



ISSUE ADVISORY: Equality Act Would Ensure Equal Treatment for LGBTQIA Persons and Women

July 29, 2015

Now that marriage equality is the law of the land, the National Organization for Women and allies are re-directing our attention to a persistent and troublesome problem: widespread discrimination against LGBTQIA persons. Unfortunately, 31 states do not have fully-inclusive non-discrimination laws that address the many forms of discrimination encountered by LGBTQIA persons; 28 states permit employers to fire someone because they are gay or bisexual. NOW has campaigned for many years for passage of a comprehensive bill that would prohibit such unequal treatment.

At an exciting press conference on July 23, Sens. Jeff Merkley (D-Ore.), Tammy Baldwin (D-Wis.), and Corey Booker (D-N.J.) and Reps. David Cicilline (D-R.I.) and John Lewis (D-Ga.), (H.R. 3185) introduced the most comprehensive LGBTQIA civil rights protection legislation yet, the **Equality Act**. There are 165 House co-sponsors currently, and there were 37 co-sponsors plus the three original Senate sponsors for the Senate companion measure (which does not yet have a bill number) at introduction.

A Historic Event - NOW's Membership Vice President and long-time LGBTQIA rights and marriage equality activist, Bonnie Grabenhofer, was proud to be in attendance for this historic event. Also in attendance were House Minority Leader Nancy Pelosi (D-Ca.), House Democratic Whip Steny Hoyer (D-Md.) and many prominent members of Congress.

At the press conference, Sen. Baldwin said, "I believe every American is ready to take the next steps forward in the march for fairness, equality, and opportunity for every American. A growing number of Americans believe that their LGBT family members, friends, and neighbors deserve to be treated like everyone else in the United States."

Rep. Cicilline noted, "In most states, you can get married on Saturday, post your wedding photos on Facebook on Sunday, and then get fired on Monday just because of who you are. This is completely wrong."

Majority Report Discrimination - Discrimination against LGBTQIA persons remains a widespread problem: a Human Rights Campaign survey conducted earlier this year found that 63 percent of LGBT persons have experienced discrimination in their personal lives.

The Equality Act is groundbreaking in its comprehensiveness, and its objectives have wide public support – in a recent poll seven out of 10 respondents indicated their full support for this type of protective legislation.¹ This bill is necessary because not only would it provide all LGBT

¹ Greenburg Quinlan Rosner Research Poll, March 2015

persons with the legal protections they deserve and it correctly situates those protections in civil rights law.

Bill Amends Civil Rights Act - The Equality Act would amend several titles of the **Civil Rights Act of 1964** by including language that protects persons from discrimination in the context of employment, housing, credit, education, and jury service based on their perceived or actual sexual orientation or gender identity. Not only would LGBT persons be better protected under the Equality Act, but the bill has several provisions extending protections against discrimination on the basis of sex.

Under the Act, “gender identity” means the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual regardless of the individual’s designated sex at birth. Sexual orientation means homosexuality, heterosexuality, or bisexuality. Queer or questioning, intersex, and asexual categories are covered in the broader LGBT definition. Definitions of “sex” include, a sex stereotype; pregnancy, childbirth, or a related medical condition; and, sexual orientation or gender identity.

Expanded Protections for Women – Currently, in the laws prohibiting discrimination by businesses serving the public, and in all types of programs receiving federal funds, there are no prohibitions against sex discrimination, according to the National Women’s Law Center. The Equality Act adds important protections against sexual harassment of women in public accommodations, such as on buses and subways. Discriminatory treatment in refusing service or being charged more for goods and services simply because they are women (as often happens with car mechanics, car dealerships or contractors) would be prohibited. The Equality Act would give women new avenues of legal recourse and new options if they are sexually harassed or experience discriminatory treatment in these areas.

Importantly, under these provisions, the Equality Act would prevent pharmacies from refusing to make available contraceptives – as many still do. And breastfeeding mothers are still being harassed and asked to leave public places because they are breast-feeding – this too would be prohibited. Additionally, it would provide for a legal action against pharmacies that refuse to dispense birth control, a problem thousands of women seeking it still face.²

Prohibits Religious Belief-Based Discrimination - In addition, there is a clear prohibition against the use of religious belief to engage in discrimination against LGBT persons; a loophole that permitted religious belief-based discrimination was a serious concern for NOW and allies in an earlier bill, the Employment Non-Discrimination Act (ENDA). Businesses covered by federal civil rights law would not be able to use the Religious Freedom Restoration Act of 1993 (RFRA) to discriminate and that is made explicit in this Act. Currently, multiple efforts to deny equal treatment for LGBTQIA persons are being made in states under either the federal or the state RFRA laws.

