

Written Testimony of The Center for American Progress
To the Committee on the Judiciary
Hearing on the Equality Act of 2019
April 12, 2019

The Center for American Progress (CAP), the nation’s foremost think tank dedicated to improving the lives of all Americans through bold, progressive ideas, is pleased to offer written testimony for the record in support of H.R. 5, The Equality Act of 2019. As a multi-issue think tank, CAP supports the bill’s long overdue update of existing civil rights protections by adding protections against sex discrimination to Title II and Title VI of the Civil Rights Act of 1964, modernization of what constitutes a public accommodation for all classes protected by Title II, as well as its clarification that existing protections against sex discrimination include sexual orientation and gender identity.

For over a decade, CAP’s research has documented both the extent of discrimination against LGBTQ people, racial and ethnic minorities, and women and the negative impact of this discrimination on people’s lives, as well as our country as a whole. The Equality Act amends existing protections to expand civil rights without undermining any existing protections, a key priority for CAP. Nearly forty-five years after Congresswoman Bella Abzug introduced the first Equality Act in 1974, CAP joins business leaders, faith leaders, the civil rights community, and the majority of Americans in urging Congress to pass this important addition to our nation’s civil rights laws and ensure all Americans are full and equal participants in our society, free from discrimination.

I. LGBTQ people experience discrimination across all areas of life covered under the Equality Act

Discrimination against LGBTQ people and their families is a pervasive problem urgently in need of solutions. Data from a nationally-representative survey of LGBTQ adults conducted by CAP and published in 2017 show that 1 in 4 respondents experienced some form of discrimination in the year prior to the survey.¹ Consistent with findings that discrimination has a significant, negative impact on LGBTQ communities, survey respondents reported that discrimination affected their psychological, physical, and spiritual wellbeing, as well as the environments they regularly found themselves in such as school and the workplace. Social science research clearly demonstrates a link between experiencing discrimination, or even the fear of experiencing discrimination, and negative psychological and physical health outcomes among LGBTQ

¹ Sejal Singh and Laura E. Durso “Widespread discrimination continues to shape LGBT people’s lives in both subtle and significant ways,” *Center for American Progress*, May 2, 2017, available at <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

individuals, including depression and anxiety² and chronic pain.³ CAP's research has shown that LGBTQ people sometimes take significant steps to avoid experiencing discrimination in their lives, such as avoiding certain public places including restaurants and shops, delaying necessary medical care, and hiding their sexual orientation and/or gender identity from employers.⁴ Importantly, this research showed that LGBTQ people who had previously experienced discrimination were far more likely to report engaging in behaviors to avoid experiencing it again, demonstrating the long-term impact of discrimination on people's everyday lives.

Previous CAP reports have documented the evidence of discrimination in specific areas of life covered by the Equality Act, including employment, housing, public accommodations, credit, and education.⁵ For example, LGBTQ Americans frequently experience hiring discrimination, workplace harassment, and wrongful termination. LGBTQ people also face discrimination when seeking to buy or rent property, contributing to a lower rate of homeownership and a higher rate of homelessness among LGBTQ people when compared to the rest of the population. In educational settings, LGBTQ students from elementary school to college are more likely to experience verbal, physical, and sexual harassment than their non-LGBTQ peers, negatively impacting educational achievement and sometimes causing students to avoid school entirely. While greater acceptance of LGBTQ persons has led to safer social climates in some areas of the country, clear and explicit statutory protections against discrimination on the basis of sex, sexual orientation, and gender identity are necessary to ensure that all individuals receive the full measure of equality guaranteed to them under the Constitution.

II. The Equality Act's expanded protections against discrimination in federal funding are necessary to prevent taxpayer dollars from funding discrimination

A. Discrimination by health care providers against LGBTQ people is pervasive

A CAP survey fielded in 2017 found that 8 percent of LGBQ respondents said that a health care provider refused to see them because of their actual or perceived sexual orientation, and 29 percent of transgender respondents said a health care provider refused to see them because of their actual or perceived gender identity.⁶ Such discrimination discourages LGBTQ people from seeking healthcare. The same survey found that LGBTQ people who had experienced

² IOM (Institute of Medicine), "The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding" (Washington: The National Academies Press, 2011), available at <http://www.nationalacademies.org/hmd/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>; Ilan H. Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence," *Psychol Bull* 125 (5) (2003): 674-697, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2072932/>.

³ D.J. Lick and others, "Minority stress and physical health among sexual minorities: Recent evidence and new directions," *Perspect Psychol Sci*. 8 (5) (2013): 521-48, available at <https://www.ncbi.nlm.nih.gov/pubmed/26173210>.

⁴ Sejal Singh and Laura E. Durso "Widespread discrimination continues to shape LGBT people's lives in both subtle and significant ways."

