

April 2, 2019

U.S. Committee on the Judiciary
Committee Hearing Room
2141 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 5, the Equality Act

Dear Committee Members:

Thank you for the opportunity to submit written testimony on the topic of H.R. 5, the Equality Act, which would provide important updates to our nation's federal civil rights laws.

I am writing in my capacity as policy and research director of the Movement Advancement Project (MAP). MAP works to provide independent and rigorous research, insight and communications that help speed equality and opportunity for all. MAP works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life. To this end, we have published extensively on the need to update nondiscrimination laws to ensure opportunity and fairness for lesbian, gay, bisexual, transgender, and queer (LGBTQ) people¹ and we track more than 35 state laws and policies that impact LGBTQ people.²

I wish to make two key points in my testimony: 1) Unconstitutional discrimination against LGBTQ people is pervasive, by state governments in areas of life ranging from employment, the criminal justice system, and the child welfare system;³ and 2) the Equality Act would provide much-needed clarity about the expectations for employers, landlords, businesses, and federal, state, and local governments about their responsibility to treat people fairly. All hardworking people—including those who are LGBTQ—should be treated fairly and equally by the laws of our nation, and should have the opportunity to earn a living and provide for themselves and their families. That's what updating the law is all about.

¹ All of our employment-related research and resources are available at Movement Advancement Project. (2019). [LGBT Workers](#).

² Movement Advancement Project. (2019). [Equality Maps](#).

³ That there is a widespread pattern of employment discrimination against state employees on the basis of sexual orientation and gender identity is an important point of inquiry given that Congress can provide a private right of action for damages to state government employees who have suffered discrimination.

Studies consistently find high rates of discrimination reported by LGBTQ people. In a 2017 survey of LGBTQ people, fully one-in-four reported experiencing discrimination based on sexual orientation or gender identity in the past year, with half of those saying it negatively impacted their work environment.⁴ A similar percentage (27%) of transgender workers reported being fired, not hired, or denied a promotion in the last year.⁵ One in five (22%) of LGBTQ people surveyed by National Public Radio, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health reported being discriminated against when trying to rent a room or buy a house.⁶

Discrimination by state governments. State governments act as employers and as service providers, among many other functions. In these interactions with individuals, there is evidence that state governments persistently and pervasively discriminate against LGBTQ people in a number of contexts that violate the Equal Protection Clause and other constitutional rights, including as employers, as state police and in the prison system, and in providing services such as child welfare and family support services.

Discrimination by state governments as employers. While surveys of LGBTQ people undoubtedly include both private and public employees, there are several studies that have specifically investigated the employment experiences of state employees. Current estimates suggest that there are an estimated 632,000 LGBTQ people working for state and local governments.⁷ In 2014, researchers at the Williams Institute analyzed 589 complaints of sexual orientation and gender identity discrimination filed by public sector workers in 123 jurisdictions.⁸ The analysis reveals that discrimination against LGBTQ people in the public sector occurs nearly as frequently as discrimination in the private sector. Mirroring findings about complaints filed more generally alleging discrimination based on sexual orientation and gender identity in the workplace, this study also found that complaints filed by state employees on these bases are filed at similar rates to those filed alleging discrimination based on sex and race.

⁴ Singh, S. & Durso, L. E. (2017). [Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways](#). Center for American Progress.

⁵ 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.

⁶ NPR, Robert Wood Johnson Foundation, & Harvard T.H. Chan School of Public Health. (2017). [Discrimination in America: Experiences and Views of LGBTQ Americans](#).

⁷ The Williams Institute (2019). [LGBT People in the U.S. Not Protected by State Nondiscrimination Statutes](#).

⁸ Mallory, C. & Sears, B. (2014). [Discrimination Against State and Local Government LGBT Employees: An analysis of administrative complaints](#). *LGBTQ Policy Journal at the Harvard Kennedy School*. 4:37-55.

