of LGB respondents report experiencing at least one instance of discrimination or patient profiling when attempting to access health services.³⁹ LGBTQ people of color and low-income people report even higher instances of discrimination. According to the same data, approximately one in three low-income transgender and gender-nonconforming respondents report being refused necessary medical care because of their gender identity.⁴⁰ Another survey found that 24 percent of all transgender respondents were denied equal treatment at a doctors' office or hospital and that 13 percent were denied equal treatment in emergency rooms.⁴¹

Safely accessing sex-segregated public spaces—including restrooms—is important for all people and for transgender people in particular. One survey of transgender and gender-nonconforming people in Washington, D.C., found that 70 percent of respondents reported being verbally harassed, denied access to, or physically assaulted in public restrooms. Fifty-four percent reported adverse health effects as a result of trying to avoid using public restrooms.⁴² Although recently several anti-equality activists have galvanized opposition to state nondiscrimination bills by claiming that their passage would make bathrooms dangerous for cisgender people, research continues to debunk such claims as completely unfounded.⁴³

Maintaining or enhancing protections for all identities at every level of government

LGBTQ nondiscrimination protections provide an important mechanism to expand and enhance protections for other communities and identities. In most instances, nondiscrimination laws already exist, while some localities will require the construction of new nondiscrimination frameworks. In order for LGBTQ people to secure the range of protections necessary to combat the full scope of discrimination, existing laws may need to be modernized; at a minimum, however, LGBTQ nondiscrimination protections should maintain existing laws at both the state and local levels. The goal of adding sexual orientation and gender identity and expression protections to nondiscrimination laws is to expand protections for all people and should never be utilized as an excuse for undermining existing frameworks.

Include currently excluded identities

In many instances, the pre-existing, prevailing nondiscrimination framework may not include protected classes from other states or federal law in every area of life. For example, most states still lack marital status protections for all individuals.⁴⁴ At the federal level, sex is currently absent from public accommodations and many portions of federally funded programs.⁴⁵ It is particularly important to include sex whenever sexual orientation and gender identity appear in a law, given the significant overlap in discrimination. When pre-existing nondiscrimination laws do not provide the scope of protections necessary for LGBTQ people to live and thrive, it's important to improve existing civil rights laws to enhance protections for them, not to settle for an inadequate structure that leaves far too many families behind.

Some cities and counties may not have an existing nondiscrimination framework. New nondiscrimination laws should include other classes commonly found in civil rights laws, such as race, sex, religion, disability, and other traditionally protected classes. Houston's 2014 Equal Rights Ordinance, which was eventually

rescinded in a contentious public referendum, created a municipal nondiscrimination apparatus where none previously existed. In doing so, the city council passed protections for 15 identities, including sexual orientation, gender identity, sex, religion, veterans status, military status, and race.⁴⁶ A majority of the complaints filed under the ordinance were based on race, sex, and age, despite state and federal laws that also ban such discrimination.⁴⁷

The passage of LGBTQ nondiscrimination protections at any level provides an important opportunity to modernize nondiscrimination laws for other protected classes as well, ensuring parity and equality in nondiscrimination protections. Even if protections already exist at the state or federal level for a particular identity, it is important to include these protected classes in municipal laws, since they create a new and unique mechanism to combat discrimination.

Do not limit local protections in state laws

State nondiscrimination protections should be a floor, not a ceiling. They should not undo the progress local ordinances have achieved, nor should they impede the ability of local ordinances to go even further in preventing future discrimination. For example, Arkansas, North Carolina, and Tennessee passed state laws interfering with the ability of localities to pass LGBTQ-inclusive nondiscrimination laws, preempting protections in Fayetteville, Charlotte, and Nashville, respectively.⁴⁸ Laws that preempt cities and counties from instituting more extensive protections restrict cities' ability to respond to the changing needs of their residents and limit the ability of nondiscrimination protections to be comprehensive in areas where evidence highlights they are necessary.

Modernize the scope of laws

Some existing nondiscrimination laws may fail to provide the scope of protections necessary to combat all forms of discrimination. LGBTQ nondiscrimination legislation provides an important opportunity to modernize existing laws to provide all protected classes the full range of necessary protections. For example, federal public accommodations protections for race, color, religion, and national origin only include protections in a small part of the public marketplace, including lodging, restaurants, transportation depots, and theaters and entertainment venues.⁴⁹ Such coverage does not include discrimination that occurs in stores, transporta-

tion services, health care facilities, and other kinds of public accommodations. Where such gaps exist, modernizing existing nondiscrimination laws would not only provide LGBTQ communities with the protections they need but it would also present the opportunity to expand protections for all classes.

