2019 HOUSE HUMAN SERVICES

HB 1441

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1441
2/11/2019
32527

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Nicole Klaman

Explanation or reason for introduction of bill/resolution:

Relating to prohibition of discrimination on the basis of sexual orientation.

Minutes: 14

Chairman Weisz: Opened the hearing on HB 1441.

Representative Mary Johnson, District 45, Introduced bill, See **attachment 1**.
(Time stamp 0:09:18)

Representative Todd Porter: ND is a right to work state, how would this bill play out if it were to pass?

Rep. Johnson: Adding sexual orientation would work well.

Representative Mary Schneider: One of the big issues recently, religious discrimination. How does this bill address those that say they can discriminate based on religion?

Rep. Johnson: My religion demands this be passed. My religion supports this because we should be supportive. Rise above identity politics, look to the constitution. Who is being equally protected and who is not.

Chairman Weisz: Further support testimony?

Jody Uecker, Governor operating officer: In support, See **attachment 2**. This bill will promote sound workforce policies.

Carol Two Eagles, citizen: In support, **See attachment 3**. Sexual orientation is a matter of the soul. A matter of spirituality, not physicality.
(Time stamp 0:18:48)

<u>Opposition</u>

Mark Jorritsma, Executive director Family Policy Alliance of ND: Opposed, see **attachment 4.** This bill would not allow North Dakotans to live and work according to their beliefs.
(Time stamp 0:28:44)

Rep. Anderson: Rep. Johnson stated she had versus in the bible

Mark Jorritsma: I am Christian and rep. Johnson gave a different perspective. I believe the passages state that homosexuality is not permitted. Religious freedom is protected and this bill would not allow people to practice their religious freedom.

Karen Anderson, Member of Concerned Women for America of ND, State Steering Committee member: In opposition; **See attachment 5**. Raises sexual orientation to a protected law.
(Time stamp 0:34:32)

Representative Mary Schneider: How many due payers do you have in ND

Karen Anderson: We have over 800 members

Christopher T. Dodson, Executive Director ND Catholic Conference; Opposed, see **attachment 6**.
(Time stamp 0:40:20)

Chairman Weisz: Questions? Seeing none, further opposition.

Elizabeth Loos, Legislative Coordinator ND Human Rights Coalition: Opposition, See **attachment 6**. Opposed because it excludes gender identity as a protected class, and thus codifies into law that it is acceptable to discriminate against transgender people. *(Time stamp 0:48:41)*

Representative Dick Anderson: What if I hired a transgender person and my business suffers because of this and I have to let them go.

Elizabeth Loos: I wouldn't suspect if they were doing wonderful work you wouldn't be faced with the problem.

Christy Wolffe, Women's Network: Not present for testimony, written testimony provided, **See attachment 7**

Representative Chuck Damschen: Putting this aside and saying I was in rep. Anderson's statement but instead he has an abrasive personality. Would I have a right to fire him?

Elizabeth Loos: Yes

Rep. Damschen: Would I be discriminating against his sexuality?

Elizabeth Loos: Your grounds for firing would be his attitude, not his sexual identity.

Chairman Weisz: Opposition

Cody Severson, Activist, Citizen Fargo: Opposition. Not supporting due to transgender identity not being included. See **attachment 8**
(Time stamp 56:24)

Representative Matthew Ruby: Is there a lower rate of suicide in states that have passed similar bills?

Cody Severson: I do not have supporting statistics, however it would make sense that this would be the case considering people could live their sexual preference.

Clint Fleckenstein, Citizen: Opposition, **See attachment 9.** This bill contains no protections for the constitutional rights of North Dakotans, and will be used to attack. Words used like Love, equality and fairness. The truth is it's legalized bullying as it's a way for Sexuality Activists to punish another through law for exercising their biblical views and constitutional rights.
(Time stamp 1:07:10)

William Schuh, Citizen: Opposed, See **attachment 10.**
(Time stamp 1:19:40)

Chairman Weisz: Questions?

Kevin Tangenstal, citizen: In opposition, written testimony not provided. Opposed as this bill excludes gender identity.
(Time stamp 1:24:30)

Jay Scott, Citizen and student, member of LGBTQA: Opposition **see attachment 11**. I don't normally go out in public dressed this way because I live in fear in ND. This bill trades away the rights to some for rights for others by not including transgender.

Hannah Hunter, Fargo resident: Opposition. See **attachment 12**. Not inclusive of the entire group, LGBTQA Plus. Human rights should not be up for debate. This bill will make it harder for transgender people to find work.

Miranda (last name Unknown): Opposition, written testimony not provided. Many people claim religious reasons why they do not support. Why do transgender people not included to be the same rights?

Kim Reidlinger, citizen. Opposed, written testimony not provided. This would provide basic human rights for all of our citizens. Concerned because younger generations, regardless of sexuality, feel ND supports discrimination on LGBTQ Plus community and because of this they have left and will not return. Per human rights campaign, violence has steadily risen against trans genders since 2014. Due to lack of LGBTQ Plus protections.
(Time stamp 1:42:48)

Ahma Schult, citizen: Opposed. Written testimony not provided.
(Time stamp 1:48:01)

Chairman Weisz: Neutral testimony

Neutral

Commissioner Michelle Kommer: Labor and Human Rights Commission, introduced Rheider McCormic

Rheider McCormick, Law intern for Labor and Human Rights Commission, **See attachment 13**

Chairman Weisz: Are there a lot of reports against LGBYQ community?

Commissioner Kommer: Disability and retaliation claims are the highest.

Chairman Weisz: closed

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1441
2/12/2019
32597

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Typed for Nicole Klaman

Explanation or reason for introduction of bill/resolution:

Relating to prohibition of discrimination on the basis of sexual orientation.

Minutes:

(04:50)
Chairman Weisz: Opened the hearing on HB 1441.

(05:00)
Chairman Weisz: So these are your amendments, Representative Dobervich. I believe everyone has a copy of the amendments, 01002.

(05:20)
Rep. Dobervich: Basically the amendment on page 3, line 22, inserts gender identity.

(05:38)
Chairman Weisz: So that's basically you're defining gender identity in that section.

(05:43)
Rep. Dobervich: And then on page 4, line 26, adds gender identity under sexual orientation as well. And then the renumbering.

(05:59)
Chairman Weisz: So everybody understands the amendment. So it’s the same bill, just broadening which was, of course, a lot of the testimony yesterday.

(06:21)
Rep. Anderson: I just have a question for Representative Dobervich, did you visit with Mary on this? I know why she did what she did, and she was afraid that if she added any of this, she wouldn't have a chance of getting her bill passed, but I don't now if you did or not.

(06:38)
Rep. Dobervich: I did let her know, and she was not excited about the amendment, and I totally understand the reasoning behind this. I'm proposing the amendment based on (audio not clear).