Discrimination by state governments in the state criminal justice system. LGBTQ people frequently experience harassment, discrimination, and violence at the hands of police, including state police.⁹

LGBTQ people, including many LGBTQ people of color, have long suffered from discrimination, harassment, and violence at the hands of police. Recent surveys have quantified these experiences, and they highlight the ways in which law enforcement not only targets LGBTQ people for breaking the law, but also abuses its power and treats LGBTQ people in deplorable ways. For example, in a survey of hate crime survivors, transgender women were 6.1 times more likely to experience physical violence when interacting with police than other violence survivors and 5.8 times more likely to experience police violence, including harassment, threats, bullying, or vandalism.¹⁰ LGBTQ and HIV-affected people of color were 2.4 times more likely to experience police violence than other violence survivors, and LGBTQ and HIV-affected young adults ages 19 to 29 were 2.2 times more likely to experience police violence. The “2015 LGBT Health and Human Services Needs Assessment” conducted in New York State found one in five transgender respondents (21%) had been unfairly arrested, harassed, or physically harmed, with higher rates for transgender people of color (31%).¹¹ In a survey by Lambda Legal, 73% of LGBTQ people and people living with HIV reported face-to-face contact with law enforcement in the past five years. Among these people, 21% reported hostile attitudes from the police and 14% were verbally harassed.¹²

LGBTQ people who are placed in prisons and jails, including state prison, disproportionately encounter harsh and unsafe treatment because of their sexual orientation and gender identity, including at the hands of staff. A Bureau of Justice Statistics survey conducted in 2011- 2012, 5.4% of inmates identifying as LGB or other had been sexually assaulted by facility staff, compared to 2.1% of heterosexual inmates.¹³ The same survey found that 16.7% of transgender people in prisons and jails reported being sexually assaulted by facility staff compared to 2.4%

⁹ Movement Advancement Project & Center for American Progress. (2016.) [Unjust: How the Broken Criminal Justice System Fails LGBT People.](#)

¹⁰ Ahmed, O. & Jindasurat, C. (2015). [2014 Report on Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence.](#) National Coalition of Anti-Violence Programs.

¹¹ Frazer, S. & Howe, E. (2015). [Transgender Health and Economic Insecurity: A Report from the 2015 LGBT Health and Human Services Needs Assessment Survey.](#) Empire State Pride Agenda.

¹² Lambda Legal. (2016). [Protected and Served? Police.](#)

¹³ Torres, C.A. & Paz, N. (2012). [Bad Encounter Line 2012: A Participatory Action Research Project.](#) Young Women’s Empowerment Project.

of all inmates.¹⁴ This mirrors findings from a survey of transgender women in men’s prisons in California in which 14% reported being sexual assaulted by a correctional staff member.¹⁵

Discrimination by state governments in the provision of services. Research finds that when seeking services through state and local government agencies, LGBTQ people experience harassment and discrimination. For example, nearly half (48%) of low-income LGBTQ and gender non-conforming people in New York City reported discrimination by a government or county agency when seeking public benefits, such as food or housing assistance, and many were turned away.¹⁶ In the National Transgender Discrimination Survey, 22% of respondents had been denied equal treatment by government agency personnel and 22% had been harassed or disrespected.¹⁷

Additionally, there are eight states that permit child welfare agencies that receive federal and state child welfare funding to discriminate against prospective parents, families, and, in some cases, even youth, in care.¹⁸ In essence, these laws enable taxpayer-funded discrimination not only against LGBTQ people, but against single parents, people of minority faiths, and others.¹⁹

Explicit, federal laws are needed to ensure fair treatment for LGBTQ workers across the United States. It is time to update our nation’s nondiscrimination laws to provide clarity to employers, landlords, business owners, courts, as well as individuals. Updating the law will help ensure that all people in our state—including people who are lesbian, gay, bisexual or transgender—have the opportunity to be judged on their job performance and qualifications, nothing more, nothing less.

LGBTQ people across the country face a patchwork of federal protections and state and local nondiscrimination laws and ordinances. Currently, 44% of LGBTQ adults live in states lacking explicit protections for employment discrimination based on sexual orientation and gender identity, including 27% of whom live and work in states lacking explicitly nondiscrimination protections for state employees, either through explicit state laws or executive orders.²⁰ This

¹⁴ Beck, A.J., et al. (2013). Sexual Victimization in Prisons and Jails Reported by Inmates. 2011–12. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

¹⁵ Jenness, V. (2009). [Transgender Inmates in California’s Prisons: An Empirical Study of a Vulnerable Population.](#)

¹⁶ Bibb, D., et al. (2010). [A Fabulous Attitude: Low-Income LGBTGNC People Surviving & Thriving with Love, Shelter & Knowledge.](#) Welfare Warriors Research Collaborative.