⁵ Sarah McBride and others, "We The People: Why Congress and U.S. States Must Pass Comprehensive Nondiscrimination Protections" (Washington: Center for American Progress, 2014), available at <https://www.americanprogress.org/issues/lgbt/reports/2014/12/10/102804/we-the-people/>.

⁶ Shabab Ahmed Mirza and Caitlin Rooney, "Discrimination Prevents LGBTQ People from Accessing Healthcare," Center for American Progress, January 18, 2018, available at <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

discrimination in a health care setting were nearly seven times more likely to have avoided doctor's offices than LGBTQ people who had not had such experiences.⁷ While opponents of LGBTQ equality claim that a solution to the problem of discrimination is for LGBTQ people to seek out explicitly affirming alternative providers or services, for significant numbers of LGBTQ people, finding another health care provider is not an option. CAP research shows that nearly 20 percent of LGBTQ people living in metropolitan areas and over 40 percent of LGBTQ people living in nonmetropolitan areas said it would be "very difficult" or "not possible" to find the same type of service at a different hospital if they were turned away.⁸

The impact of health care service refusals on LGBTQ people is severe, but explicit legal protections can improve access to care without overwhelming providers with costly litigation. A CAP analysis of closed complaints asserting sexual orientation and gender identity-related discrimination claims received by the Department of Health and Human Services (HHS) between 2010 and 2017 revealed that in approximately 30 percent of these claims, patients alleged denial of care or insurance coverage simply because of their gender identity – not related to the type of medical care they sought.⁹ Approximately 20 percent of the claims involved the patient being misgendered or subjected to other forms of derogatory language by medical providers.¹⁰ And, despite worries of costly litigation from opponents of the Affordable Care Act's (ACA) protections, the vast majority of the complaints obtained by CAP were resolved by HHS working with the subjects of complaints to voluntarily take corrective action and change policies or train staff, avoiding the need to pursue a remedy in court.¹¹

Discrimination also affects the ability of LGBTQ people to pay for health care, further demonstrating the need for protections. In 2013, before the ACA's coverage reforms came into effect, 1 in 3 LGBT people making less than \$45,000 per year were uninsured.¹² Just one year later, in 2014, uninsurance for this group had dropped to 1 in 4, and by 2017, CAP's study finds that it was around 1 in 5 (22 percent).¹³ Regardless of income, insured LGBTQ respondents in that survey were more than twice as likely to be confident they can afford regular medical costs and more than three times as likely to be confident they can afford major medical costs, compared to uninsured respondents.¹⁴ Removing barriers to coverage, including discrimination, is essential to the health and financial well-being of LGBTQ Americans.

⁷ Shabab Ahmed Mirza and Caitlin Rooney, "Discrimination Prevents LGBTQ People from Accessing Healthcare."

⁸ *Ibid.*

⁹ Sharita Gruberg and Frank J. Bewkes, "The ACA's Nondiscrimination Regulations Prove Crucial," *Center for American Progress*, March 7, 2018, available at <https://www.americanprogress.org/issues/lgbt/reports/2018/03/07/447414/acas-lgbtq-nondiscrimination-regulations-prove-crucial/>.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Kellan Baker and Laura E. Durso, "Why Repealing the Affordable Care Act Is Bad Medicine for LGBT Communities," *Center for American Progress*, March 22, 2017, available at <https://www.americanprogress.org/issues/lgbt/news/2017/03/22/428970/repealing-affordable-care-act-bad-medicine-lgbt-communities/>.

¹³ *Ibid.*

¹⁴ *Ibid.*

B. LGBTQ people face discrimination by taxpayer-funded child welfare agencies

Adoption discrimination runs counter to the principles held by the majority of Americans. Across the country, more than two-thirds (68 percent) of the public oppose allowing agencies that receive federal funding to refuse to place children with same-sex couples.¹⁵ Opposition to this form of discrimination comes from all sides of the political spectrum, including 53 percent of Republicans, 67 percent of independents, and 81 percent of Democrats.¹⁶ Allowing publicly-funded organizations to discriminate on the basis of religion would force taxpayers to foot the bill for a practice with which they disagree. Despite this, ten states and counting have passed legislation giving child placement agencies a license to discriminate based on their religious beliefs.¹⁷ While often used to ban LGBTQ individuals and couples from providing loving foster or adoptive homes, these laws can also bar single people, people of other faiths, previously divorced people, or interracial couples from caring for these children. The overall legal landscape is disheartening, as a majority of states still lack protections in foster care and adoption for LGBTQ prospective parents.