Protect existing laws

If nondiscrimination laws were to roll back existing protections when adding sexual orientation and gender identity and expression, they would cause harm by unjustly limiting the protections of other protected classes. Examples of such measures include new limits to damages awarded to people who file successful discrimination claims or the creation of new religious exemptions in existing nondiscrimination protections.⁵⁰ Such actions arbitrarily weaken safeguards for all protected classes. For LGBTQ people who live at the intersection of multiple protected classes, such actions would undermine the protections they would conceivably gain.

Do not penalize people for filing complaints

Penalizing people for filing unsuccessful complaints opens the door to retaliation against those who bring discrimination complaints. Indiana's proposed nondiscrimination bill, for example, would allow a penalty of up to \$1,000 for complaints that the commissioner determines are "frivolous" and "intended to harm the subject of the complaint."⁵¹

This creates a solution for a nonexistent problem. Rather than frivolous complaints, the true problem is underreporting of discrimination: An estimated 4 million acts of rental housing discrimination occur each year, but only 27,528 of these complaints are reported.⁵² According to a Williams Institute report that looked at an aggregate of all available state level data, LGBTQ people use public accommodation legal protections at rates similar to people of color using race nondiscrimination laws and women using sex nondiscrimination laws.⁵³ Penalties for filing complaints do not promote equal treatment under the law—they may only deter people from filing legitimate complaints out of fear that losing their cases could carry a heavy financial penalty.

While a penalty for bringing an unsuccessful discrimination complaint should be avoided, awarding attorney's fees is reasonable, in limited circumstances. Title VII of the Civil Rights Act includes a provision under which courts may allow the prevailing party a reasonable attorney's fee.⁵⁴ The U.S. Supreme Court found in *Christiansburg Garment Co. v. Equal Employment Opportunity Coalition* that employees generally should not have to worry about having to pay their employer's attorney fees if their case did not succeed at trial. Assessing fees simply because the plaintiff did not win would "undercut the efforts of Congress to promote the vigorous enforcement of the provisions of Title VII."⁵⁵ In cases of a claim that was "frivolous, unreasonable, or groundless," a court may require the plaintiff to pay attorney's fees.

Ensuring parity and equality for LGBTQ people in nondiscrimination laws

One of the more common attempts to amend LGBTQ nondiscrimination bills is to include unique exemptions or exclusions that allow for discrimination to persist in vital areas of life.⁵⁶ These exemptions perpetuate and condone the discrimination that falls within the exclusion, leaving many people vulnerable to life-altering discrimination. Exemptions—whether based on religious beliefs or focused on restroom exclusions—frequently target the most vulnerable members of LGBTQ communities. In fighting for equality, LGBTQ people deserve the same protections from discrimination provided to other communities.

Do not privilege religiously based discrimination

The first common exemption seeks to allow entities or organizations with a religious affiliation to be allowed to discriminate against LGBTQ individuals and families.⁵⁷ Such overly-broad religious exemptions would effectively condone anti-LGBTQ discrimination against some of the most vulnerable LGBTQ community members, including homeless LGBTQ youth seeking shelter and LGBTQ families living in poverty.⁵⁸ Additionally, LGBTQ parents seeking to adopt children may face stigmatizing and unequal barriers to adoption.⁵⁹

Religious freedom is an important and long-standing principle that allows all Americans to worship and practice their faith, but it does not and should not include the right to utilize religion to impose harm on others. Incorporating LGBTQ people into a comprehensive nondiscrimination framework does not disrupt America's historic, constitutionally protected freedom of religion. Indeed, religious freedom continues to flourish in the states and localities that have already passed LGBTQ-inclusive protections. States such as Iowa, Colorado, Illinois, and Maryland all have thriving religious freedom and nondiscrimination protections for LGBTQ people.⁶⁰

Incorporating unique exemptions, particularly for religiously-based discrimination, effectively communicates to both the public and the entities charged with enforcement that LGBTQ discrimination should be treated differently than other forms of discrimination.⁶¹ Such a message not only condones discrimination within these exclusions but also could potentially provide a rationale to undermine protections in broader areas of life.