¹⁷ 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.

¹⁸ Movement Advancement Project. (2019). [Foster and Adoption Laws.](#)

¹⁹ Movement Advancement Project & Family Equality Council. (2018). [Kids Pay the Price.](#)

²⁰ Movement Advancement Project. (2019). [Non-Discrimination Laws: State Employees.](#)

means that they are vulnerable to discrimination on the job that can jeopardize their economic wellbeing and their ability to provide for their families. What's more, there are more than 300 cities and counties in states lacking state-level protections that have passed local ordinances prohibiting discrimination based on sexual orientation and gender in employment, housing, and/or public accommodations.

On the federal level, there remains confusion and uncertainty for LGBTQ workers.²¹ A growing number of courts and the EEOC have concluded that when a person is discriminated against because of their sexual orientation or gender identity, such discrimination is inherently differential treatment based on the individual's sex. In 2012, the EEOC ruled in *Macy v. Holder* that discrimination against a transgender person because they are transgender is, by definition, discrimination based on sex.²² Just three years later in *Baldwin v. Foxx*, the EEOC ruled that discrimination based on sexual orientation similarly constitutes unlawful sex discrimination under Title VII.²³ As a result of these rulings, the EEOC accepts, investigates, and attempts to resolve claims filed by LGBTQ employees across the country alleging discrimination based on their sexual orientation and/or gender identity under Title VII.

This patchwork of laws and legal interpretations is bad for the economy, bad for businesses, and bad for workers and their families. Simultaneously, a shifting federal legal landscape has created new opportunities for LGBTQ workers to seek redress for discrimination. Later this fall, the U.S. Supreme Court may take up one or more cases that could definitively establish the extent to which LGBTQ workers are protected under existing federal civil rights laws.

Most employers, landlords, and businesses want to do the right thing, but there will always be a few people who only do what's right when the law requires it. For those times when good judgment breaks down, we need laws so that all people, including those who are LGBTQ, are treated like anyone else and not discriminated against.

America is a land of opportunity and freedom—where people who work hard and meet their responsibilities have the chance to get ahead. Updating the law would help ensure that all people, including those who are LGBTQ, have a fair opportunity to earn a living, meet their obligations, provide for themselves and their families, and build a better life.

²¹ Movement Advancement Project. (2018). ACLU, & Lambda Legal. [Are LGBT Workers Protected From Discrimination? Unravelling the Patchwork of Federal, State, and Local Employment Protections.](#)

²² *Macy v. Holder*, EEOC ruling, April 2012.

²³ *Baldwin v. Dep't of Transportation*, EEOC ruling, July 2015.

Thank you for the opportunity to provide written testimony as you consider this important issue. In addition to this testimony, we would like the reports in Attachment A entered into the record.

Sincerely,

A handwritten signature in blue ink, appearing to read "Naomi", with a stylized flourish at the end.

Naomi G. Goldberg, MPP
Director of Policy & Research
Movement Advancement Project

Attachment A

Movement Advancement Project. (2019). [Equality Maps](#).

Singh, S. & Durso, L. E. (2017). [Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways](#). Center for American Progress.

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.

NPR, Robert Wood Johnson Foundation, & Harvard T.H. Chan School of Public Health. (2017). [Discrimination in America: Experiences and Views of LGBTQ Americans](#).

Movement Advancement Project & Center for American Progress. (2016.) [Unjust: How the Broken Criminal Justice System Fails LGBT People](#).

Ahmed, O. & Jindasurat, C. (2015). [2014 Report on Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence](#). National Coalition of Anti-Violence Programs.

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Torres, C.A. & Paz, N. (2012). [Bad Encounter Line 2012: A Participatory Action Research Project](#). Young Women's Empowerment Project.

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Movement Advancement Project. (2019). [Non-Discrimination Laws: State Employees](#).

Movement Advancement Project. (2018). ACLU, & Lambda Legal. [Are LGBT Workers Protected From Discrimination? Unravelling the Patchwork of Federal, State, and Local Employment Protections](#).