(07:10)
Rep. Dobervich: Moved amendment .01002.

(07:21)
Rep. Anderson: Seconded.

(07:30)
Rep. Ruby: I'm going to resist this amendment strictly, I know somebody who basically wakes up every morning and picks from a hat on what gender they're going to be today. And the actual perceived confused me. I think it's going to cause a lot of troubles, so I think that there's, that may be an anecdote, an outlier, but it's relevant. So I'm going to go against this.

(08:02)
Chairman Weisz: Any further discussion on the amendment?

(08:10)
A voice vote was taken. Motion failed.

(08:22)
Chairman Weisz: Is there any other amendments?

(08:27)
Rep. Porter: Mr. Chairman, there is. Representative Johnson did have one out, 01001.

(08:39)
Chairman Weisz: Well, let's discuss it. I'd entertain a motion to get it on the table at least.

(08:54)
Vice Chairman Rohr made the motion.

(09:02)
Rep. Dobervich: Seconded.

(09:06)
Chairman Weisz: And if I recall, the argument for removing the actual or perceived, correct?

(09:17)
Rep. Porter: Page 6, line 6.

(09:20)
Chairman Weisz: And I'm trying to remember the, page 4, line 25. I'm trying to remember the argument. I think, if I remember, testimony was that perceived wasn't necessary anyway because in a sense it's already implied that sexual orientation means homosexuality, bisexuality, or heterosexuality by itself. I don't know, that was her argument that you don't need to. But you could argue, maybe I shouldn't even say this, but, if you take out perceived, what defines or what qualifies homosexuality? Maybe I'm not making myself clear, or bisexuality or heterosexuality for that matter. What's the criteria then? Because, legally, it is because you say you are. You say you're a heterosexual or you say you're bisexual. So does the language need to be in there? I don't know.

(11:22)
Rep. Dobervich: I'm wondering if it isn't the perceived is in there based on the person perceiving as much as society perceiving. Because right now if I think an employee is gay, I can fire them, whether they have come out as gay and whether they are or not. So I'm wondering if the perception is more there not for the person but for society as a whole.

(11:54)
Chairman Weisz: And I think that's kind of my point is that there's, the only definition is that that person says so if society or the employer, whoever you want to say, if they perceive someone and discriminate against them regardless of even whether they are or not. So it seems like you'd almost want to keep that language in. But that is the bill sponsor did want to remove it. So whatever the committees wants to do with it. We do have a motion, I guess there's no further discussion. Let's see where it goes.

(12:47)
A voice vote was taken. Motion failed.

(12:57)
Chairman Weisz: Are there any other amendments? Okay, if there aren't, then let's talk about the bill.

(13:04)
Rep. Ruby: Do you want to correct the spelling mistake?

(13:06)
Chairman Weisz: Oh. Where's there a spelling mistake?

(13:08)
Rep. Ruby: The "for" to "from".

(13:10)
Chairman Weisz: Oh, on page 6, line 6. Okay, committee, take a look there. Yeah, there might need to be. Well, but I mean there's no, okay, page 6, line 6 does not prohibit. Oh yeah "for" with "from". We should then have a motion to correct that on page 6, line 6, the "for" to "from".

(13:39)
Rep. Rohr: It says it right here.

(13:41)
Chairman Weisz: I know, but we killed that.

(13:42)
Rep. Rohr: Oh, so I see, you have to go add it again. I didn't know that.

(13:45)
Chairman Weisz: Yeah, we killed that amendment.

(13:47)
Rep. Tveit made a motion to correct the language on page 6, line 6.

(13:56)
Rep. Dobervich: Seconded.

(13:58)
Chairman Weisz: Any discussion on that. That's just cleaning up the bill here.

(14:03)
A voice vote was taken. Motion carried.

(14:21)
Chairman Weisz: This is always a fun subject that some of us have dealt with since 2009. Discussion on the bill? Motion? I realize we're probably not changing minds to any degree.

(14:49)
Rep. Anderson: My feelings are, even though that discrimination of any kind is horrible, I just think this puts a lot of burden on an employer who he hires. And I actually think it would be more discrimination, just visiting with my brother who lives out in California and has his own business, he gets to the point that he's very picky on who he hires because just of the lawsuits that are thrown up all the time. I just don't think it's going to help anything. It's my opinion.

(15:28)
Chairman Weisz: Further discussion?

(15:34)
Rep. Damschen: The same one we talked about, the point that we talked about every time is that we run into trouble if we start making special, giving special rights. I wouldn't think anyone in this committee would discriminate against the LGBT people. But I would certainly would be against giving them special rights, or any other group, actually, for that matter, giving them special rights. I think the constitution, both North Dakota and the U.S. Constitution don't leave anybody out when they guarantee rights. So I'm going to oppose this one again.

(16:22)
Chairman Weisz: Yeah, we'll fail it, and it's not directly related to this bill in a way. I thought it was interesting the number one thing that is being discriminated against is the disabled. I thought that was, it wasn't was I expected, I guess, to be honest with you, what the answer was. And it sounds like it was overwhelmingly, compared to the other complaints of discrimination, which may be telling us we have a ways to go too on how we treat our, those with disabilities. Further discussion?

(17:16)
Rep. Porter: I move a do not pass on House Bill 1441.

(17:22)
Vice Chairman Rohr: Seconded.

(17:25)
Chairman Weisz: Further discussion? If anybody else had amendments, I surely would have like to have looked at them. And, frankly, I wish there was a way we could resolve some of the issues. I'm tired of this too. I'm not always thrilled being the bad guy here. It just seems like were sort of at an impasse at this point, where we can't come up with a way that melds where I think most, I would hope all of us should, but at least I hope the vast majority agree we shouldn't be discriminating, and how you make that fit with some of the other issues that come up.

(18:16)
A roll call vote was taken: Yes 11, No 2, Absent 1.

Motion carried.

Chairman Weisz will carry the bill.

Prepared by the Legislative Council staff for
Representative Dobervich
February 8, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 3, line 22, after "10." insert ""Gender identity" means actual or perceived gender-related identity, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individuals' designated gender at birth.

11."

Page 3, line 26, overstrike "11." and insert immediately thereafter "12."

Page 3, line 28, overstrike "12." and insert immediately thereafter "13."

Page 3, line 30, overstrike "13." and insert immediately thereafter "14."

Page 4, line 4, overstrike "14." and insert immediately thereafter "15."

Page 4, line 11, overstrike "15." and insert immediately thereafter "16."

Page 4, line 14, overstrike "16." and insert immediately thereafter "17."

Page 4, line 17, overstrike "17." and insert immediately thereafter "18."

Page 4, line 24, overstrike "18." and insert immediately thereafter "19."

Page 4, line 25, overstrike "19." and insert immediately thereafter "20."

