

Written Statement of
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To the
Committee on Financial Services
Subcommittee on Oversight and Investigations
United States House of Representatives
Financial Services and the LGBTQ+ Community: A Review
of Discrimination in Lending and Housing

10/29/2019

Chairman Green, Ranking Member Barr, and Members of the Committee:

My name is Alphonso David, and I am the President of the Human Rights Campaign, the nation's largest civil rights organization working to achieve equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. On behalf of our more than 3 million members and supporters, I am honored to testify at this hearing.

Every day, we fight in the halls of Congress, in state legislatures, and in the courtroom for our right to live and work free from discrimination. Systemic discrimination (including in housing, employment and credit), family rejection, and the persistence of the school to prison pipeline weigh heavily on our community's shoulders and make breaking even, much less getting ahead, feel utterly impossible.¹ Discrimination and stigma push many members of our community so far to the margins that they have literally run out of safe places to be. For example, the rates of homelessness among LGBTQ people are breathtaking—40% of homeless youth identify as LGBTQ and young Black men report the highest rates of homelessness.²

The faces behind these numbers, many of whom are Black and Brown, reflect some of our community's most vulnerable—our youth, our transgender siblings, and people living with HIV.

¹ Morton, M.H., Dworsky, A., & Samuels, G.M. (2017). Missed opportunities: Youth homelessness in America. National estimates. Chicago, IL: Chapin Hall at the University of Chicago.

² Durso, L.E., & Gates, G.J. (2012). Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth who are Homeless or At Risk of Becoming Homeless. Los Angeles: The Williams Institute with True Colors Fund and The Palette Fund.

Once on the streets, we are more likely to be targets of violence, and we are less likely to be able to secure a job or be able to access and sustain daily maintenance medications.

The Trump Administration continues to propose aggressive policies that limit or exclude our community from accessing the shelters and programs our taxpayer dollars have funded. Without explicit federal protections, too many of us will face the hard and devastating reality of housing and credit discrimination, with no recourse. Accordingly, we strongly oppose Secretary Carson's proposed revisions to the landmark housing regulations, *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* and *Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs*, referred to collectively as the HUD Equal Access Rule. Further, we urge the Department of Housing and Urban Development to withdraw proposed revisions to the regulation implementing the Fair Housing Act's disparate impact standard. The existing disparate impact rule has served as a critical tool to combat facially neutral policies that disproportionately impact so many in our community. The increased burden of proof introduced by the proposed rule would drastically weaken this powerful enforcement mechanism.

Finally, we oppose the Justice Department's revised interpretation of the sex discrimination provisions of the 1964 Civil Rights Act. The Justice Department briefs filed in *Bostock v. Clayton Cnty.; Altitude Express, Inc. v. Zarda*; and *R.G. & G.R. Harris Funeral Homes, Inc. v EEOC & Aimee Stephens* at the Supreme Court argue for the adoption of a narrow, and legally specious interpretation of Title VII of the 1964 that would exclude lesbian, gay, bisexual, and transgender workers from its protection. This directly conflicts with existing judicial and administrative precedent, including the interpretation of "sex discrimination" employed by the Equal Employment Opportunity Commission. These cases and the actions of the Department of Justice directly influence the interpretation of protections under similar civil rights statutes including the Fair Housing Act.

LGBTQ people, particularly those in communities of color, shoulder the weight of discrimination at unconscionably high rates.

Based on research conducted by the Department of Housing and Urban Development (HUD), same-sex couples experience significant levels of discrimination when responding to advertised rental housing nationwide. Specifically the research shows that different-sex couples were routinely favored over gay male or lesbian couples by a significant margin³. Transgender people

³ U.S. Department of Housing and Urban Development, Office of Policy Development and Research (June 2013). *An Estimate of Housing Discrimination Against Same-Sex Couples*. Retrieved from: http://www.huduser.org/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf.

experience discrimination in housing even more often. Nearly one in four transgender people have reported being refused a home or apartment because of their gender identity or expression.⁴