Given the increasing number of states with religious exemptions for child placing agencies, the default assumption of some LGBTQ parents may be that an agency is not welcoming, especially if that agency is faith-based. Indeed, CAP research showed that faith-based child welfare agencies are less likely than secular agencies to have an inclusive nondiscrimination policy on their websites.¹⁸ This does not necessarily mean that they are unwelcoming, but it likely sparks doubt for some prospective parents who might then avoid such agencies—an unfortunate possible result. A CAP review of child placing agency websites in Texas and Michigan, two states that have enacted licenses to discriminate in adoption, revealed that many more agencies either need to adopt nondiscrimination policies that are inclusive of sexual orientation and gender identity or need to post their existing policy on their website.¹⁹ Overall, only 10 percent of Texas agency websites show their explicit willingness to work with LGBTQ prospective parents with a nondiscrimination policy inclusive of sexual orientation and/or gender identity or positive mentions of sexual orientation and/or gender identity.²⁰ This also presents an issue of access, as a same-sex couple in El Paso might avoid the nearest agency one mile away for fear of being turned away, and instead have to drive 348 miles to find the nearest agency with an LGBTQ-inclusive nondiscrimination policy on their website.²¹ There are 443,000 youth in care.²² Same-sex couples raising children are seven times more likely to be raising a foster child and seven times more likely to be raising an adopted child than their different-sex counterparts.²³ Passage of the Equality Act would ensure qualified prospective parents are not turned away.

¹⁵ Daniel Cox and Robert P. Jones, “Most Americans Oppose Restricting Rights for LGBT People” (Washington: Public Religion Research Institute, 2017), available at <https://www.prrri.org/research/poll-wedding-vendors-refusing-service-same-sex-couples-transgender-military-ban/>.

¹⁶ Ibid.

¹⁷ Frank J. Bewkes and others, “Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children” (Washington, DC: Center for American Progress, 2018), available at <https://www.americanprogress.org/issues/lgbt/reports/2018/11/20/461199/welcoming-all-families/>.

¹⁸ Ibid.

¹⁹ Ibid..

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

C. LGBTQ youth are vulnerable to discrimination in homelessness prevention services

LGBTQ youth are 120 percent more likely to experience homelessness than their non-LGBTQ peers.²⁴ LGBTQ young people are overrepresented in the child welfare and juvenile justice systems, where they may be targeted for bullying or harassment because of their identity.²⁵ If they are harassed for their identity in a group home or if staff at the youth shelter refuse to house them according to their gender identity, LGBTQ young people may look for the first opportunity to leave that living situation, making them vulnerable to abuse and exploitation.²⁶ The homelessness prevention system needs to prioritize LGBTQ equity to be effective. Prohibiting all forms of anti-LGBTQ discrimination in federally funded emergency shelters, transitional housing, wraparound services, and street outreach programs is an essential way to address the disparity in homelessness for LGBTQ youth.

D. Discrimination contributes to LGBTQ people being more likely to access public benefits

Prohibiting discrimination in federally funded programs that provide basic living standards for low-income people and their families is also crucial since LGBTQ people are disproportionately likely to need these programs. According to a national representative survey conducted by CAP in 2017, LGBTQ people and their families are more than twice as likely to receive SNAP than non-LGBTQ families.²⁷ LGBTQ people were also more likely to report that they or their families participated in Medicaid and received public housing assistance. Unfortunately, discrimination may prevent some LGBTQ families from receiving the benefits they need or may deter LGBTQ people from seeking such benefits out of fear of discrimination. According to the same 2017 CAP survey, 17 percent of LGBTQ people who had experienced anti-LGBTQ discrimination in the past year reported avoiding getting services they or their family needed out of fear of facing further discrimination.²⁸ According to the 2015 U.S. transgender survey, 11 percent of transgender people who had visited a public assistance or government benefits office in the past year reported being denied equal treatment or service and 9 percent reported being verbally harassed.²⁹ The Equality Act would ensure that LGBTQ people could access the programs they need for themselves and their families without the fear of discrimination.

²⁴ Matthew H. Morton, Amy Dworsky, and Gina H. Samuels, “Missed opportunities: Youth homelessness in America. National estimates.” (Chicago, IL: Chapin Hall at the University of Chicago, 2017), available at <http://voicesofyouthcount.org/brief/national-estimates-of-youth-homelessness/>.

²⁵ Human Rights Campaign, “LGBTQ Youth in the Foster Care System,” (2015) available at <https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>; Center for American Progress, Movement Advancement Project, and Youth First, “Unjust: LGBTQ Youth Incarcerated in the Juvenile Justice System” (2017), available at <http://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-youth-detention>.

²⁶ Casey Quinlan, “Homeless LGBTQ youth struggle to escape harassment at shelters,” *ThinkProgress*, June 29, 2017, available at <https://thinkprogress.org/homeless-lgbtq-youth-a0f35cab620e/>.

²⁷ Caitlin Rooney, Charlie Whittington, and Laura E. Durso, “Protecting Basic Living Standards for LGBTQ People” (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>.

²⁸ Sejal Singh and Laura E. Durso “Widespread discrimination continues to shape LGBT people’s lives in both subtle and significant ways.”

