

April 1, 2019

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515



**Statement of the American Civil Liberties Union (ACLU)
in Support of H.R. 5, the Equality Act**

Dear Chairman Nadler, Ranking Member Collins, and Members
of the Committee on the Judiciary:

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The American Civil Liberties Union (ACLU) strongly supports H.R. 5, the Equality Act. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in this country. With more than 2 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, sex (including sexual orientation and gender identity), disability, national origin, or record of arrest or conviction.

H.R. 5, the Equality Act, is landmark civil rights legislation. It is grounded in the principle that all people in this country should be able to fully participate in public life and not be judged based on characteristics like sexual orientation or gender identity. Everyone deserves a fair chance to support themselves, provide for their family, and live as their true selves free from the fear of harassment or discrimination. The harsh reality – despite increasing support among the public and representation in popular culture – is that discrimination remains a persistent problem for LGBTQ people across the country. From discrimination and harassment of transgender youth in our nation's schools to older same-sex couples denied housing in

retirement communities because of their sexual orientation, this is something that LGBTQ people confront throughout their lives and in every corner of the country.

This is why the Equality Act is so critically important. It would provide LGBTQ people with consistent, explicit, and nationwide nondiscrimination protections across all of the key areas of daily life, including employment, housing, and access to public spaces and services. It would do this by explicitly prohibiting discrimination based on sexual orientation and gender identity in our nation's federal civil rights laws, including the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, and the Jury Selection and Service Act. This approach would give LGBTQ people the same protections that have long existed for other characteristics under federal law, such as race, religion, and national origin.

The Equality Act would also fill significant gaps in our federal civil rights laws. It would do this in several ways including:

- updating and modernizing the scope of public spaces and services covered in current law to include retail stores, services such as banks and legal services, and transportation service, such as airports, taxis, and bus stations; and
- expanding protections from sex discrimination by banning this type of discrimination in public spaces and services and in federally funded programs.

For the first time under federal law, it would be illegal to discriminate against individuals for “Shopping While Black” or “Flying While Brown.” In addition, with the significant expansion in sex discrimination protections, the routine practice of mechanics charging women more than men for the same car services would be illegal under federal law.

As an organization that represents people who have experienced discrimination simply because of who they are, we feel it is important to share a few of our clients' stories, as they clearly speak to why the Equality Act's protections are so important.

Meagan Taylor

Meagan Taylor, a Black transgender woman, and her best friend, who is also Black and transgender, checked into a hotel in Iowa, on July 13, 2015 while traveling from Illinois to Kansas City for a funeral. Despite the fact that she and her friend had made reservations, the pair were sent a clear message that they were not welcome. Before finalizing the check-in, the front desk clerk – at the request of the general manager – asked to make a copy of Meagan's ID even though they had already processed payment and checked her ID once. Like many transgender people, Meagan had not been able to update the name and gender on her ID so the identification listed her birth name and the sex she was assigned at birth.

At some point between Meagan’s check-in and 8:30am the next morning, the hotel staff called the police to report that they suspected Meagan and her friend were engaging in prostitution because they were “men dressed like women.”

As a result of the hotel’s discrimination against her, Meagan was arrested and charged with possessing her hormone pills without a copy of the prescription – charges that were dismissed. There was never evidence of prostitution, and she was never charged with it. After her arrest, she was held for eight days in Polk County Jail before being bonded out, never making it to the funeral in Kansas City that she was traveling to attend.

In describing her experience, Meagan wrote the following:

When I came out as transgender, I expected I would experience some discrimination, but I didn’t know how strong it would be. When something bad happens, I try to think about things and sort out why they happened. When this all happened, I knew exactly what it was: the racial profiling, the transgender profiling, the harassment, the solitary confinement. I knew why it was happening, and I knew it wasn’t right. I knew something had to change. To experience so many levels of discrimination makes you feel like less of a person.¹

Gavin Grimm

Gavin Grimm, a 19-year-old young man who is transgender, was a student at Gloucester High School in Gloucester County, Virginia. When he was 15, Gavin came out to his family as a boy and transitioned to living in accordance with his male identity.