Tonya and Rachel Smith a loving, married same-sex couple from Colorado experienced this discrimination. Rachel is also transgender. In 2015, the couple were looking for a new home for their family. Their must-haves were simple—they needed a home that was affordable, with outdoor space for their young children, located near a quality public school. They found the perfect duplex in the community of Gold Hill. However, only a few hours after touring the property the landlord emailed, informing them that they could not rent the unit because of their “unique relationship.”⁵ In 2017, the United States District Court for the District of Colorado held that the landlord’s refusal violated the Fair Housing Act’s nondiscrimination provision.⁶

This decision is consistent with the developing trajectory regarding discrimination on the basis of sexual orientation and gender identity as unlawful sex stereotyping under federal civil rights laws. The *Smith* court relied on the landmark Supreme Court sex stereotyping case *Price Waterhouse v. Hopkins*. The court held that “discrimination against women (like [Smith]) for failure to conform to stereotype norms concerning to or with whom a woman should be attracted, should marry, and/or should have children is discrimination on the basis of sex under the FHA.”

The federal bench has overwhelmingly adopted this interpretation to include LGBTQ people under the protective umbrella of sex nondiscrimination statutes. The First, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits and many district courts have all recognized that claims of discrimination on the basis of gender identity is sex discrimination under Title VII and other federal civil rights laws based on *Price Waterhouse*. Likewise, the Second and Seventh Circuits and multiple district courts have concluded sexual orientation discrimination as a form of sex discrimination as well.

Recent studies confirm that discrimination faced by our community is further compounded by race and ethnicity—rates of discrimination in housing are higher for Black and Latinx same-sex couples and transgender people. According to a recent study, Black male couples are the most likely to experience discrimination when seeking rental housing of all family types.⁷ Some studies have found Black LGBTQ people face twice the levels of discrimination as their white counterparts.⁸

These stark racial disparities hold true for transgender individuals as well. Nearly 40% of Black transgender people have reported eviction because of their gender identity and report rates of

⁴ James S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality.

⁵ *Smith v. Avanti*, 249 F. Supp. 3d 1194 (2017).

⁶ *Id.*

⁷ David Schwegman (2018): Rental Market Discrimination Against Same-Sex Couples: Evidence From a Pairwise-Matched Email Correspondence Test, *Housing Policy Debate*.

⁸ *Id.*

homelessness three times that of white transgender people.⁹ Latinx, Native American, and multi-racial transgender people report similarly significant higher rates of discrimination.¹⁰

Transgender people rejected from home, denied a rental unit, or evicted because of their gender identity may turn to an emergency shelter for relief. These emergency shelters receive federal and state tax dollars and are designed as the final safety net from exposure to the elements. Before publication of the HUD Equal Access Rule, which prohibits discrimination in HUD-funded programs on the basis of sexual orientation and gender identity, nearly half of transgender people seeking emergency shelter reported that these shelters required them to be housed with the wrong gender in order to obtain shelter.¹¹ In many cases, these policies resulted in a transgender woman housed as the only woman in a men's shelter. As a result of these dangerous policies, one in four transgender women reported physical assaults during their stay and 22% reported experiencing sexual assault at the shelter. Half of all respondents provided that they chose to return to the street rather than stay in the shelter because of safety concerns.¹²

The consequences of homelessness, particularly for LGBTQ youth and young adults, are far reaching and can last a lifetime. Homelessness is harmful to mental and physical health, and increases risk for sexual violence and exploitation, substance abuse, social stigma and discrimination. Young adults who experience homelessness also report lower levels of long-term educational attainment—placing them at an even greater disadvantage when they enter the job market. Housing insecurity and homelessness can contribute to catastrophic consequences for economic stability, educational attainment and life expectancy.

Discrimination in credit and lending limit growth of financial stability.

In addition to high rates of discrimination in the rental market, LGBTQ people also continue to experience discrimination when purchasing a home and securing a mortgage. People of color experience similar discriminatory and predatory practices when seeking credit, or are often met with a flat denial of credit for mortgages. For LGBTQ people of color living at the intersection of this discrimination, home ownership and the stability it can provide are all too often out of reach. Studies have shown that banks routinely favor different-sex couples over same-sex couples applying for mortgages by a startling 73%.¹³ Homeownership in the transgender

⁹ City of Philadelphia (June 2018). *Mayor's Taskforce on Eviction Prevention and Response: Report and Recommendations*. Retrieved from:
<https://www.phila.gov/hhs/PDF/Mayors%20Task%20Force%20on%20Eviction%20Prevention%20and%20Response-e-Report.pdf>.