Include small businesses

While Title VII of the Civil Rights Act of 1965 is limited to employers with 15 or more employees, state nondiscrimination laws can go beyond Title VII's coverage and extend protections to small businesses. In fact, many states extend coverage of employment nondiscrimination laws to employers who employ one or more individuals.⁶² A poll conducted by CAP, American Unity Fund, and Small Business Majority found that 81 percent of small business owners support a federal law banning employment discrimination against LGBTQ people. When it comes to serving everyone that walks through their doors, the poll found that 80 percent of small business owners support laws banning discrimination against LGBTQ people in public accommodations.⁶³

These protections have broad support across party lines and among Christian small business owners.⁶⁴ It is unnecessary to exempt small businesses when they overwhelmingly support the protections without exemptions.⁶⁵ Indiana's proposed nondiscrimination bill, for example, would treat LGBTQ people differently than other protected classes by only including exemptions for businesses with four or more employees in marriage-related services.⁶⁶ Employers with six or more employees are covered by the state's employment nondiscrimination laws, and there is no small business exemption for public accommodations protections.⁶⁷

Include shared facilities

Another common exemption seeks to exclude shared facilities, such as restrooms, from gender identity nondiscrimination protections. The discriminatory legislation in North Carolina, H.B. 2, has thrust this conversation into the national spotlight, highlighting both the need for protections in such facilities and the support for allowing transgender people access to restrooms consistent with who they are.⁶⁸ Bathroom exclusions reinforce stigma and prejudice against

transgender people, while leaving them without protection or recourse should they face harassment or discrimination. One study found that 70 percent of transgender people surveyed in Washington, D.C., said that they had experienced discrimination or harassment in a public restroom.⁶⁹ Another study found that 54 percent of transgender respondents experienced negative health outcomes due to avoiding public restrooms.⁷⁰

While opponents cite concerns regarding public safety, no evidence exists to suggest that passing protections for transgender people throughout daily life, including in shared facilities, increases incidences where public safety is compromised. Law enforcement officials have spoken out against these claims and Patricia Dailey Lewis, a Delaware prosecutor in charge of the state's child predator unit stated that the notion that gender identity protections could threaten children "is offensive and exploitative to children and to the parents that seek to protect them."⁷¹ Additionally, all harmful behavior, from voyeurism to assault, would remain illegal.

Access to shared facilities is vital to be able to fully participate in society. Failing to protect transgender people from discrimination and harassment in shared facilities can limit their ability to work, attend school, or go to a restaurant or a shopping mall.

Conclusion

Ongoing expansion and improvement of our nation’s nondiscrimination laws are a vital way to ensure that LGBTQ community members have the opportunity to survive and thrive in our society. While comprehensive nondiscrimination laws will not solve every instance of discrimination, they will provide an important mechanism for discriminatory landlords, employers, shop owners and others to be held accountable for their behavior.

The existing nondiscrimination framework in the United States codifies the covenant that the government and its representatives have struggled to uphold throughout this country’s history—that every person is created equal and endowed with a right to life, liberty, and equal protection under the law. As cities, states, and the nation continue to debate and pass LGBTQ nondiscrimination protections, elected officials and advocates must ensure that no one—in any state, community, or vital area of life—is left behind.

About the authors

Ashe McGovern is a former Policy Analyst with the LGBT Research and Communications Project at the Center for American Progress, where they focus on issues related to poverty and criminalization within LGBTQ communities. Prior to joining CAP, Ashe was an equal justice works fellow at New York Legal Assistance Group, where they launched the LGBTQ Health and Economic Justice Initiative and provided direct legal services and policy advocacy to low-income LGBTQ New Yorkers. Ashe received their J.D. from Cornell Law School, where they served as an acquisitions editor for the *Cornell Journal of Law and Public Policy*, and their B.A. magna cum laude in government and feminist, gender, and sexuality studies from Cornell University.

While pursuing their J.D., Ashe worked at several national civil rights organizations and engaged in direct representation of clients on a range of issues—including advocacy on behalf of incarcerated people and low-wage workers. Prior to law school, Ashe was an adult literacy and English as a second language, or ESL, teacher.

Sarah McBride is the former Campaigns and Communications Manager for the LGBT Research and Communications Project at the Center for American Progress. Sarah joined CAP after completing her undergraduate degree at American University, where she served as student body president.

A native of Wilmington, Delaware, Sarah currently serves on the Board of Directors of Equality Delaware, the state's primary LGBT advocacy and educational organization. In that capacity, Sarah helped lead and served as the primary spokesperson for the successful effort to add gender identity and expression to her state's nondiscrimination and hate-crimes laws during the 2013 legislative session. In 2008 she served as a field organizer for Gov. Jack Markell's (D-DE) campaign and in 2010 as field director for Delaware Attorney General Beau Biden's re-election effort.