²⁹ Sandy E. James and others, “The Report of the 2015 U.S. Transgender Survey” (Washington: National Center for Transgender Equality, 2015), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

III. The Equality Act's expanded public accommodations protections would safeguard LGBTQ people, people of color, and women from discrimination in daily life

When a business opens its doors to the public, it should serve everyone equally. Unfortunately, too many LGBTQ people have had to suffer the indignity of facing barriers to their ability to participate in public life as full citizens. This discrimination pervades the public square, impeding equal access to everything from hotels to restaurants, retail stores, wedding-related services, and ride-share services.³⁰ For example, a 2016 study by the Equal Rights Center found that transgender female shoppers experienced adverse differential treatment compared to cisgender female shoppers in 75 percent of matched-pair tests.³¹ Among the three jurisdictions in the study, the rate of this adverse differential treatment was higher in the jurisdiction that lacked explicit nondiscrimination protections than in the jurisdictions that had them.³² Research shows that service refusals act like a one-two punch. The discrimination itself causes dignitary harm that negatively affects long-term psychological and physical health and well-being.³³ Then, compounding that harm, the refusal can make it harder or impossible for LGBTQ people to access services at all, denying them full participation in the public square. According to CAP's 2017 survey data, a third of LGBTQ people who reported experiencing discrimination in the past year then avoided public places in order to avoid discrimination.³⁴ In addition, LGBTQ people who face discrimination are not always able to access alternative services, especially if they live outside of metropolitan areas: four in ten nonmetro LGBTQ people said it would be "very difficult" or "not possible" to find the same type of service at a different retail store selling wedding attire.³⁵ Explicit nondiscrimination protections in public accommodations would ensure that LGBTQ people could participate fully in public life without fear of discrimination.

The Equality Act also expands nondiscrimination protections for all currently protected classes. Specifically, the bill would add protections from discrimination in public places and services not already covered by current law, such as retail stores and transportation services. People of color, and African Americans in particular, are disproportionately affected by current gaps in public accommodation law.

³⁰ "Faces of Freedom," *Freedom for All Americans* (last accessed April 11, 2019), available at <https://www.facesoffreedom.org/tag/public-accommodations-discrimination/>; Caitlin Rooney, "Urban Outfitters Latest Retail Outlet to Refuse Trans Customer Access to Fitting Room: This Is Not an Isolated Incident," *Think Progress*, September 27, 2016, available at <https://thinkprogress.org/urban-outfitters-trans-customer-aab1ba7f1ca0/>; Cervelli v. Aloha Bed & Breakfast, 415 P.3d 919 (Haw. Ct. App. 2018); Cody Gohl, "Gay Couple Threatened With Being Kicked Out Of Pizzeria for Kissing," *New Now Next*, March 15, 2017, available at <http://www.newnownext.com/goodfellas-pizzeria-gay-couple-kissing/03/2017/>; Caitlin Rooney and Laura E. Durso, "The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities" (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/lgbt/reports/2017/11/29/443392/harms-refusing-service-lgbtq-people-marginalized-communities/>.

³¹ Equal Rights Center, "Room for Change: an Investigation Exploring the Levels of Discrimination in Retail Stores Based on Gender Identity and Race" (2016), available at <https://equalrightscenter.org/wp-content/uploads/room-for-change.pdf>.

³² *Ibid.*

³³ Caitlin Rooney and Laura E. Durso, "The Harms of Refusing Service to LGBTQ People and Other Marginalized Communities" (Washington: Center for American Progress, 2017), available at <https://www.americanprogress.org/issues/lgbt/reports/2017/11/29/443392/harms-refusing-service-lgbtq-people-marginalized-communities/>.

³⁴ *Ibid.*

³⁵ *Ibid.*

Racial discrimination in public accommodations has persisted for centuries. However, the issue has gained increased attention in recent years as a result of many high-profile instances of profiling and refusal of service. For example, in 2015, employees at a jewelry store in Milwaukee refused to allow then-Milwaukee Bucks player John Henson to enter the store and subsequently called the police.³⁶ These instances are not isolated: in one 2019 survey, 70 percent of black respondents reported being treated less fairly than white people when in stores or restaurants.³⁷ The Equality Act takes a critical step forward in ensuring that all Americans, regardless of background, have full access to public accommodations.

This bill, if enacted, would also have far-reaching benefits for women when it comes to their access to reproductive health services and certain commercial goods and services. For example, under the Equality Act, pharmacists would no longer be able to refuse to fill birth control prescriptions or emergency contraception requests. Access to birth control is a cornerstone of comprehensive reproductive health care, helping people to plan for healthy families and prevent unintended pregnancies. When people are denied access to birth control and experience an unintended pregnancy, it can effectively derail important professional and educational goals and ultimately impact their ability to become economically independent and participate fully in the workforce.

