



April 10, 2019

Representative Jerrold Nadler
Chair
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

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

Dear Chair Nadler, Ranking Member Collins, and Members of the Committee:

On behalf of the more than 170,000 members and supporters of the American Association of University Women (AAUW), I thank you for the opportunity to submit this letter for the record for the Committee's hearing on, "*H.R. 5, the Equality Act.*" AAUW opposes all forms of discrimination and supports the civil rights of all individuals.¹ Our nation's civil rights laws must be updated to protect all of us. It is critical that Congress pass the Equality Act (H.R. 5), which would amend existing federal civil rights laws to provide explicit protection against discrimination based on sexual orientation and gender identity in housing, employment, education, public spaces and other key areas.

While the Supreme Court made clear in its 2015 decision *Obergefell v. Hodges* that LGBTQ people cannot be denied the right to marry, there is still much to be done to ensure that they are afforded equal treatment and equal rights in other areas of daily life. For example, only 20 states provide explicit protections prohibiting discrimination based on sexual orientation and gender identity in public accommodations.² An estimated 6.9 million LGBT people, ages 13 and older, live in states without statutes prohibiting sexual orientation and gender identity discrimination in public accommodations.³ In addition, while the U.S. Equal Employment Opportunity Commission (EEOC) currently argues that lesbian, gay, bisexual, and transgender workers are protected from wage discrimination under Title VII of the Civil Rights Act of 1964,⁴ federal court rulings and state and local laws are inconsistent and workplace protections for LGBTQ workers are not sufficiently uniform and robust. There are approximately 8.1 million LGBT workers, ages 16 and older, in the U.S., and an estimated 4.1 million of them live in the 29 states without statutes prohibiting sexual orientation and gender identity discrimination in employment.⁵ These are only a few examples of the patchwork of protections, which leaves LGBTQ people vulnerable to discrimination in many aspects of daily life — including employment, housing, credit, and federally funded programs such as education. This letter will address the need for uniform federal protections by providing a few examples in key AAUW areas.

Discrimination Impacts LGBTQ Workers' Economic Security

It is critical that LGBTQ employees can work free from discrimination. Indeed, it is an economic imperative to ensure that LGBTQ people have civil rights protections and equal recourse for workplace discrimination. A study of the employment discrimination experienced by gay men, bisexual men and women, and lesbians found that all three groups have labor market outcomes that diverge from heterosexual workers.⁶ Gay men, on average, are paid less than straight men.⁷ Bisexuals seem to face lower earnings primarily as a result of discrimination.⁸ The gender pay gap is consistent across sexual orientation: regardless of sexual orientation, women tend to have lower earnings than men.⁹

Other workplace outcomes vary as well. Lesbian, gay, and bisexual men and women are significantly more likely than their heterosexual peers to report employment discrimination, such as being fired from or denied a job, being denied a promotion, or receiving a negative evaluation.¹⁰ For example, Meagan Hunter, a successful server at Chili's, was denied promotions because of her sexual orientation.¹¹ Stacy Bailey was fired from her job as an elementary school art teacher because she is a lesbian.¹² Likewise, Lisa Howe was fired from her job as the

Belmont University soccer coach for her sexual orientation, even though she was a highly successful and popular coach.¹³ Discrimination, including based on cultural norms and gender stereotypes, persist and many LGBTQ workers are left without recourse if they face pay discrimination or other forms of workplace discrimination.

Transgender people also frequently experience workplace discrimination because of their gender identity, which harms their economic security.¹⁴ There is evidence to suggest that people who transition from a male to female gender expression experience a drop in pay after their transition.¹⁵ For example, more than one-quarter of respondents to a survey of transgender people reported an income of less than \$20,000 annually, while another analysis found that 15 percent of transgender people have earnings less than \$10,000 annually, compared to 4 percent of the general population.¹⁶ Carter Brown, a hardworking transgender man with a family was fired from his job in real estate simply because of his gender identity.¹⁷ The experiences of transgender people offer a powerful tool for understanding gender stereotypes and bias and how these factors play a role in the gender pay gap. They also demonstrate the need for uniform federal discrimination protections for LGBTQ workers.