Page 4, line 26, after "homosexuality" insert ", or gender identity"

Page 4, line 27, replace "20." with "21."

Page 6, line 6, replace "for" with "from"

Renumber accordingly

Prepared by the Legislative Council staff for
Representative M. Johnson
February 8, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 4, line 25, remove "actual or perceived"

Page 6, line 6, replace "for" with "from"

Renumber accordingly

DP 2/12/19

19.0991.01003
Title.02000

Adopted by the Human Services Committee

February 12, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 6, line 6, replace "for" with "from"

Renumber accordingly

Date: 2-12-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Dobervich Seconded By Anderson

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

→ motion fails to adopt amendment

add gender identity (listen to this)

Date: 12-12-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rohr Seconded By Dobervich

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin	N	V			
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Amendment to strike "perceived"
Motion fails

Date: 12-12-19
Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Tveit Seconded By Dobervich

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Gretchen Dobervich		
Karen M. Rohr – Vice Chairman			Mary Schneider		
Dick Anderson					
Chuck Damschen					
Bill Devlin					
Clayton Fegley					
Dwight Kiefert					
Todd Porter					
Matthew Ruby					
Bill Tveit					
Greg Westlind					
Kathy Skroch					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

→ pg. 6 line 6 - From "for" to "from"

Motion Carried.

Date: 2-12-19
Roll Call Vote #: 4

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 19 0991.01003 LC 02000

Recommendation:
☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Porter Seconded By Rohr.

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich		X
Karen M. Rohr – Vice Chairman	X		Mary Schneider		X
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	X				
Clayton Fegley	X				
Dwight Kiefert	—				
Todd Porter	X				
Matthew Ruby	X				
Bill Tveit	X				
Greg Westlind	X				
Kathy Skroch	X				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Weisz

If the vote is on an amendment, briefly indicate intent:

Motion passes - DNP as Amended

REPORT OF STANDING COMMITTEE

HB 1441: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1441 was placed on the Sixth order on the calendar.

Page 6, line 6, replace "for" with "from"

Renumber accordingly

2019 TESTIMONY

HB 1441

#1
HB 1441
2-11-19
pg 1

HUMAN SERVICES COMMITTEE
FEBRUARY 11, 2019
SUPPORT OF **HB 1441**
REP. MARY C. JOHNSON

I am Mary Johnson, Representative from District 45. I am the prime sponsor of HB 1441 which seeks to ban discrimination based on sexual orientation in employment, housing, state and local government services and credit transactions.

With the amendment I just passed out, "Sexual Orientation" means heterosexuality, bisexuality or homosexuality." As was pointed out to me, "actual or perceived" has no bearing on the underlying discrimination based on sexual orientation.

M Johnson

19.0991.01001
Title.

Prepared by the Legislative Council staff for
Representative M. Johnson
February 8, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 4, line 25, remove "actual or perceived"

Page 6, line 6, replace "for" with "from"

Renumber accordingly

M Johnson

#2
HB1441
2-11-19
pg 1

Testimony on HB 1441

Prepared for the House Human Services Committee

February 11, 2019

Good morning Chairman Weisz and members of the Human Services Committee, My name is Jodi Uecker and I serve as the Chief Operating Officer for the Governor's Office, and on behalf of the Governor's Office, I stand in support of HB1441.

The passage of this bill is an important message to current and future North Dakota citizens. With over 30,000 job openings, every policy the legislature is considering should be viewed through a lens of supporting workforce development in our state. We need our young people to stay in North Dakota, and we need to recruit new North Dakotans in order to fill the abundance of open jobs across our state. We are competing both nationally and globally for talent, and laws that exclude or limit the rights of our citizens, or the omission of laws that protect those rights, create a barrier for recruiting and retaining talent. You have the opportunity before you to promote sound workforce policy for the great state of North Dakota.

#3
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2-11-19
pg 1

TESTIMONY ON HB1441 CAREL TWO-EAGLE, PK FEBRUARY 11, 2019

Hanh Chairman and members of the Committee. For the record, my name is Carel Two-Eagle. I am here in support of HB 1441.

In the Indian Way of every Native Nation on this Turtle Island, one's sexual orientation is a matter of the kind of soul that inhabits a body, not whether the body has male or female genitalia. It is a matter of spirituality, not physicality.

Among us Lakota, a person is one of the following:

a male spirit in a male body (Straight male);
a female spirit in a female body (Straight female);
a male spirit in a female body (winkte); or
a female spirit in male body (sometimes winkte, sometimes "manly-hearted woman".

We are the original "one person, one vote people". If someone tries to talk to you about "two spirit" people, ignore them. Such things are anathema to us Lakota. Before missionaries and reservations, bisexual people would be killed in a special ceremony so their two spirits could go back to the Spirit World and get one body each. Our cultural thinking is, if there are 2 spirits in one body, you are dis-eased and not in balance, and it is unkind to leave a person in such a condition.

Given that I Walk with a Pipe and such a Pipe is holy, I am the authority on such things, not them. In Lakota, I would say, "Channunpa yuha wamani ye." – I Walk With a Pipe. And, "Channunpa wakan ye" – The Pipe is Holy. We who Keep Pipes (Channunpa) are the authorities on things spiritual.

In Traditional Lakota society, the winkte are not discriminated against but rather are valued as spiritual bridges between the two Straight worlds. They are considered to have special spiritual and other talents that fulfill some cultural and/or ceremonial needs of the community that ordinary people can not fill.

Thus, this being a spiritual matter, it is as incorrect to discriminate against someone on the basis of their sex or sexual preference as it is to discriminate on the basis of eye or hair color.

Please give this bill a unanimous DO PASS recommendation. I am always available to answer your questions. Thank you for hearing me in a good way now.

#4
HB 1441
2/11/19
pg. 1

Family Policy ALLIANCE of North Dakota

Testimony Opposing House Bill 1441

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
February 11, 2019

Good morning Chairman Weisz and honorable members of the House Human Services Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and the thousands of constituents across our great state for you to please render a "DO NOT PASS" on House Bill 1441.

INTRODUCTION

I would like to begin my testimony by clarifying what is and isn't in House Bill 1441. You may have heard House Bill 1441 marketed by some as a "softer version" of failed Senate Bill 2303, because this bill does not include "gender identity" as a protected class in the language. However, I'm here to tell you that despite focusing on sexual orientation, the bill would still be disastrous to North Dakotans. It still seeks to enshrine "sexual orientation" as a protected class, similar to race and religion. This is the fundamental problem with the bill. We have ample evidence from other states that have enacted similar laws that this bill would result in the trampling of religious freedoms, create a climate for legal action against businesses, and prevent churches and other religious organizations from practicing their beliefs. This is not a "softer" bill; it just dresses up bad legislation in a different manner.