It is also well-documented that women are routinely charged more for certain commercial goods and services – a phenomenon known as the “pink tax” – including vehicle maintenance and personal care products. In fact, the New York City Department of Consumer Affairs found that women pay on average 7 percent more than men for similar products.³⁸ The Equality Act would help tackle this form of gender-based price discrimination by, for example, not allowing a car mechanic to charge a woman more simply because of her gender. These protections would also include other services, such as health care, transportation, and restaurants.

IV. The Equality Act’s clarification of Title VII’s protections are needed to protect LGBTQ workers

A 2014 report from the Movement Advancement Project estimated that between 8 and 17 percent of lesbian, gay, and bisexual workers have been denied employment or unfairly fired on the basis of their sexual orientation³⁹. This number rises to 13 to 47 percent for transgender workers. Even for those who secure and retain jobs, discrimination can still impact financial security. For instance, between 11 and 28 percent of lesbian, gay, and bisexual workers have been denied a promotion on the basis of their sexual orientation.⁴⁰ This can manifest into

³⁶ AP, “Store Owner Apologizes for NBA Player Being Refused Service,” *USA Today*, October 20, 2015, available at <https://www.usatoday.com/story/sports/nba/2015/10/20/store-owner-apologizes-for-nba-player-being-refused-service/74296558/>.

³⁷ Juliana Menasce Horowitz, Anna Brown, and Kianna Cox, “Race in America 2019” (Washington: Pew Research Center, 2019), available at <https://www.pewsocialtrends.org/2019/04/09/race-in-america-2019/>.

³⁸ Bill de Blasio and Julie Menin, “From Cradle to Cane: The Cost of Being a Female Consumer” (New York: New York City Department of Consumer Affairs, 2015), available at <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf>.

³⁹ Movement Advancement Project, Center for American Progress, Human Rights Campaign, and Freedom to Work, “Unchecked Discrimination Against LGBT Workers” (2014), available at <http://www.lgbtmap.org/file/unchecked-discrimination-against-lgbt-workers.pdf>.

⁴⁰Ibid.

disparities between LGBTQ people and their non-LGBTQ counterparts working the same jobs. A 2014 resume-matching study found that men whose resumes indicated they were gay received lower starting salaries than others listing involvement in a general student council organization.⁴¹ Williams Institute data reveal that overall, gay men experience a “wage penalty” of 10 to 32 percent relative to their heterosexual counterparts.⁴²

Altogether, these circumstances contribute to heightened economic insecurity amongst members of the LGBTQ community. There are also disparities within the community. For example, bisexual women are less likely to be employed than their lesbian counterparts,⁴³ and a study of transgender people found they are nearly four times more likely to have a household income under \$10,000 per year than the U.S. population as a whole (15 percent compared to 4 percent).⁴⁴ Meanwhile, children of same-sex couples are almost twice as likely to live in poverty compared to children raised by married different-sex couples. As many as 19 percent of children of female same-sex couples and 23 percent of children of male same-sex couples are poor, compared to 12 percent of children of married different-sex couples.⁴⁵ The Equality Act’s clarification of employment protections for LGBTQ workers would help ensure hiring, firing, and promotion decisions are based on a worker’s skills, not based on who they are.

V. The Equality Act’s clarification of the Fair Housing Act’s protections is needed to protect LGBTQ people from housing discrimination

LGBTQ people face pervasive discrimination in housing, from accessing shelters to renting apartments to buying homes. Studies also suggest that LGBTQ people face homelessness and housing security at higher rates than non-LGBTQ people.⁴⁶ It’s therefore crucial that LGBTQ people are able to access shelter and affordable housing without facing discrimination.

⁴¹ Ibid.

⁴²M.V. Lee Badgett, Holning Lau, Brad Sears, and Deborah Ho, “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>

⁴³ Shabab Ahmed Mirza, “Disaggregating the Data for Bisexual People,” Center for American Progress, September 24, 2018, available at <https://www.americanprogress.org/issues/lgbt/reports/2018/09/24/458472/disaggregating-data-bisexual-people/>

⁴⁴ Center for American Progress and Movement Advancement Project, “Paying an Unfair Price: the Financial Penalty for Being LGBT in America.”

⁴⁵ Ibid.