¹⁰ *Id.*

¹¹ J.M. Grant, L.A. Mottet, J. Tanis, J. Harrison, J.L. Herman, M. Keisling, *Injustice at Every Turn: A Report on the National Transgender Discrimination Survey*, 118 (2011).

¹² *Id.*

¹³ Lending practices to same-sex borrowers, Hua Sun, Lei Gao *Proceedings of the National Academy of Sciences* May 2019, 116 (19) 9293-9302.

community is less than half the national average at only 33%.¹⁴ Discrimination in accessing credit continues to be one of the most prominent barriers for LGBTQ people seeking to buy a home or start a business. LGBTQ people frequently report denial of a loan that they are otherwise qualified for simply because of their sexual orientation or gender identity.

Access to federally backed mortgages, particularly through the Federal Housing Authority (FHA) has traditionally served as a critical tool to bridge opportunity gaps based on discrimination. FHA loans serve as a critical stepping-stone to the American dream for many buyers chronically underserved by traditional lenders including low-income populations, LGBTQ people, and people of color. A 2011 study revealed that half of all mortgage loans taken out by Black and Latinx Americans were FHA loans.¹⁵ Under the HUD Equal Access Rule, FHA lenders can no longer take a borrower's sexual orientation or gender identity into account when determining credit worthiness. This has made the dream of homeownership, and the financial and family stability it can provide, a reality for the first time for many LGBTQ homebuyers.

The HUD Equal Access Rule has proven to be an effective tool to end harmful discrimination in housing and loan programs. Within a year of publication, HUD announced a settlement with a major banking institution for discriminating against a Florida lesbian couple seeking a home loan insured by the FHA.¹⁶ Patty Snyder and her partner Shelley applied for an \$87,000 home loan to purchase their dream home in South Daytona, Florida. The lender assured the couple that there would be no problem with the loan and advised them to schedule the closing. Despite qualifying for the loan, the bank refused to finalize the loan when they realized they were a same-sex couple. Although the case was resolved in favor of the couple, the months-long delay resulted in the loss of their dream home to another buyer.

Equal access to housing is essential for people living with HIV.

As we enter the fourth decade of the HIV/AIDS epidemic, people living with the virus continue to face stigma and discrimination including in housing. Although this discrimination is barred by statute, people living with HIV continue to be denied rental housing and credit if the property owner or bank is aware of their status. The high cost of treatment can also strain individual and family finances, increasing the risk for homelessness.

For individuals living with HIV, housing is health care. Research has shown that stable housing is a valid predictor in health care outcomes, particularly for those living with HIV. It is critical to maintaining continuity of care to achieve and maintain viral suppression, and for accessing

¹⁴ The Federal Home Loan Mortgage Corporation (May 2018). *The LGBT Community: Buying and Renting Homes*. Retrieved from: http://www.freddiemac.com/fmac-resources/research/pdf/Freddie_Mac_LGBT_Survey_Results_FINAL.pdf.

¹⁵ Federal Housing Administration (Fiscal Year 2015). *The Financial Status of the FHA Mutual Mortgage Insurance Fund: Annual Report to Congress*. Retrieved from: <https://www.hud.gov/sites/documents/2015FHAANNUALREPORT.PDF>.

¹⁶ *In re: Matter of Bank of America*, Docket- No. 12-1657-N1R (November 1, 2012).

needed supportive services that can enhance the quality of life. Having stable housing is associated with fewer hospitalizations, and reduced mortality rates.¹⁷ Housing status has more impact on health outcomes than demographics, drug and alcohol use, mental health status, or receipt of social services.¹⁸

Vigorous enforcement and preservation of existing protections is critical.