SUMMARY ANALYSIS

House Bill 1441 comes down to some very basic questions. Do you want a North Dakota where business owners are forced to give up their faith in order to earn a living? Do you want a state where religious organizations are forced to hire someone who claims to ascribe to their faith, but whose sexual life is in direct contradiction to the beliefs of the organization? Should our state government use your tax dollars to fight possible new lawsuits? The passage of House Bill 1441 would be the catalyst to create all these potential problems.

This bill would enshrine sexual orientation as a protected class subject to the existing human rights statutes, alongside race, color, religion, sex, national origin, age, and disability. This protection would need to be extended to "employment relations, public accommodations, housing, state and local government services, and credit transactions". In other words, a huge portion of North Dakotan's lives and livelihoods.

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pg. 2

Family Policy ALLIANCE of North Dakota

I would contend that the government should be in the business of protecting our freedoms, not punishing its people for their ideas and beliefs. Culture and economy thrive with the free exchange of beliefs and ideas. No culture or economy has ever prospered when its governmental authority uses its power to punish ideas and beliefs.

MAJOR IMPACTS

Private Employers

House Bill 1441 would force private business owners to provide goods and services that violate their faith and conscience. I ask you, should anyone be forced to give up their faith in order to earn a living? There is ample evidence of this happening in other states that include "sexual orientation" as a protected class. Those laws have been used to punish and even destroy family businesses, such as when business owners declined to serve a same-sex wedding because of their Christian beliefs, even though they referred the couple to another business that would serve them (e.g., CO, WA, NM, OR, KY, NY).

This bill would require an employer to consider an employee's or potential employee's actual or "perceived" sexual orientation when making hiring/firing decisions. Sexual orientation is essentially who an individual is attracted to, which means that an employer would need to somehow ascertain or "perceive" which sex someone is attracted to. I ask, how is an employer or frankly anyone able to do this? If the employer gets it wrong, they could be accused of violating the person's human rights under this bill and could end up in court fighting an unwinnable battle.

Some worry about whether our state will be perceived as unfriendly to businesses or experience less in-migration without this type of law. Texas and North Carolina have refused to pass these kinds of laws, and in fact have passed strong religious freedom laws. Yet, they consistently rank in the top 5 states in the nation for business. Similarly, of the eight states that experienced the greatest net in-migration in 2018, six of those states had no similar law regarding discrimination on the basis of sexual orientation.

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2-11-19
pg 3

Family Policy ALLIANCE of North Dakota

Religious Institutions

House Bill 1441 would require faith-based organizations to hire staff whose lifestyles might be against their fundamental religious beliefs. There is a weak and poorly written supposed exemption for religious organizations, associations, societies and nonprofits in Section 3 of the bill. However, a detailed read of this section reveals that religious entities could still be forced to hire someone who claims to ascribe to their faith, but whose sexual life is in direct contradiction to the beliefs of the organization. For example, a church could be forced to hire a homosexual pastor, even though the church's position is that its leadership must be heterosexual.

Further, this part of the bill does not represent a true "exemption". Even if this section of the bill was written in a substantive manner, exemptions do not convert an otherwise bad policy into a good one, and the result would not be fairness for all, but unfairness for many with an exemption for a fortunate few.

State and Local Governments

House Bill 1441 would also put state and local government entities at risk of being sued and potentially create significant costs to them. There is no more convincing evidence of this than in the case of Jack Phillips, the cake baker from Colorado who declined to serve a same-sex wedding because of his religious beliefs. That case went all the way to the U.S. Supreme Court. It cost the State of Colorado $125,000 to pursue the case. And that's just time by the Colorado Department of Law. Many other agencies undoubtedly needed to contribute time and resources to the case, which means this is almost certainly a low estimate.

Housing

This bill would force housing owners/directors to NOT consider sexual orientation when it comes to housing. For example, North Dakota colleges and universities could not provide alternative housing to a heterosexual student, if he was assigned a gay roommate and wanted to be relocated because his roommate's sexual orientation made him feel uncomfortable.

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Family Policy ALLIANCE of North Dakota

SUMMARY

- All North Dakotans should be free to live and work according to their beliefs—this bill would gravely harm that freedom.
- The primary duty of government is to protect its citizens—this bill would put North Dakotans at risk.
- House Bill 1441 would force North Dakotans to give up their faith in order to earn a living. This is not the type of state we want.
- This bill could very well make North Dakota employers much easier targets for lawsuits.
- There is evidence that enacting this type of law does not adversely affect business attractiveness or net in-migration.
- No religious organization should be required to hire someone who claims to ascribe to their faith, but whose sexual life is direct contradiction to the beliefs of the organization.
- This bill would put state and local government entities at risk of being sued and potentially incurring significant costs.
- State colleges and universities could not provide alternative housing to students uncomfortable with a roommate's sexual orientation.
- Landlords could no longer decide how to best operate their businesses, without fear of legal action based on actual or "perceived" sexual orientation.

In conclusion, why should North Dakota bow to the politically correct pressure that other states have successfully resisted? We aren't a New York, California, Washington, or Colorado, and I hope we never are. Their beliefs are not our beliefs or values.

I respectfully ask that you please vote House Bill 1441 out of committee with a "DO NOT PASS" recommendation. Thank you for the opportunity to testify and I am now happy to stand for any questions.

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CONCERNED
WOMEN for AMERICA
OF NORTH DAKOTA

February 11, 2019
House Human Services Committee
Testimony in Opposition to HB 1441

Mr. Chairman and members of the committee, my name is Karen Anderson. I am a member of Concerned Women for America (CWA) of North Dakota and serve on the State Steering Committee. We are the state's largest public policy women's organization and country's largest public policy women's organization with hundreds of thousands of members across the country.

We are here today on behalf of our North Dakota members in **opposition to HB 1441, relating to the prohibition of discrimination on the basis of sexual orientation.**

CWA of North Dakota opposes HB 1441 as it elevates "sexual orientation" to a protected civil rights status. Listed are areas of concern:

- **HB 1441 is not needed. The equal amendment clause of our Constitution covers gender or sexual distinction.** The 14th Amendment gives all equal protection under the law. In the U.S. Supreme Court ruling in *Reed v. Reed* in 2971, the court decided **the 14th Amendment did prohibit unequal treatment** on the bases of sex and declared sex discrimination a violation of the 14th Amendment. REED V. REED, 404 U.S. 71 (1971).
- **HB 1441 would not protect rights but would rather grant special privileges based strictly on someone's sexual behavior.** Further, those privileges would have a significant impact on the constitutional rights of North Dakotans who may have a moral objection to certain sexual behavior.
- **HB 1441 infringes upon the conscience and religious liberty of one group over another and gives individuals a right to harass and sue – based on a class of sexual activities.** The term "sexual orientation" itself is a radical challenge to the beliefs of all major religious faiths because it attacks the notion that sexual behavior has moral dimensions.
- **HB 1441 has no exemptions for those with personal convictions, thus forces individuals to accept and support sexual behaviors with which they disagree.** The "religious exemptions" specified in the bill are limited and do not cover protections for conscience.
- **HB1414 would force the acceptance of any "inclination." Since the underlying concept of "sexual orientation" is that all sexual behavior is equally valid, there are no good choices or bad choices, just inclinations.** There is no longer any definition of the two sexes. Private businesses and organizations would be forced by the state to set aside their moral or religious principles, based upon someone's proposed rights due to the individual's sexual behavior.