⁴⁶ U.S. Department of Housing and Urban Development, *An Estimate of Housing Discrimination Against Same-Sex Couples* (2013), available at http://www.huduser.org/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf; Caitlin Rooney, Laura E. Durso, and Sharita Gruberg, “Discrimination Against Transgender Women Seeking Access to Homeless Shelters” (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/lgbt/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>; Sandy E. James and others, “The Report of the 2015 U.S. Transgender Survey”; John Ecker, Tim Aubry, and John Sylvestre, “A Review of the Literature on LGBTQ Adults Who Experience Homelessness,” *Journal of Homosexuality* (2018): 1–27, available at <https://doi.org/10.1080/00918369.2017.1413277>; Matthew Morton and others, “LGBTQ Young Adults Experience Homelessness at More than Twice the Rate of Peers” (Chicago: Chapin Hall and the University of Chicago, 2018) available at <https://www.chapinhall.org/research/lgbtq-young-adults-experience-homelessness-at-more-than-twice-the-rate-of-peers/>

A. *LGBTQ people face discrimination accessing housing*

About thirty thousand incidents of housing discrimination are reported each year, of which less than one percent are related to sexual orientation.⁴⁷ LGBTQ people might not report incidents of discrimination because they do not know how to file a complaint, do not believe that anything will be done, fear retaliation for reporting an incident, or simply because they do not recognize the treatment as discrimination. The number of fair housing law violations is estimated to be greater than four million.⁴⁸ States with more funding for fair housing assistance report higher numbers of complaints, suggesting that fair housing assistance and public education can improve awareness and enforcement of fair housing laws.⁴⁹

Since housing applications do not collect information on sexual orientation or gender identity, researchers have studied discrimination by comparing results for pairs of LGBTQ and non-LGBTQ applicants for the same units. These paired-test studies have found that different-sex couples were favored over same-sex couples and that cisgender applicants were favored over transgender applicants.⁵⁰ LGBTQ older adults were also found to experience discrimination in the senior housing market.⁵¹ In these situations, discrimination can be so subtle that an applicant would not even realize it, such as asking for a higher deposit or quoting a higher price, or as explicit as telling a same-sex couple that they cannot rent an apartment. Most fair housing complaints are filed by renters, possibly because it may be easier for them to perceive discrimination than borrowers or homebuyers. However, same-sex applicants were found to be more likely to be denied home mortgage loans than different-sex applicants, particular when one of the same-sex applicants was black.⁵² Discrimination against same-sex applicants was found to be equally prevalent in urban and rural areas and at larger and smaller banks.⁵³ However, this disparity was significantly lower in areas with state and local laws prohibiting sexual orientation discrimination.⁵⁴

B. *LGBTQ people face pervasive discrimination seeking shelter*

When LGBTQ people are turned away from shelters – or avoid shelters out of fear of discrimination and mistreatment – the consequences can be dire. For example, LGBTQ youth

⁴⁷ National Fair Housing Alliance, “Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report” (2018), available at https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf.

⁴⁸ National Fair Housing Alliance, “Modernizing the Fair Housing Act for the 21st Century: 2013 Fair Housing Trends Report” (2013), available at https://nationalfairhousing.org/wp-content/uploads/2017/04/2013_trends_report.pdf.

⁴⁹ Sarah McBride and others, “We The People: Why Congress and U.S. States Must Pass Comprehensive Nondiscrimination Protections.”

⁵⁰ Samantha Friedman and others, “An Estimate of Housing Discrimination Against Same-Sex Couples” (Washington, D.C.: U.S. Department of Housing and Urban Development, 2013), available at

https://www.huduser.gov/portal/publications/fairhsg/discrim_samesex.html; Jamie Langowski and others, *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market* (Boston, MA: Suffolk University Law School, 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2941810

⁵¹ The Equal Rights Center, “Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples” (2014), available at <https://equalrightscenter.org/news-posts/opening-doors-an-investigation-of-barriers-to-senior-housing-for-same-sex-couples/>.

⁵² J. Shahar Dillbary and Griffin Edwards, “An Empirical Analysis of Sexual Orientation Discrimination,” *The University of Chicago Law Review* 86 (1) (2019): 1-75, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3152015.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

experiencing homelessness are more likely than other youth to engage in survival sex and to experience sexual abuse.⁵⁵

Unfortunately, this discrimination is all too common. According to a study conducted by CAP and Equal Rights Center in 2015, only 30 percent of 100 shelters tested across 4 states were willing to appropriately house transgender women with other women.⁵⁶ Instead of housing them according to their gender identity, 13 percent of shelters would only house transgender women in isolation or with men and one in five refused them shelter outright. In one case, the shelter employee said if the transgender woman hadn't had surgery, she would need to be housed with men because there was a concern about rape on the women's floor. The transgender woman asked about her own safety if she were housed with men, at which point the shelter employee said she would instead be isolated.⁵⁷ In addition to insinuating transgender women are a threat and that their own safety doesn't matter, shelter employees also mistreated transgender shelter seekers by misgendering them, asking them about their genitalia, giving them different information than they gave cisgender shelter seekers, and even hanging up when the shelter seeker revealed she was transgender. Recognizing the real risk of violence transgender people face, anti-sexual assault and domestic violence organizations support full and equal access of transgender people to gender-specific facilities.⁵⁸