By the time Gavin began his sophomore year at Gloucester High School, he had legally changed his name and had begun using male pronouns. He wore his clothing and hairstyles in a manner typical of other boys and used men’s restrooms in public venues, including restaurants, libraries, and shopping centers, without encountering any problems.

With the support of the school principal and superintendent, Gavin used the boys’ restrooms at his high school for approximately seven weeks without incident. But in response to complaints from some adults in the community – including those without school-age children – the Gloucester County School Board overruled its own

¹ Meagan Taylor, *I Was Arrested Just for Being Who I Am*, ACLU, Nov. 10, 2015, <https://www.aclu.org/blog/lgbt-rights/transgender-rights/i-was-arrested-just-being-who-i-am>.

administrators and enacted a policy prohibiting students “with gender identity” issues from using the same restrooms as other students. The new, discriminatory policy directed transgender students to an “alternative appropriate private facility.” This policy effectively banished Gavin from the boys’ restroom and denied him the basic dignity of being recognized by his school as the young man he is.

As the school board meeting that led to the adoption of this discriminatory policy, Gavin and his parents sat while strangers pointedly referred to him as “a young lady” to deliberately undermine his gender identity. One speaker called Gavin a “freak” and compared him to a person who thinks he is a dog and wants to urinate on fire hydrants.

Throughout the rest of high school, Gavin was segregated from his peers by being forced to use separate restrooms that no other student was required to use. The degrading and stigmatizing policy singled Gavin out as unfit to use the same restrooms that were available to every other student. Shockingly, the school board continues to discriminate against Gavin to this day – even though he has now graduated – by refusing to update his official school transcript to match the male sex on his birth certificate. As a result, every time Gavin is required to provide a copy of his high school transcript to a college or potential employer, he must provide a transcript that – unlike all his other identification documents – wrongly declares that his sex is “female.”

Following the adoption of the discriminatory policy by the Gloucester County School Board, Gavin wrote the following:

I am boy, and it is important to me to live life like other boys do, including using the boys' bathroom. I am disappointed that the school board decided to ignore my best interest, including others in the same situation, and chose to adopt a policy that is discriminatory and spreads fear and misinformation. This needs to stop.²

Andre Cooley

Andre, a Black gay man, was a corrections officer for juvenile detainees at the Sheriff’s Department in Forrest County, Mississippi. He was fired after his supervisors learned of his sexual orientation.

Andre was raised in the foster care system from birth. He became a corrections officer so he could serve as a mentor and positive role model for troubled teenagers.

² Gavin Grimm, *I'm a Boy, so Why Won't My School Allow Me to Use the Boys' Bathroom?*, ACLU, Dec. 22, 2014, <https://www.aclu.org/blog/speakeasy/im-boy-so-why-wont-my-school-allow-me-use-boys-bathroom>.

In November 2009, Andre began working at the Forrest County Sheriff's Department and was quickly promoted to senior corrections officer. At the time Andre was hired, he was told that he had a better resume than any other person who had applied for the job.

On June 14, 2010 while at home and off-duty, Andre called 911 after his boyfriend became physically violent. One of Andre's supervisors was among the officers responding to the call and learned at that time of Andre's sexual orientation. The day after the incident, for which Andre was identified in the police report as the "victim," Andre learned that despite having an exemplary record, he was being fired from his job. When Andre asked if he was being fired because he was gay, he was told "yes."

Andre did not receive a written explanation for his firing and was never charged or disciplined in connection with the domestic violence perpetrated by his former boyfriend. After firing Andre, the sheriff's department attempted to deny him unemployment benefits by alleging that Andre had engaged in unspecified "inappropriate conduct and behavior while off duty, unacceptable for an officer." After a hearing, an administrative law judge concluded that the sheriff's department failed to show that Andre committed misconduct of any kind.³

Patricia Dawson

Patricia Dawson is a transgender woman and licensed electrician who lives north of Little Rock, in rural Arkansas. She has worked in the field of electrical and mechanical maintenance for over 20 years. Despite her skills as an electrician, Patricia was fired from her job because of the objections of her boss to her transition.