Lastly, the question should be asked, "Should what happens between two consenting adults in privacy even be of public and legislative discussion or concern?"

Be aware, the liberties we now all enjoy, regardless of sexual orientation, will all stand defenseless against this discriminatory proposed law. It will have a negative effect on our society, removing all moral boundaries, and allowing further sexualization of our public square.

Let it also be said, it should be the personal duty of all citizens to behave in such respectful manner towards fellow citizens, without being compelled or directed by law, so as to afford all the right to life, liberty, and pursuit of happiness. We should all strive to behave in such a way. **We, again, urge your "Do Not Pass" vote on HB 1441.** Your consideration of this request is appreciated.

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FACEBOOK: CONCERNED WOMEN FOR AMERICA OF NORTH DAKOTA

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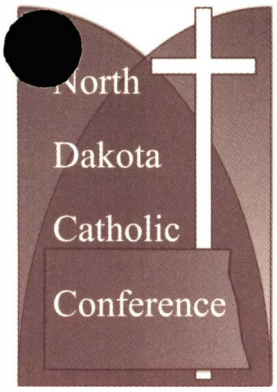

Representing the Diocese of Fargo and the Diocese of Bismarck

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To: House Human Services
From: Christopher T. Dodson, Executive Director
Subject: House Bill 1441 - Discrimination on the Basis of Sexual Orientation
Date: February 11, 2019

The Catholic Church affirms the dignity of every human life and rejects unjust discrimination. Acts of violence, degradation, or diminishment toward any human person are contrary to the teachings of the church. There is no place for arbitrary discrimination or prejudice against a person because of the person's sexual attraction.

This legislation, however, is not about how we feel about discrimination based on sexual orientation. It is not about whether a nondiscrimination policy is good for business. It is not about whether we should be like other states. It is not about how many people testify on one side or the other. It is about this bill.

This bill gives individuals a right to sue — and some would say harass — organizations and businesses based on a set of undefined or poorly defined phrases. This bill would create special protections for a certain class of activities and self-perceptions — not individuals as individuals.[1] Current law already protects lawful activities outside the place of employment.[2] Civil rights law should not become a vehicle to give elevated protection to sexual activities and self-perceptions.

Both supporters and opponents of this bill have noted the absence of "gender identity" in this bill. Its absence, however, might be overstated. Although Congress has never passed legislation to prohibit gender identity discrimination, the Equal Employment Opportunity Commission has ruled that the laws on "sex" discrimination apply to "gender identity."[3] Courts and agencies from other states have ruled that "sexual orientation" necessarily includes "gender identity," especially if the definition of "sexual orientation" includes — as it does in HB 1441 — "perceived" sexual orientation.[4]

This history tells us two things. First, we should not be deceived into thinking that HB 1441 will not be interpreted to include self-perceived "gender identity." Second, it illustrates how this type of legislation is inherently messy and ripe for abuse.

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House Bill 1441 is also replete with infringements upon conscience and religious liberty. Do not be fooled by the bill's "religious exemptions." The problems with the purported exemptions are numerous. Here are just a few: The first exemption applies only to *employment* matters when hiring employees and volunteers for *religious* positions. As such, it does not provide anything that does not already exist under Supreme Court decisions. The second purported exemption also applies only to *employment* matters, but would require the religious organization to restrict its employment to people of the same religion, effectively scaling-back protections that exist in the current law. The third exemption states that a religious organization can limit admission to places of worship and parochial schools to people of the same religion. This is a right we already have and it has nothing to do with the type of discrimination this bill purports to reach.

We realize this is an emotionally-charged issue. However, respect and cooperation, among people with legitimate differences of opinion is what makes North Dakota great. There is no place for hate, name-calling, or stereotyping by people on either side of this issue or this particular bill. Opposition to HB 1441 does not indicate hatred, prejudice, or even a lack of love and respect for anyone. It merely reflects a different understanding of law and this bill.

Keeping those principles in mind we urge this committee to carefully review what this bill actually does and give it a **Do Not Pass** recommendation.

[1] Here lies the fundamental error of any "sexual orientation" legislation. Unlike something like race or sex that does require overt behavior, the sexual orientation of an individual is not known unless the individual publicly expresses his or her sexual orientation with overt speech or actions.

[2] N.D.C.C. sec. 14-02.4-03. "It is a discriminatory practice for an employer to fail or refuse to hire an individual; to discharge an employee; or to accord adverse or unequal treatment to an individual or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of . . . participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer."

[3] "Lakeland Eye Clinic will Pay $150,000 to Resolve Transgender / Sex Discrimination Lawsuit" https://www.eeoc.gov/eeoc/newsroom/release/4-13-15.cfm; "EEOC inks first transgender discrimination settlement agreement" http://www.employmentlawdaily.com/index.php/news/eeoc-inks-first-transgender-discrimination-settlement-agreement/.

[4] This is actually the position of the American Civil Liberties Union, despite it opposition to HB 1441 because it does not include "gender identity." https://www.aclu.org/know-your-rights/transgender-people-and-law.

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HB 1441 Testimony to House Human Services Committee
11 February 2019
Elizabeth Loos, Legislative Coordinator
North Dakota Human Rights Coalition

Chairman Weisz and Members of the Human Services Committee,

My name is Elizabeth Loos, and I am testifying on behalf of the North Dakota Human Rights Coalition. Founded in 2002, we are a statewide, membership-based organization established to increase the visibility of human right needs and violations and to change laws and attitudes that stand as barriers to residents within North Dakota who do not currently enjoy their full rights. Central to our mission is promoting and protecting the human rights of ALL North Dakotans.