Even when transgender people are able to receive shelter, they often face discrimination once inside. According to the 2015 U.S. transgender survey, more than four in ten transgender people who stayed in a shelter in the past year left due to poor treatment or unsafe conditions.⁵⁹ Nearly one in ten transgender people who spent time in a shelter in the past year were subsequently thrown out of the shelter once staff learned they were transgender. Discrimination can also deter transgender people from seeking shelter: one in four transgender people who had experienced homelessness in the past year didn't seek shelter out of fear of discrimination and mistreatment based on their gender identity.⁶⁰

Although the Department of Housing and Urban Development has interpreted the Fair Housing Act's protections against sex discrimination to cover sexual orientation and gender identity⁶¹ and

⁵⁵ Meredith Dank and others, "Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex" (Washington: Urban Institute, 2015), available at <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>.

⁵⁶ Caitlin Rooney, Sharita Gruberg, and Laura E. Durso, "Discrimination Against Transgender Women Seeking Access to Homeless Shelters."

⁵⁷ Caitlin Rooney, Laura E. Durso, and Sharita Gruberg, "Discrimination Against Transgender Women Seeking Access to Homeless Shelters."

⁵⁸ "National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community" (2018) available at <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/12/national-consensus-statement-of-anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>.

⁵⁹ Sandy E. James and others, "The Report of the 2015 U.S. Transgender Survey" (Washington: National Center for Transgender Equality, 2015), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁶⁰ Sandy E. James and others, "The Report of the 2015 U.S. Transgender Survey" (Washington: National Center for Transgender Equality, 2015), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁶¹ Department of Housing and Urban Development, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," final rule, Federal Register Vol. 77 no. 23, February 3, 2012, available at https://www.hudexchange.info/resources/documents/EqualAccess_FinalRule_2.3.12.pdf.

has clarified that this requires that HUD-funded shelters house transgender people according to their gender identity,⁶² the Equality Act would enshrine such protections explicitly into law and would apply them to all shelters, not only those receiving HUD funding.

VI. Public opinion research demonstrates broad support for protecting LGBTQ people from discrimination

LGBTQ-inclusive nondiscrimination protections are strongly supported by a majority of Americans from multiple walks of life. According to the Public Religion Research Institute (PRRI), 69 percent of Americans overall support laws protecting LGBTQ people from discrimination in employment, housing, and public accommodations.⁶³ This strong level of support for fully inclusive laws has been consistently reported by PRRI since at least 2015. Importantly, majorities of the nation’s major political parties support LGBTQ-inclusive nondiscrimination laws, with 56 percent of Republicans, 70 percent of Independents, and 79 percent of Democrats in support.⁶⁴ PRRI has also found that majorities of all major U.S. religious groups favor these types of laws, including groups not traditionally seen as supporting LGBTQ civil rights such as white evangelical Protestants (54 percent support), white Catholics (71 percent support), Hispanic Catholics (72 percent), and Mormons (70 percent support).

There is also clear support for LGBTQ-inclusive nondiscrimination laws from businesses large and small. On April 2nd, IBM Vice President Tia Silas spoke before the Judiciary Committee in support of the Equality Act, emphasizing the role of nondiscrimination protections in creating “a culture – both inside and outside of work – where employees can bring their authentic selves to work every day.”⁶⁵ Research has documented that LGBTQ-inclusive workplace policies are associated with positive business outcomes, including higher job satisfaction and lower turnover, which are in turn associated with increased productivity.⁶⁶ These positive outcomes are why 189 companies, with nearly 10 million total employees across all 50 states, support the Equality Act.⁶⁷

Research conducted by CAP in partnership with the Small Business Majority and the American Unity Fund demonstrated strong support from small business owners for LGBTQ-inclusive

⁶² Department of Housing and Urban Development, “Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs,” final rule, Federal Register Vol. 81 No. 183, September 21, 2016, available at <https://www.govinfo.gov/content/pkg/FR-2016-09-21/pdf/2016-22589.pdf>.

⁶³ Daniel Greenberg, Maxine Najle, Oyindamola Bola, Robert P. Jones, “Fifty Years After Stonewall: Widespread Support for LGBT Issues – Findings from American Values Atlas 2018.” (Washington: Public Religion Research Institute, 2018), available at <https://www.prri.org/wp-content/uploads/2019/03/PRRI-Mar-2019-American-Values-Atlas.pdf>.

⁶⁴ Daniel Greenberg, Maxine Najle, Oyindamola Bola, Robert P. Jones, “Fifty Years After Stonewall: Widespread Support for LGBT Issues – Findings from American Values Atlas 2018.” (Washington: Public Religion Research Institute, 2018), available at <https://www.prri.org/wp-content/uploads/2019/03/PRRI-Mar-2019-American-Values-Atlas.pdf>.