For the past decade, the Department of Housing and Urban Development has interpreted the Fair Housing Act to include discrimination against LGBTQ people through informal guidance on the basis of sex stereotyping and perceived or actual disability.¹⁹ In 2012 and 2016 HUD engaged in formal rulemaking explicitly prohibiting discrimination on the basis of sexual orientation and gender identity in all HUD-funded programs.²⁰ Following publication in 2012, HUD vigorously enforced these provisions, engaged in diverse outreach and education efforts, and provided covered entities and organizations with concrete, clear guidance regarding their obligations.²¹

In 2013, HUD further clarified the reach of the Fair Housing Act in a regulation implementing the Act's disparate impact standard. Disparate impact claims under the Act are critical to addressing systemic housing discrimination and segregation in the United States. This original rule provided significant safeguards for individuals from particularly pernicious aspects of oft-overlooked discrimination that may lack—at least visible—discriminatory intent. Regardless of intent, policies and practices with a disparate effect further limit housing access for historically marginalized people, including LGBTQ individuals.

These policies worked. Even before federal marriage equality in 2015, HUD's enforcement of the Equal Access Rule ensured that LGBTQ families were served by programs funded by the Department. Same-sex couples and their children are entitled to receive services as a family unit and cannot not be separated or treated as legal strangers by a family shelter.²² HUD also provided emergency shelters serving transgender people with explicit guidance regarding housing and placement and how to best serve this vulnerable population.²³

¹⁷U.S. Department of Health and Human Services. *Housing and Health*. Retrieved from: <https://www.hiv.gov/hiv-basics/living-well-with-hiv/taking-care-of-yourself/housing-and-health>.

¹⁸ *Id.*

¹⁹ U.S. Department of Housing and Urban Development. *Housing Discrimination and Persons Identifying as LGBTQ*. Retrieved from:
https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq

²⁰ *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* 77 FR 5359 (Feb. 3, 2012); *Equal Access in Accordance With an Individual's Gender Identity in Community Planning and Development Programs* 81 FR 64763 (Sept. 21, 2016).

²¹U.S. Department of Housing and Urban Development, Office of Community Planning and Development (September 2016). *Notice on Equal Access Regardless of Sexual Orientation, Gender Identity, or Marital Status for HUD's CPD Program*. Retrieved from: <https://files.hudexchange.info/resources/documents/Notice-on-Equal-Access-Rights.pdf>.

²² *Id.*

²³ *Id.*

As of today, these policies remain in place. But Secretary Carson's HUD has placed a target on these regulations that have meant so much, to so many, who have so little. He has proposed replacing these tested, functioning regulations with a vague laundry list that would allow emergency shelters to choose how to serve transgender people—or not. The federal government has not announced the settlement of a claim of housing discrimination on the basis of LGBTQ status since Trump took office, and it is unclear whether HUD's Office of Fair Housing and Equal Opportunity (FHEO) continues to accept and investigate these claims. Secretary Carson has proposed revisions to the Department's disparate impact regulation increasing the burden on individuals who have experienced discrimination. Under Carson, the Office also excluded information on sexual orientation and gender identity discrimination from the FHEO annual reports to Congress for the first time since 2008. In 2017, HUD withdrew guidance regarding enforcement of the Equal Access Rule that would have required people served by the rule to be given information about their rights.

Housing discrimination is a nationwide problem that has real human impacts. The federal government must be committed to enforcing and maintaining the existing strong policies designed to protect our most vulnerable.

We need explicit, federal statutory protections. We need the Equality Act.

Today, LGBTQ people who are evicted from their home, denied a mortgage, or simply ignored by prospective landlords because of who they are or whom they love are forced to rely on a patchwork of state and local laws, an openly hostile federal government, and court precedent that—while robust—is the subject of a Supreme Court challenge. Explicit, federal protections in statute are critical to end discrimination. That is why we need the Equality Act (H.R. 5/S. 788). The Equality Act amends the Fair Housing Act of 1968, adding sexual orientation and gender identity to the list of protected characteristics. It simply affords to all Americans basic housing protection from discrimination based on irrational prejudice.

No one should be turned away from an apartment, kicked out of their home, or sent back to the street simply because of who they are or whom they love. LGBTQ people and our families demand fair and equal access to housing opportunities. We want affordable homes, we want quality schools, and we want to feel safe when we lay our heads down at night. These are simple things, but without them the right to fully participate and contribute to our communities as equal members is simply out of reach. Discrimination continues to persist and, for an agency that purports to ensure housing for all, it is illogical and frankly morally bankrupt to harm those in our community who are often closest to the edges. We can, and must, do better.