Of her firing, Patricia wrote:

The day after I got my new driver's license, I told my boss that I am a transgender woman. He looked shocked. He told me that I was one of his best people and that he would hate to lose me. I was stunned that his first reaction was that he might have to fire me.

He didn't fire me right away, but he didn't let me come to work as a woman, either. He told me I couldn't discuss my transition with anyone at work or use my legal name, Patricia.

³ American Civil Liberties Union, *ACLU SUES SHERIFF'S DEPARTMENT ON BEHALF OF CORRECTIONS OFFICER FIRED FOR BEING GAY*, Oct. 18, 2010, <https://www.aclu.org/news/aclu-sues-sheriffs-department-behalf-corrections-officer-fired-being-gay>.

Even though I didn't say anything, people at work noticed that I was transitioning. My hair was growing out, and I'd started hormone therapy. Some of my co-workers were kind to me, but others were cruel. Twice, co-workers tried to sabotage my work. One of those instances could have caused an explosion that could hurt or even kill someone. Fortunately, I discovered it in time, and no one was hurt.

The more time passed, the more it became obvious that I am a woman. Eventually I felt brave enough to wear makeup and a blouse to work. I was on top of the world. I had a great job, and I was finally being myself. That week, my boss pulled me aside and said, "I'm sorry, Steve, you do great work, but you are too much of a distraction and I am going to have to let you go."

I am not a distraction. I am a woman, and I shouldn't be fired for being who I am.⁴

Dave Mullins and Charlie Craig

Dave Mullins and Charlie Craig visited Masterpiece Cakeshop in Colorado in July 2012, with Charlie's mother, to order a cake for their upcoming wedding reception. Dave and Charlie planned to marry in Massachusetts and then celebrate with family and friends back home in Colorado (at the time, same-sex couples did not yet have the freedom to marry in Colorado). But the bakery's owner informed them that the bakery wouldn't sell wedding cakes to same-sex couples.

Describing the experience of being refused service in a business that is open to the public, Charlie's mom, Deborah Munn, wrote the following:

What should have been a fun and special moment turned into a day I will never forget. The three of us walked into Masterpiece Cakeshop, and a man at the counter motioned for us to sit at a small table and then joined us. When the man asked whose wedding this was for, and my son said "it is for our wedding," the man said that he does not make cakes for same- sex couples' weddings or commitment ceremonies. When my son said "really?" the man tried to justify his stance by saying he will make

⁴ Patricia Dawson, *Fired for Being Trans*, ACLU, Feb. 23, 2015, <https://www.aclu.org/blog/speakeasy/fired-being-trans>.

birthday cakes or other occasion cakes for gays, just not a wedding cake.

I just sat there in disbelief. All of the levity that we felt on the drive to the bakery was gone. As I left that bakery, my heart was breaking for my son and his fiancé. What should have been a joyous occasion had turned into a humiliating occasion.⁵

Joaquín Carcaño

Joaquín is a 30-year-old Latino, transgender man who is the Director of Community Organizing at the Latino Commission on AIDS. Until recently, he worked at the University of North Carolina at Chapel Hill at the Institute for Global Health and Infectious Disease, where he coordinated a project that provided medical education and services such as HIV testing to the Latinx population.

In March 2016, the so-called “Public Facilities Privacy & Security Act,” commonly known as HB 2, was passed by the North Carolina General Assembly and signed into law by then-Governor Pat McCrory to respond to the City of Charlotte’s enactment of an ordinance that extended existing municipal anti-discrimination protections to LGBTQ people. Advocates for these protections had spent years describing the significant degree of discrimination faced by LGBTQ people, particularly transgender people, to the City Council. Because North Carolina state law does not explicitly prohibit discrimination based on sexual orientation or gender identity, the many LGBTQ residents of Charlotte – as well as LGBTQ residents throughout the state like Joaquín – were exposed to significant discrimination in their day-to-day lives simply for being themselves. After two hours-long hearings, in which there was extensive public comment on both sides of the issue, the City Council voted to adopt the non-discrimination ordinance to protect LGBTQ people from discrimination in public spaces.