² <http://www.nwlc.org/resource/pharmacy-refusals-101>

Patchwork of State Laws - The Equality Act comes at a time when an LGBT person's safety and security is at the mercy of partisan state politics, which have created a "patchwork" of rights across the country. Currently, only 22 states have laws that ban discrimination in employment and housing based on sexual orientation, and only 19 of these laws protect transgender individuals. In terms of public accommodations (places such as restaurants, hotels, theaters, etc.), only 21 states protect people based on sexual orientation, and an even fewer – just 17 – protect based on gender identity and sexual orientation. Fourteen states and the District of Columbia prohibit discrimination on the basis of sexual orientation or gender identity in education.

“Public Accommodations” Broadened - Specifically, in the areas of **Public Services and Accommodations**, the Equality Act would amend **Title II of the Civil Rights Act of 1964** to provide basic protections against discrimination in public services and spaces on the basis of sex, sexual orientation and gender identity to the list of protected classes. It also expands the definition of “public accommodation” from a more limited list including lodging, places that serve food, and places of entertainment to a more comprehensive list including stores, online retailers or service providers, salons, banks, gas stations, food bank, shelters, travel agencies, funeral parlors, health care providers, accountants, legal services, public transportation, taxis and car services, airports, and bus and train stations and others. These provisions also prohibit segregation in public accommodations and offer men and women of color ways to counter racial discrimination and profiling in these settings.

Discrimination in Federally-Funded Programs Prohibited - Title VI of the Civil Rights Act of 1964 would be amended to provide basic protections against discrimination in Federal Funding on the basis of sex, sexual orientation and gender identity and thus would prohibit discrimination by those programs funded with federal dollars. This provision would prohibit discrimination against LGBT people and women in federally-assisted programs or services and would make denying LGBT persons access to federal benefits or excluding them from a federally-assisted program solely on the basis of sex, sexual orientation, or gender identity unlawful. The provision would apply to both men and women in prohibiting discrimination by a program or institution using federal funds. Any entity that accepts any amount of federal funding, whether through a contract, grant, award, or other form of funding is a covered entity under the proposed Act.

According to the Human Rights Campaign, research indicates that 82 percent of LGBT students report that they have been verbally harassed, 38 percent have been physically harassed, and 64 percent have felt unsafe at school because of their sexual orientation.

Prohibiting Discrimination in Education - The Equality Act also contains vital protections against discrimination in education, and does so by amending **Title IV of the Civil Rights Act of 1964** to add sexual orientation and gender identity to the list of protected classes under the act that cannot be used as a basis for assigning public school students into a particular school or educational program. While this statute would only apply to public schools, a student could file a

complaint with the U.S. Attorney General if they experienced discrimination in admission or enrollment -- for example, if a transwoman was denied admission to an all-women school.

All public schools would be subject to provisions of the Equality Act, including elementary and secondary educational institutions and public colleges, which include any institution of higher education or any technical or vocational school above the secondary level that is operated by a state. The Equality Act does not apply to private schools.

Several Employment Laws Amended - As to employment discrimination, the Equality Act amends **Title VII of the Civil Rights Act of 1964**, the **Civil Service Reform Act of 1978**, the **Government Employee Rights Act of 1991**, and the **Congressional Accountability Act of 1995** to provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity. Note: the bill does not alter existing exemptions for small business, the military and religious organizations. It also codifies discrimination on the basis of sex stereotyping such as the kind of discrimination detailed in the case of *Price Waterhouse v. Hopkins* along with recent decisions from the Equal Employment Opportunity Commission. (In the *Price Waterhouse v. Hopkins* case, the Supreme Court established that gender stereotyping is actionable as sex discrimination, among other rulings.)

The Equality Act extends LGBT discrimination prohibitions in three other areas. The **Fair Housing Act** is amended to provide basic protections against housing discrimination based on sexual orientation and gender identity. A study commissioned by the Department of Housing and Urban Development, shows that housing discrimination against LGBT people is very prevalent.

The **Equal Credit Opportunity Act** is amended to provide basic protections against credit discrimination based on sexual orientation and gender identity. Such protections should help address a high proportion of economically-disadvantaged persons in the LGBT community, especially transgender people and women who are at high risk of poverty that other groups of people.

The **Jury Selection and Services Act** is amended to provide basic protections against discrimination based on sexual orientation and gender identity. There is a long history of attorneys discriminating against LGBT individuals, or those perceived to be LGBT, in jury selection.

TAKE ACTION - The Equality Act is a very large step into a more just, equitable future for LGBTQIA persons and for women. You can read the House bill at www.congress.gov We urge NOW activists to call, meet with or email their senators and representative and ask them to sponsor the Equality Act and to take a leadership role in getting it passed into law. For a listing of House members' contact information, go to, <http://www.house.gov/representatives/> or enter your zip code at, <http://www.house.gov/representatives/find/> The Senate directory is at, <http://www.senate.gov/senators/contact/>