Discrimination Impacts LGBTQ Students' Education

Equal educational rights is another key area where protections are needed. Nearly 2.1 million students ages 15 and older, and countless more under the age of 15, live in states without statutory protections against sexual orientation and gender identity discrimination at school.¹⁸ For them, accessing education often includes experiencing bullying and harassment on a regular basis. LGBTQ students experience harassment or assault based on personal characteristics, including sexual orientation, gender expression, gender, religion, race and ethnicity, and disability, at alarming rates. In a GLSEN report, 87 percent of these students reported experiencing this type of discrimination.¹⁹ Around seven in ten LGBTQ students experienced verbal harassment at school based on sexual orientation, and more than half experienced harassment based on gender expression or gender.²⁰ In addition, AAUW research has found that students in grades 7–12 are often targeted for failing to follow norms that are typical for their gender. Boys were most likely to identify being called gay as the type of sexual harassment most troubling to them. For girls, being called a lesbian was also a common occurrence, particularly for female athletes.²¹ This bullying and harassment impacts the ability of all students to access education. But with a patchwork of federal court rulings and state and local laws, students are often left without a solution when they experience this type of discrimination at school, as well as other forms of discrimination based on their sexual orientation or gender identity.

The Equality Act is a Critically Needed Solution

The Equality Act (H.R. 5) would make clear that discrimination on the basis of gender identity or sexual orientation are forms of sex discrimination and unlawful. In addition, the Equality Act would close loopholes in existing federal law that prohibits sex discrimination in public spaces and federally funded activities, providing new protections for women. Finally, the Equality Act would update the spaces considered public accommodations, thus extending current civil rights protections against discrimination based on race, religion, and national origin (in addition to sex) to more places important in our everyday lives.

Specifically, the Equality Act provides clear protections for LGBTQ people across a number of areas. These protections would:

- Protect discrimination against LGBTQ people who access federally funded programs and activities. This includes prohibiting discrimination by schools, hospitals, domestic violence shelters, and police departments that receive federal funds.
- Explicitly prohibit employment discrimination against LGBTQ people by clarifying that sex discrimination includes discrimination on the basis of gender identity or sexual orientation. The Equality Act also clarifies that discrimination based on sex stereotyping is a form of prohibited discrimination.
- Ensure LGBTQ people do not experience harassment and other forms of discrimination in public accommodations, such as at stores, in restaurants, and on transportation.

- Make clear that LGBTQ people are protected from discrimination in housing, including the sale or rental, and in credit, financing, and lending.

In addition to ensuring the LGBTQ people are clearly included in our civil rights laws, the Equality Act would update those laws to provide important new protections against sex discrimination overall. Currently, federal law does not prohibit sex discrimination in public spaces or in all federally funded programs. The new protections would:

- Ensure that sex discrimination is prohibited in public spaces and services. This would mean that women who experience sexual harassment on public transportation or in restaurants or stores would have a remedy. In addition, businesses would not be able to charge women more than men for the same services or products or to refuse services. For example, pharmacists would not be able to refuse to fill a woman's birth control prescription.
- Prohibit any programs that are federally-funded from discriminating on the basis of sex, including sexual orientation and gender identity. This would mean that businesses that receive federal grants and organizations that receive federal funding could not discriminate on the basis of sex.

While existing federal law provides protections against discrimination on the basis of race, religion, or national origin in public accommodations, these provisions need updating to ensure that everyone can fully participate in social and public spaces. The Equality Act's updated protections would:

- Include other important providers of goods and services like retail stores, accountants, and salons, and providers of transportation, to ensure they are also required to not discriminate on the basis of any protected characteristic.
- Extend protections to "actual or perceived" membership in a protected class and include protections based on association with a member of a protected class.

I want to thank the Committee for holding this important hearing on the Equality Act (H.R. 5). It is critical that Congress pass the bill and update existing federal civil rights laws to provide explicit protection against discrimination based on sexual orientation and gender identity. I urge you to stand up for the rights of all people by cosponsoring and supporting the Equality Act (H.R. 5). Cosponsorship and votes associated with this bill and amendments may be scored in the AAUW Action Fund *Congressional Voting Record for the 116th Congress*. Please do not hesitate to contact me at 202/785-7720 or Anne Hedgepeth, Director of Federal Policy, at 202/785-7724, if you have any questions.