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Endnotes

- 1 M.V. Lee Badgett and others, "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination" (Los Angeles: The Williams Institute, 2007), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf>; Jaime Grant and others, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey" (Washington: National Center for Transgender Equality and the National Gay and Lesbian Task Force, 2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.
- 2 Sharita Gruberg, "We the People: LGBT Americans and Housing" (Washington: Center for American Progress, 2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2015/04/NonDisc-Housing-4.10.pdf>; Hannah Hussey, "We the People: LGBT Americans and Education" (Washington: Center for American Progress, 2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2015/04/NonDisc-Education-4.10.pdf>; Center for American Progress and Movement Advancement Project, "Unjust: How the Broken Criminal Justice System Fails LGBT People" (2016), available at <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf>; Sarah McBride, "We the People: Americans and the Public Square" (Washington: Center for American Progress, 2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2015/04/NonDisc-PubAccomm-4.10.pdf>.
- 3 Movement Advancement Project, "Non-Discrimination Laws," available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws (last accessed June 2016).
- 4 American Civil Liberties Union, "Non-Discrimination Laws: State by State information—Map," available at <https://www.aclu.org/map/non-discrimination-laws-state-state-information-map> (last accessed June 2016).
- 5 Movement Advancement Project, "Non-Discrimination Laws"; Zack Ford, "North Carolina Lawmakers Waste Taxpayer Money to Gut LGBT Protections," ThinkProgress, March 23, 2016, available at <http://thinkprogress.org/lgbt/2016/03/23/3762662/north-carolina-special-session-preemption/>.
- 6 Grant and others, "Injustice at Every Turn."
- 7 Badgett and others, "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination"; Grant and others, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey."
- 8 Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders, "Out and Visible: The Experiences and Attitudes of Lesbian, Gay, Bisexual and Transgender Older Adults, Ages 45–47," available at <http://www.sageusa.org/resources/publications.cfm?ID=214>.
- 9 Jack Harrison, Jamie Grant, and Jody L. Herman, "A Gender Not Listed Here: Genderqueers, Gender Rebels, and OtherWise in the National Transgender Discrimination Survey," *LGBTQ Policy Journal at the Harvard Kennedy School* 2 (2011–2012): 13–24, available at http://www.thetaskforce.org/static_html/downloads/reports/reports/gender_not_listed_here.pdf.
- 10 *Macy v. Holder*, No. 0120120821 (E.E.O.C. Apr. 20, 2012).
- 11 Ilona M. Turner, "Sex Stereotyping Per Se: Transgender Employees and Title VII," *California Law Review* 95 (2) (2007): 561–596, available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1227&context=californialawreview>.
- 12 Sonali Kohli, "More than half of LGBT students have felt unsafe at school," *Los Angeles Times*, October 21, 2015, available at <http://www.latimes.com/local/education/community/la-me-edu-bullying-prevention-month-lgbt-students-20151020-story.html>.
- 13 Jack Harrison, "Wonky Wednesday: Trans people & sexual orientation," National LGBTQ Task Force, June 5, 2013, available at <http://thetaskforceblog.org/2013/06/05/wonky-wednesday-trans-people-sexual-orientation/>.
- 14 Movement Advancement Project, "Equality Maps: Non-Discrimination Laws," available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws (last accessed June 2016).
- 15 *Ibid.*
- 16 *Ibid.*
- 17 M.V. Lee Badgett and others, "Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination" (Los Angeles: The Williams Institute, 2007), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf>.
- 18 Grant and others, "Injustice at Every Turn."
- 19 Teresa Rainey and Elliot E. Imse, "Qualified and Transgender: A Report on Results of Resume Testing for Employment Discrimination Based on Gender Identity" (Washington: District of Columbia Office of Human Rights, 2015), available at http://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/QualifiedAndTransgender_FINAL_110215.pdf.
- 20 Grant, "Injustice at Every Turn."
- 21 *Ibid.*
- 22 M.V. Lee Badgett, Laura E. Durso, and Alyssa Schnee-ebaum, "New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community" (Los Angeles: The Williams Institute, 2013), available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-poverty-update-june-2013/>.
- 23 *Ibid.*
- 24 *Ibid.*
- 25 These states include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. For more information, see, Movement Advancement Project, "Equality Maps: Non-Discrimination Laws," available at http://www.lgbtmap.org/equality-maps/non_discrimination_laws (last accessed June 2016).