We have been honored to have been a part of each attempt since 2009 to include sexual orientation and gender identity in the North Dakota Human Rights century code through legislative action. **Today I am here to tell you that we oppose HB 1441.** We oppose this bill because it explicitly excludes gender identity as a protected class, and thus codifies into law that it is acceptable to discriminate against transgender people. Transgender people are among the most vulnerable and at risk, and excluding them sends an awful message to transgender youth, adults & their loved ones. Please allow me to digress from the specifics of this bill to ask you to think about the **message** the passage of this bill would send: it will tell transgender youth and adults that they are not worthy of the protections offered their lesbian, gay, bi-sexual sisters and brothers. **Not worthy**. A 2018 study by the American Academy of Pediatrics found that transgender youth attempt suicide at a rate **three times higher** than cis-gender adolescents. Let me put a face on that: last year in Bismarck, 14 year old Chance Houle took his own life. Imagine – 14 years old! He was living with a loving and supportive foster family at the time, but his family was so completely opposed to his true identity that they referred to him as a girl throughout his obituary. He was bullied at school, and moved between Bismarck middle schools. Now, maybe you are thinking that Chance's story doesn't relate at all to this particular bill. But it DOES. The exclusion of gender identity in this bill sends a message to Chance, and all other trans youth and adults that they are not worthy of protections.

I have included in my packet a statement from the LGBTQ+ organization Dakota OutRight, as well as a letter from Alex Johnson, expressing their opposition to this bill because of its exclusion of gender identity. They are all willing to sacrifice protections for themselves and their loved ones until protections for their transgender sisters and brothers can be included.

Now, let me talk for a minute about discrimination faced by transgender people in North Dakota. I have heard so many stories these last few months about discrimination in housing and employment that transgender people have experienced in North Dakota. I have heard from people that lost jobs and people that were evicted from their apartments. Included in the packet I have provided you is a letter from Michelle Rydz, Executive Director of the High Plains Fair Housing Center. She provides details on the study they conducted last year that documented the high rates of housing discrimination experienced by transgender people in North Dakota. Everyone has the right to live where they want, safe from hate and discrimination.

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Just like the rest of us, transgender people should be judged only on their qualifications and job performance - nothing more and nothing less. Nobody should have to live in fear of being fired for reasons that have nothing to do with their job performance.

Let me just take a few moments to dispel some of the myths perpetrated by usual opponents of non-discrimination legislation in North Dakota, including the Catholic Conference, the Family Policy Alliance, and Concerned Women of America. Women and girls will NOT be forced to share bathrooms or locker rooms with men, men will not be allowed in women's shelters. Have you ever traveled to Minnesota, been to The Mall of America, perhaps? Do you know that Minnesota has had a law prohibiting discrimination based on sexual orientation and gender identity since 1993? Have you, or your children or grandchildren ever been in danger in a bathroom in Minnesota? It is a complete falsehood that transgender people are sexual predators – in fact they are often the victims of sexual violence, not the perpetrators. I could not find a single example of a woman or girl, or any person, being assaulted by a transgender person in a bathroom or locker room in any state.

A baker will NOT be forced to bake a wedding cake for a transgender couple, because the US Supreme Court ruled on that very question last summer.

Another argument that I hear is that a bill that offers protections for lesbian gay, bisexual and transgender people from discrimination in housing and employment would result in many frivolous lawsuits. North Dakota currently provides protections for seven classes of people in North Dakota – have we seen frivolous lawsuits from people in these classes? What is the basis for assuming that we will see frivolous lawsuits if protections for lesbian, gay, bisexual and transgender individuals are added?

Mr. Chairman, members of the Committee, I urge a Do Not Pass on HB 1441 as it has been introduced. **However, if it is amended to include gender identity in the sections on housing and employment, we would whole-heartedly support it.**

Thank you for your time, and I would stand for any questions.

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High Plains
Fair Housing Center

February 10, 2019

House Human Services Committee
North Dakota Legislature
Bismarck, ND 58506

Dear Chairman Weisz and Members of the House Human Services Committee,

My name is Michelle Rydz and I am the Executive Director of High Plains Fair Housing Center. We are the only organization in the state of North Dakota whose mission **is strengthen communities and to ensure equal access to fair housing** in the region through training, education, enforcement and advocacy. Fair Housing is a right protected by federal and state laws. I speak to the housing aspect of this bill.

I write with a do not-pass recommendation on HB1441 as it is written because of the exclusion of the transgender and gender non-conforming individuals from these added protections. If HB 1441 were amended to include gender non-conforming and transgender individuals I would change my recommendation. I base my recommendation on the fact that High Plains completed a study last year in North Dakota that showed discrimination against transgendered and gender non—conforming individuals.

The Fair Housing Act was passed on April 11, 1968 it was passed exactly a week after the assassination of the Rev. Dr. Martin Luther King, Jr. as a tribute to him and the work he did to challenge residential segregation. Since that time, the Fair Housing Act has been amended on several occasions to address housing discrimination based on sex (1974) and against people with disabilities and families with children (1988). Since 1999, when the North Dakota Housing Discrimination Act became effective, discrimination in housing has also been prohibited by state law. The Housing Discrimination Act provides the same protections against discrimination as the federal Fair Housing Act, plus three more protected categories.

The fair housing act recognizes the concept of home as a basic right. Everyone has the right to live where they want safe and free from hate and discriminatory behavior.

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Finally, in 60% of the cases trans/gender non-conforming testers were asked prying questions that the control testers were not asked such as, "Do you have a job? What is your level of education? Are you married? Do you have kids?"

These patterns are consistent with the calls that we receive from our hotline for victims of housing discrimination. From calls that we receive, we have learned LGBT individuals and families in North Dakota are often met with antagonism and hostility from landlords and property managers. Sometimes this is in the outright denial of a unit or contract and other times it is retaliatory or hostile behavior, such as not responding to maintenance calls or being "pushed out". Yet when these actions occur, these individuals and families do not have recourse.

While we are unable to file formal discrimination complaints with HUD or the North Dakota Department of Labor and Human Rights we track the calls and note the incidents, but this provides little relief for the victims of this discriminatory behavior. The fact that High Plains Fair Housing Center and the Department of Labor and Human Rights receive any calls is remarkable, because there are no LGBT protections, no recourse and no outreach and still people who experience LGBT discrimination reach out and try to find help.

Passage HB 1441 with the inclusion of transgender and non-conforming individuals is also in keeping with HUD's regulations which require HUD funded housing and for mortgages insured by the Federal Housing Administration (FHA) to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. HUD also clarifies that the terms "family" and "household," as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity, or marital status. Finally, HUD prohibits FHA lenders from taking into account actual or perceived sexual orientation or gender identity in determining the adequacy of a potential borrower's income.

Please feel free to contact me, if you have any questions.

Sincerely,
/s/
Michelle Rydz
Executive Director

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Past legislative sessions attempted to pass legislation to establish LGBT as a protected class and they failed in part because legislators asked for more definitive evidence that discrimination is occurring in North Dakota.

High Plains applied for funding from the Consensus Council to complete a series of housing discrimination testing based on transgender or gender non-conforming individuals. This audit is not intended to be a scientific study- rather an objective snapshot of experiences that transgender and gender non-conforming people experience in the housing context.