Sincerely,



Deborah J. Vagins
Senior Vice President, Public Policy and Research

¹ See AAUW, *Public Policy Priorities 2017-2019*, June 2017, www.aauw.org/resource/principles-and-priorities.

² Human Rights Campaign, *State Maps of Laws and Policies, Public Accommodation*, June 2018, www.hrc.org/state-maps/public-accommodations.

³ The Williams Institute, "LGBT People in the United States Not Protected by State Nondiscrimination Statutes" (UCLA School of Law, March 2019), williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf.

⁴ U.S. Equal Employment Opportunity Commission, "What You Should Know About EEOC and the Enforcement Protections

for LGBT Workers,” 2018, www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm.

⁵ The Williams Institute, “LGBT People in the United States Not Protected by State Nondiscrimination Statutes”; Human Rights Campaign, *State Maps of Laws and Policies, Public Accommodation*.

⁶ Trenton D. Mize, “Sexual Orientation in the Labor Market,” *American Sociological Review*, November 2016, 1132–1160.

⁷ *Id.*

⁸ See, e.g. Kevin Miller and Deborah J. Vagins, “The Simple Truth about the Gender Pay Gap” (American Association of University Women, Fall 2018), www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/; Trenton D. Mize, “Sexual Orientation in the Labor Market.”

⁹ M. V. Lee Badgett and Alyssa Schneebaum, “The impact of wage equality on sexual orientation poverty gaps” (The Williams Institute at UCLA School of Law, June 2015), williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf.

¹⁰ The Williams Institute, “Experiences of Discrimination among Lesbian, Gay and Bisexual People in the US” (UCLA School of Law, April 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Discrimination-Work.pdf>.

¹¹ Meagan Hunter, “I’m Out of a Job Because My Boss Didn’t Think I Look Like a Woman” (ACLU Jan. 16, 2019), <https://www.aclu.org/blog/womens-rights/womens-rights-workplace/im-out-job-because-my-boss-didnt-think-i-look-woman>.

¹² Christine Hauser, “Texas Teacher Showed a Photo of Her Wife, and Was Barred From the Classroom,” *N.Y. TIMES* (May 10, 2018) <https://www.nytimes.com/2018/05/10/us/gay-teachers-wife-texas.html>.

¹³ Courtney Hodrick, “5 People Who Were Fired for Being Gay, And the 29 States Where That Is Still Legal” (The Williams Institute, UCLA School of Law, July 24, 2012), <https://williamsinstitute.law.ucla.edu/press/5-people-who-were-fired-for-being-gay-and-the-29-states-where-that-is-still-legal/>.

¹⁴ U.S. Equal Employment Opportunity Commission, “What You Should Know About EEOC and the Enforcement Protections for LGBT Workers,” www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm; Center for American Progress and Movement Advancement Project, “Paying an Unfair Price: The Financial Penalty for Being Transgender in America,” February 2015, www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf.

¹⁵ Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, “Injustice at every turn: A report of the National Transgender Discrimination Survey”; Kristen Schilt, “Just one of the guys? Transgender men and the persistence of gender inequality” (University of Chicago, 2010), www.press.uchicago.edu/ucp/books/book/chicago/J/bo9743256.html.

¹⁶ Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, “Injustice at every turn: A report of the National Transgender Discrimination Survey” (National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

¹⁷ Brian McBride, “A Man Was Fired for Being Trans. This is Why We Need the Equality Act Now” (Human Rights Campaign, March 19, 2019), <https://www.hrc.org/blog/a-man-was-fired-for-being-trans.-this-is-why-we-need-the-equality-act-now>.

¹⁸ The Williams Institute, “LGBT People in the United States Not Protected by State Nondiscrimination Statutes.”

¹⁹ GLSEN, “National School Climate Survey Released,” October 2018, www.glsen.org/article/glsen-releases-new-national-school-climate-survey-report.

²⁰ *Id.*

²¹ Catherine Hill and Holly Kearn, “Crossing the Line: Sexual Harassment at School” (American Association of University Women, 2011), www.aauw.org/research/crossing-the-line/.