- 26 These states include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. Movement Advancement Project. For more information, see, "Equality Maps: Non-Discrimination Laws," available at http://www.gbtmap.org/equality-maps/non_discrimination_laws (last accessed June 2016).
- 27 Samantha Friedman and others, "An Estimate of Housing Discrimination Against Same-Sex Couples" (U.S. Department of Housing and Urban Development, 2013), available at http://www.huduser.org/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf.
- 28 Grant, "Injustice at Every Turn."
- 29 Ibid.
- 30 Ibid.
- 31 City and County of San Francisco Human Services Agency, "San Francisco Releases Homeless Count," Press release, June 21, 2013, available at <http://www.sfgov3.org/modules/showdocument.aspx?documentid=4831>.
- 32 Andrew Cray, Katie Miller, and Laura E. Durso, "Seeking Shelter: The Experiences and Unmet Needs of LGBT Homeless Youth" (Washington: Center for American Progress, 2013), available at <http://cdn.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf>.
- 33 Movement Advancement Project, "Non-Discrimination Laws."
- 34 Ibid.
- 35 Crosby Burns and Philip Ross, "Gay and Transgender Discrimination Outside the Workplace: Why We Need Protections in Housing, Health Care, and Public Accommodations" (Washington: Center for American Progress, 2011), available at http://www.americanprogress.org/wp-content/uploads/issues/2011/07/pdf/lgbt_discrimination.pdf.
- 36 Grant and others, "Injustice at Every Turn."
- 37 Ibid.
- 38 Caitlin Rooney, Laura E. Durso, and Sharita Gruber, "Discrimination Against Transgender Women Seeking Access to Homeless Shelters" (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/lgbt/report/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.
- 39 Lambda Legal, "When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination Against LGBT People and People Living with HIV" (2010), available at http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring_1.pdf.
- 40 Ibid.
- 41 Grant and others, "Injustice at Every Turn."
- 42 Elijah Adiv Edelman and others, "Access Denied: Washington, DC Trans Needs Assessment Report" (Washington: DC Trans Coalition, 2015), available at <https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf>.
- 43 Timothy Wang and others, "State Anti-Transgender Bathroom Bills Threaten Transgender People's Health and Participation in Public Life" (Boston and Washington: The Fenway Institute and the Center for American Progress, 2016), available at http://fenwayhealth.org/wp-content/uploads/2015/12/COM-2485-Transgender-Bathroom-Bill-Brief_v8-pages.pdf.
- 44 NOLO, "What is marital status discrimination?," available at <http://www.nolo.com/legal-encyclopedia/what-marital-status-discrimination.html> (last accessed June 2016).
- 45 U.S. Department of Justice, "Title II of the Civil Rights Act (Public Accommodations)," available at <https://www.justice.gov/crt/title-ii-civil-rights-act-public-accommodations> (last accessed June 2016); "Title VI of the Civil Rights Act of 1964 42 U.S.C. § 2000d Et Seq." (Washington: The United States Department of Justice), available at <https://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>.
- 46 City of Houston, "An Ordinance Amending Chapters 2, 15 and 17 of the Code of Ordinance, Houston, Texas" (2014), available at https://archive.org/stream/equal_rights_ordinance/equal_rights_ordinance_djvu.txt.
- 47 Alliance Houston, "Houstonians Value Fairness" (2015), available at <https://d3n8a8pro7vnmx.cloudfront.net/houequality/pages/58/attachments/original/1438360369/HERO-fact-packet-07302015.pdf?1438360369>.
- 48 Emma Margolin, "Arkansas clears a new kind of anti-LGBT law," MSNBC, February 24, 2015, available at <http://www.msnbc.com/msnbc/arkansas-clears-new-kind-anti-lgbt-law>; Ned Barnett, "The fake protection and real damage of HB2," News & Observer, July 23, 2016, available at <http://www.newsobserver.com/opinion/opn-columns-blogs/ned-barnett/article91495487.html>; Jillian T. Weiss, "Tennessee Bill to Ban Local LGBT Non-Discrimination Laws—Is it Constitutional?" LGBTQ Nation, May 16, 2011, available at http://www.bilerico.com/2011/05/tennessee_bill_to_ban_local_lgbt_non-discrimination.php.
- 49 U.S. Department of Justice, "Title II of the Civil Rights Act (Public Accommodations)."
- 50 *A bill for an act to amend the Indiana Code concerning civil rights*, proposed, 119th Indiana General Assembly (2016), available at http://www.indianasenatepublicans.com/clientuploads/Documents/2016%20Session/SB100_LS6175.pdf; *Antidiscrimination and Religious Freedom Amendments*, S.B. 296, 2015 Utah General Session, available at <http://le.utah.gov/~2015/bills/static/SB0296.html>.
- 51 *A bill for an act to amend the Indiana Code concerning civil rights*.
- 52 National Fair Housing Alliance, "Where You Live Matters: 2015 Fair Housing Trends Report" (2015), available at <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=SYWmBgwpazA%3d&tabid=3917&mid=5321>.
- 53 Christy Mallory and Brad Sears, "Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014" (Los Angeles: The Williams Institute, 2016), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Accommodations-Discrimination-Complaints-2008-2014.pdf>.