Fair Housing Testing is tool used in fair housing investigations that measures the quality, quantity, content of information and customer service given to potential renters or home buyers by a housing provider. Testers pose as individuals seeking housing by contacting housing providers to inquire about available units. In a rental test scenario, test coordinators select testers who are as similar as possible in all ways except the protected class (or in this case, potential protected class) involved. Based on the test scenario, testers separately visit the site of a housing provider (within an appointed time period) and inquire about the availability of housing. Afterwards, the testers objectively record everything that happened during the test — what are the terms and conditions, what units the testers were shown, what price was quoted for an available apartment, how the tester was greeted and treated, etc. The test coordinator then compares the testers' objective reports to determine whether a difference in treatment based on the protected class occurred. Fair housing testing is **legal and has been upheld** by the US Supreme Court as the only truly objective way to identify if there is discrimination.

In this audit, we used matched-pair testing which allows for the comparison of how people are treated differently during the housing search process. One essential facet of testing is to ensure pairs are well matched on all variables except the one variable or characteristic to be tested—this procedure ensures that test results are unambiguous. The matched characteristics of the tester pairs in this audit included race, age range, education, employment, household size, and income. The single variable that differed between matched testers was comparing gender (transgender vs. non-transgender (cisgender)).

Findings

Matched paired tests were completed in Grand Forks, Fargo, Valley City and Jamestown. There were 15 matched pair tests (30 test parts).

Overall, 70% of the trans/gender non-conforming testers experienced subtle forms of discrimination; no eye contact, no hand shake, refusal to use proper pronoun even after the tester informed property manager of preferred pronoun.

Additionally, 80% of the trans/gender non-conforming testers experienced discrimination by not being shown the same number of units or showing them inferior units.

Other instances of discrimination; such as rushing through the showings, not providing detailed information or being abrupt occurred in 50% of the cases for the trans/gender non-conforming testers.

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From: **Matthew Leidholm** matt@mattleidholm.com
Subject: Dakota OutRight HB 1441 statement
Date: February 10, 2019 at 10:04 PM
To: elizloos@gmail.com

Here is Dakota OutRight's statement on HB 1441:

Dakota OutRight cannot support HB 1441, which offers protections for sexual orientation, but includes no protection on the basis of gender identity. We know that will surprise and disappoint some of our friends and allies, so we wanted to explain our thinking:

2019 marks the 50th anniversary of the Stonewall Riots that marked the beginning of the modern LGBTQ movement. Then, it was our Transgender progenitors who stood up for our community and shouted, "enough." In that New York City alley on that fateful night, trans people like Marsha P. Johnson and Sylvia Rivera stood up for the entire LGBTQ community. We should all be grateful for their power and their service.

Instead, cisgender society has not been kind to our Trans siblings. They are vilified and scapegoated. One in five have faced homelessness; one in four has lost a job due to discrimination; and two in five have attempted suicide.

Trans people led the way in the fight for freedom, and we will not abandon them today. We refuse to support any bill that claims to help the Lesbian, Gay, and Bisexual community that does not include our Transgender, Intersex, and Genderqueer community members.

We understand that the legislative process is one of compromise, and we look forward to hearing further ideas from legislators and activists trying to assemble a majority coalition. But we cannot compromise on the commitment we have made to stand together and protect one another.

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North Dakota Women's Network

Kristie Wolff – Executive Director, North Dakota Women's Network
Opposition HB 1441
North Dakota House Human Services Committee

Chairman Weisz and members of the House Human Services Committee, my name is Kristie Wolff, I am the Executive Director of the North Dakota Women's Network.

Although we believe the intent of those sponsoring this bill was good. I am here today to stand in opposition to HB 1441.

North Dakota Women's Network is a local non-profit with members from every corner of the state. One of our core areas of focus is equality for all and our mission is to improve the lives of women in North Dakota, and trans women are women.

Thank you,
Kristie Wolff
kristie@ndwomen.org

Extra handed out by Eleanor Lovas

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Good morning, my name is Cody Severson, I'm an activist in Fargo, ND working in addiction services, and I also help run the Harbor Health Clinic, the only clinic in Fargo that will see transgender patients using a sliding fee scale and prescribe to them hormone therapy. When I heard that this bill was being brought forward, I was excited, because anytime that sexual orientation is protected in our society, the more visibility we get, the easier it becomes for future generations to simply live. However, when I realized that this bill doesn't include gender identity, it made me sick to my stomach.

I understand why some wish to support this bill, stating that protections for some people are better than protections for no one.

I keep thinking back to the Suffragettes, who were able to secure the right to vote for white women in 1920, but it took another 45 years of organizing, and the lives innocent people before the Voting Rights Act passed into law extending the right to vote to women of color. As a gay man in this state, I cannot look at my community, the patients that will walk through my clinic, and tell them that I was supportive of legislation that will have left them by the wayside but gave me the equal protection under the law that we all deserve.

There have been many conversations in the LGBT community among the various organizations regarding how we feel about HB1441. Ultimately, we decided that in 2019, we are tired of piece meal approaches. Our transgender community members are still taking their own lives at horrible rates, the American Foundation for Suicide Prevention is facilitating a conference at the end of next month to specifically talk about how we combat the crisis of suicide and self-harm amongst our LGBT community members, because it is staggering.

According to the Human Rights Campaign Foundation's 2018 LGBTQ Youth Report:

"More than half of transgender male teens who participated in the survey reported attempting suicide in their lifetime, while 29.9 percent of transgender female teens said they attempted suicide. Among non-binary youth, 41.8 percent of respondents stated that they had attempted suicide at some point in their lives."

We need to stand up and say that in North Dakota all our community members are accepted, loved, and wanted.

The last time that I was at the Capital, speaking in support of SB2303, I heard from the opposition stating that they were scared that individuals might try to claim that they are of the opposite gender in order to assault someone in a bathroom or locker room, specifically a man claiming to be a female in order to assault a female. I ask this committee, has that ever happened? When was the last time that you've heard of a woman assaulted in a bathroom or locker room in this scenario? Now ask yourself: When was the last time you heard a transgender person was assaulted?

Human Rights Campaign Foundation further reports that in 2017 at least 29 Transgender people were killed.

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And last month, Dana Martin, 31, a Black transgender woman, was fatally shot in Montgomery, Alabama, on January 6. Reports stated that she was found in a roadside ditch in her vehicle and pronounced dead at the scene. Daroneshia Duncan-Boyd, an Alabama-based trans advocate, said that "she was a person that was loved by many."

I hope it is now abundantly clear to the members of this committee that the fears of the Trans community are real, and the consequences are fatal.

Moreover a transgender person is not the same as a man claiming to be a woman to assault someone. that person is a predator.

Transgender people who genuinely wants to live their authentic life and who are in the process of doing so are not predators. They are members of our community and deserve the right to exist same and I do, and same as all of you, and as all of us.