⁶⁵ Tia Silas, “Testimony before the House Judiciary Committee Concerning HR-5, the Equality Act,” April 2, 2019, available at <https://docs.house.gov/meetings/JU/JU00/20190402/109200/HHRG-116-JU00-Wstate-SilasT-20190402.pdf>.

⁶⁶ M.V. Lee Badgett, Laura E. Durso, Angeliki Kastanis, and Christy Mallory, “The business impact of LGBT-supportive workplace policies” (Los Angeles: The Williams Institute, 2013), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-of-LGBT-Policies-May-2013.pdf>.

⁶⁷ Human Rights Campaign, “Business Coalition for the Equality Act,” *Human Rights Campaign*, available at <https://www.hrc.org/resources/business-coalition-for-equality> (Last accessed April 9, 2019).

protections.⁶⁸ In a 2015 survey, 8 in 10 small business owners supported laws protecting LGBTQ people from discrimination in the workplace and in places of public accommodation. Importantly, that survey also showed that 66 percent of small businesses say business owners shouldn't be able to deny goods or services to someone who is LGBT based on the owner's religious beliefs, including 55 percent of Republican small business owners and 62 percent of Christian small business owners. Given this support for nondiscrimination and opposition to denying LGBTQ persons jobs, goods, or services on the basis of religious beliefs, federal law that protects people on the basis of sexual orientation and gender identity should not include any exceptions for small businesses or enable business owners to circumvent civil rights law under the guise of religious liberty.

VII. Discrimination against LGBTQ people by state actors is well-documented

Not only do LGBTQ people face high rates of discrimination in all aspects of their daily lives, but there has also been a widespread and persistent pattern of unconstitutional discrimination by local, state, and federal government actors on the basis of sexual orientation and gender identity. A report by CAP and the Movement Advancement Project documented how LGBTQ people face discrimination by state actors at every level of the criminal justice system: in policing, in the courtroom, in prisons and jails, and in re-entry programs.⁶⁹ The impact of this discrimination can be seen in the high rates of incarceration of this population. According to the Williams Institute, lesbian, gay, and bisexual people are incarcerated at three times the rate of the general population.⁷⁰ Once incarcerated, discrimination puts LGBTQ people at an incredibly high risk of sexual assault and abuse. The Bureau of Justice Statistics found that 40 percent of transgender people in state and federal prisons had been sexually victimized in 2011-12 with 15 percent of transgender people in state and federal prisons reporting they had been sexually victimized by prison staff.⁷¹

The abuse of and discrimination against LGBTQ immigrants by immigration detention facility staff has also been well-documented. Immigration and Customs Enforcement (ICE) refuses to provide adequate medical care to LGBTQ immigrants and routinely subjects them to arbitrary solitary confinement and verbal and physical abuse.⁷² Similar to in prisons, the result of the discrimination LGBTQ immigrants are subjected to in detention is incredibly high rates of sexual violence: LGBTQ immigrants in detention are 97 times more likely to report sexual violence than the general detention population. The high rate of abuse LGBTQ immigrants face makes the fact that in FY 2014, ICE overrode release recommendations over twice as often for LGBTQ

⁶⁸ Small Business Majority, Center for American Progress, and American Unity Fund, "Opinion Poll: Small Business Owners Oppose Denying Services to LGBT Customers Based on Religious Beliefs (2015), available at <https://cdn.americanprogress.org/wp-content/uploads/2015/07/071315-National-RFRA-and-ND-poll.pdf>.

⁶⁹ 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-unjust.pdf>.

⁷⁰ Illan H. Meyer and others, "Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012," *American Journal of Public Health* 107 (2) (2017): 234-240, available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/Meyer_Final_Proofs.LGB_In_.pdf.

⁷¹ Allen J. Beck, "Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates" U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, 2014, available at https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.

⁷² Sharita Gruberg, "Dignity Denied: LGBT Immigrants in U.S. Immigration Detention" (Washington D.C.: Center for American Progress, 2013), available at <https://www.americanprogress.org/issues/immigration/reports/2013/11/25/79987/dignity-denied-lgbt-immigrants-in-u-s-immigration-detention/>.

immigrants than for the general population, while knowing the danger they face in detention, even more concerning.⁷³

VIII. Conclusion

For all the reasons outlined above, we urge Congress to pass the Equality Act.

⁷³ Sharita Gruberg, “ICE Officers Overwhelmingly Use Their Discretion to Detain LGBT Immigrants” (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/lgbt/reports/2016/10/26/291115/ice-officers-overwhelmingly-use-their-discretion-to-detain-lgbt-immigrants/>; Sharita Gruberg, “No Way Out: Congress’ Bed Quota Traps LGBT Immigrants in Detention,” *Center for American Progress*, May 14, 2015, available at <https://www.americanprogress.org/issues/lgbt/news/2015/05/14/111832/no-way-out-congress-bed-quota-traps-lgbt-immigrants-in-detention/>.