- 54 Civil Rights Act of 1964, §7, 42 U.S.C. §2000e et seq (1964).
- 55 *Christiansburg Garment Co. v. EEOC* 434 U.S. 412 (1978), available at <https://supreme.justia.com/cases/federal/us/434/412/case.html>
- 56 *A bill for an act to amend the Indiana Code concerning civil rights.*
- 57 Tony Cook, Stephanie Wang, and Chelsea Schneider, "Republicans' LGBT protections bill draws criticism on both sides," *The Indiana Star*, November 17, 2015, available at <http://www.indystar.com/story/news/politics/2015/11/17/republicans-unveil-sexual-orientation-gender-identity-bill/75942498/>; Ian Thompson, "ENDA's Religious Exemption Is Far Too Broad," *Slate*, April 14, 2014, available at http://www.slate.com/blogs/outward/2014/04/14/enda_s_religious_exemption_is_too_broad_to_truly_protect_lgbt_workers.html.
- 58 Zack Ford, "Utah Bill Would Ban LGBT Discrimination, With Some Big Exceptions" *ThinkProgress*, March 6, 2015, available at <http://thinkprogress.org/lgbt/2015/03/06/3630229/utah-lgbt-nondiscrimination-bill/>.
- 59 Erik S. Thompson, "Compromising Equality: An Analysis of the Religious Exemption in the Employment Non-Discrimination Act and its Impact on LGBT Workers," *Boston College Journal of Law & Social Justice*, 35 (2) (2015): 285-238, available at <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1084&context=jlsj>.
- 60 Jerome Hunt, "A State-by-State Examination of Nondiscrimination Laws and Policies: State Nondiscrimination Policies Fill the Void but Federal Protections Are Still Needed" (Washington: Center for American Progress, 2012) available at https://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf.
- 61 Ed O'Keefe, "Gay rights groups withdraw support of ENDA after Hobby Lobby decision," *The Washington Post*, July 8, 2014, available at <https://www.washingtonpost.com/news/post-politics/wp/2014/07/08/gay-rights-group-withdrawing-support-of-enda-after-hobby-lobby-decision/>.
- 62 National Conference of State Legislatures, "State Laws on Employment-Related Discrimination," available at <http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx> (last accessed June 2016).
- 63 Small Business Majority, "Opinion Poll: Small Business Owners Oppose Denying Services to LGBT Customers Based on Religious Beliefs," Press release, July 13, 2015, available at <https://www.smallbusinessmajority.org/our-research/workforce/opinion-poll-small-business-owners-oppose-denying-services-lgbt-customers>.
- 64 *Ibid.*
- 65 *Ibid.*
- 66 *A bill for an act to amend the Indiana Code concerning civil rights.*
- 67 National Conference of State Legislatures, "State Laws on Employment-Related Discrimination."
- 68 Amanda Terkel, "North Carolina Governor Faces Political Backlash For Anti-LGBT Law," *The Huffington Post*, April 22, 2016, available at http://www.huffingtonpost.com/entry/pat-mccrory-hb2_us_571a33ade4b0d4d3f7230244.
- 69 Jody L. Herman, "Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives," *Journal of Public Management and Social Policy* 19 (1) (2013): 65-80, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Gendered-Restrooms-and-Minority-Stress-June-2013.pdf>.
- 70 *Ibid.*
- 71 Jen Rini, "Lawmakers debate gender identity non-discrimination bill," *Delaware State News*, June 6, 2013, available at <http://delaware.newszip.com/centraldelaware/123007-70/lawmakers-debate-gender-identitynon-discrimination-bill>; Wang and others, "State Anti-Transgender Bathroom Bills Threaten Transgender People's Health and Participation in Public Life."

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