Before the Charlotte Ordinance could take effect, the North Carolina General Assembly rushed to convene a special session with the express purpose of passing a statewide law that would preempt Charlotte’s move to protect its residents from discrimination. Lawmakers made no attempt to hide the purpose of their actions and instead openly and virulently made clear that HB 2 was targeted retaliation for what it called Charlotte’s “radical” move to protect its residents from discrimination.

In addition to repealing the Charlotte ordinance, HB 2 also:

⁵ Deborah Munn, *It Was Never About the Cake*, ACLU, Dec. 9, 2013, <https://www.aclu.org/blog/lgbt-rights/lgbt-relationships/it-was-never-about-cake>.

- forced transgender students to use restrooms and locker rooms that accord with the sex they were assigned at birth, whether or not that matches how they identify;
- forced transgender individuals to use restrooms and locker rooms in any government building, including public universities and colleges, that accord with the sex they were assigned at birth, whether or not that matches how they identify; and
- prohibited local governments from passing LGBTQ-inclusive non-discrimination protections.

Prior to the passage of HB 2, Joaquín was treated just like all other men at UNC-Chapel Hill. As part of his social transition, he had begun using the men's restroom at work and elsewhere in late 2015, which occurred without incident for the five months or so prior to the enactment of HB 2. Joaquín had used the multi-user men's restroom on his floor at work just like all of the other men on that floor. Indeed, the only restrooms on the floor where Joaquín works at UNC-Chapel Hill are multi-user and designed for either men or women. HB 2 thus excluded him from using the same restrooms used by his co-workers. Following the passage of HB 2, Joaquín generally used a single-user, gender neutral restroom in another building on campus, which was an approximately 20-30 minute roundtrip walk from his building. He was later informed by administrative staff in the building where he worked that there was a single-user, gender neutral restroom in that building – accessible only by using a special service elevator and located in a cubby in a part of the building used for housekeeping.

In describing what he had to endure simply to use the restroom at his job, Joaquín wrote the following:

I feel humiliated by being singled out and forced to use a separate restroom from all my coworkers. Because using the special service elevator several times a day would attract even greater attention to the fact that I am not able to use the same restrooms as my coworkers, I have generally resorted to leaving the building and using a restroom in another building on-campus. I now have to plan out my trips to the restroom as part of my schedule. For example, I cannot simply make a quick trip to the restroom before a meeting is about to start, as my coworkers are able to do. All of this often causes me to delay or avoid going to the restroom, or to limit my fluid intake.⁶

⁶ Decl. of Joaquín Carcaño at 4-5, Carcaño v. McCrory, 203 F.Supp.3d 615 (M.D.N.C. 2016) (No. 1:16-cv-00236-TDS-JEP).

These stories illustrate the many ways in which discrimination robs individuals of their education, employment, even their very liberty.

Unfortunately, the patchwork nature of current laws has left millions of people across the country subject to uncertainty and potential discrimination that impacts their safety, their families, and their day-to-day lives. Around 50% of LGBTQ people in the U.S. – approximately 8 million people – live in states that still lack explicit statewide legal protections, leaving their residents and visitors at risk of discrimination because of who they are.

The need for consistent, explicit, and nationwide civil rights protections for LGBTQ people – exactly what the Equality Act would provide – could not be clearer. This year, as we mark the 50th anniversary of the uprising at Stonewall – an event that launched the modern struggle for LGBTQ equality – we urge all Members of Congress to write the next chapter in our nation’s civil rights history by passing the Equality Act.

Please reach out to Ian Thompson, ACLU senior legislative representative, with any questions at (202) 715-0837 or ithompson@aclu.org.

Sincerely,



Ronald Newman
National Political Director



Ian S. Thompson
ACLU Senior Legislative Representative

Cc: Members of the U.S. House Committee on the Judiciary