This bill, House Bill 1441, is only flawed by its exclusion of gender identity. If that amendment would get added, this bill would be great, and a huge win for this state. This bill would make it so that I could tell the people who come to me for help that they are protected in this state against discrimination based on their sexual orientation and gender identity, items that have no bearing on others around them, are used often to create unsafe environments for them.

A quote from Dr. Martin Luther King Jr.'s Letter from a Birmingham Jail demonstrates the need for us all to care and for you the members of this committee to act:

"I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."

Please, do not pass this legislation without an amendment including protections for gender identity. We are one family, and we all deserve to be protected against discrimination by our state government. Thank you.

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As of November 2018 they reported 26 Trans people were murdered, I'll tell you a bit about them.

Christa Leigh Steele-Knudslien, 42, was found dead in her home on January 5 in North Adams, Massachusetts. Steele-Knudslien organized and produced the Miss Trans New England and other pageants and was loved and known by many in both the local and national trans community.

Viccky Gutierrez, 33, a transgender woman from Honduras was stabbed and had her body set ablaze inside her Los Angeles home on January 10. Friends described her as "a young trans Latina immigrant woman whose warm smile would give anyone comfort."

Celine Walker, 36, was fatally shot in a hotel room on February 4 in Jacksonville, Florida. It was not known for several days that Walker was trans because local police claimed to not refer to victims as transgender. Investigators are still looking for a suspect in her death.

Tonya Harvey, 35, was fatally shot on February 6 in Buffalo, New York. A friend of Harvey's expressed her condolences on Facebook, writing: "I knew her since I started transitioning, she was so sweet and loving." Police have confirmed they are looking into the incident as a possible hate crime.

Zakaria Fry, 28, went missing in New Mexico in mid-January. Her body was later found 40 miles outside of Albuquerque on February 19. Albuquerque Police arrested and charged a suspect with two open counts of murder. Fry's loved ones shared condolences on Facebook with one friend saying: "You were my older sister. You took care of me and loved me like family. I'll forever love you. I'm sorry."

Phylicia Mitchell, 45, was shot and killed outside her home on February 23 in Cleveland, Ohio. On April 10, Cleveland.com reported that a warrant has been issued for the arrest of a suspect who has been charged with aggravated murder in Mitchell's death. Her longtime partner, described her as "funny and kind" and that "everyone loved her."

Amia Tyrae Berryman, 28, was fatally shot at a local motel on March 26 in Baton Rouge, Louisiana. Few details are known about the crime, and police report they have no suspects or persons of interest at the time this report was published.

Sasha Wall, 29, a transgender woman of color, was fatally shot on April 1 in Chesterfield County, South Carolina. The FBI is assisting with local investigators and are analyzing phone records and collecting DNA evidence. A friend of Wall's, expressed condolences on Facebook, writing, "I will miss you my beautiful sister. I cannot sleep, I hope they find who did this."

Karla Patricia Flores-Pavón, 26, was found choked to death in her apartment in Dallas, Texas, on May 9. Dallas Police arrested a suspect on May 17, charging him with Flores-Pavón's murder. "It hurts a lot, you were a good-hearted person. Sister, fly high. We will remember you with love. Your beautiful smile will stay with us," a friend posted on her Facebook page.

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Nino Fortson, 36, was fatally shot in Atlanta on May 13. City police were nearby executing a traffic stop and rushed to the scene, but Forston later died at the hospital, said transgender advocate Monica Roberts.

Gigi Pierce, 28, was fatally shot on May 21 in Portland, Oregon. When officers arrived, they tried to administer aid, but Pierce died at the scene. Police investigators say they believe that Pierce was shot during an altercation. Her assailant has been charged with Pierce's murder, according to KGW-TV.

Roxana Hernández, 33, passed away on May 25 while in the custody of U.S. Immigration and Customs Enforcement (ICE) after fleeing violence and discrimination in Honduras. After an autopsy report strongly indicated Hernández was beaten in ICE custody before her death, the agency is falsely claiming its press release announcing her death constitutes its report and is disputing the accuracy of eyewitness accounts of abuse from detainees held with her in custody prior to her death.

Antash'a English, 38, was fatally injured in drive-by shooting in Jacksonville, Florida on June 1. On her Facebook page, English described herself as an "independent" transgender woman who "thrives on being the best person" she can be. The Jacksonville Sheriff's Office has declared an active murder investigation and asks anyone with information to contact their office.

Diamond Stephens, 39, was found shot to death on June 18 in Meridian, Mississippi. In interviews with a local television station, family members said that Stephens had an "incredible personality." As is too often the case in the reporting of anti-transgender violence, Stephens was originally misgendered in local police statements and media reports, which delayed the public's awareness of this deadly incident.

Cathalina Christina James, 24, was fatally shot in Jacksonville, Florida, on June 24. In an interview with First Coast News, James' mother described her daughter as having a "big and bold" personality, saying she loved to dance and travel. James was the third transgender woman murdered and the fourth shot in the Florida city in 2018.

Keisha Wells, 54, was found dead with a gunshot wound to her abdomen in the parking lot of an apartment complex on June 24, according to Cleveland.com. A longtime friend of Wells described her as "the nicest person ever" but also a "tough cookie."

Sasha Garden, 27, was found dead with signs of trauma in Orlando, Florida, early July 19. Originally from Wisconsin, Garden is remembered by loved ones as a "firecracker" who "didn't hold anything back." Friend and local transgender activist Mulan Montrese Williams recalls that Garden was a talented and aspiring hair stylist and had been saving money to fund her transition.

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Vontashia Bell, 18, was fatally shot on August 30 in a neighborhood of Shreveport, Lousiana. The Louisiana Trans Advocates organization released a statement condemning the shooting and calling on the city's leaders to help curb the violence against the trans community.

Dejanay Stanton, 24, was found with a fatal gunshot wound to the head on August 30, according to media reports. After an autopsy, her death was ruled a homicide and the investigation is ongoing. "Every time you saw her she had a smile on her face," said LaSaia Wade, executive director of Brave Space Alliance. "She was just trying to live her best life as a young girl."

Shantee Tucker, 30, was found with a fatal gunshot wound in the back in Philadelphia, Pennsylvania, on Sept. 5. Friends and family honored her life and mourned her death on Facebook, recalling that she was like "another big sister" to them and remembering her "beautiful spirit and fun aura."

Londonn Moore, 20, was found dead of multiple gunshot wounds in a remote area of North Port, Florida on Sept. 8. Moore is remembered by her family and other loved ones, who described her as "hilarious" and someone who "made everyone laugh all the time."

Nikki Enriquez, 28, was one of four women killed in Sept. in what local officials describe as a "serial killing spree" allegedly carried out by an intel supervisor for the U.S. Border Patrol. The Texas Tribune wrote about the murders on September 15, 2018. Enriquez, who also went by the name Janelle, is survived by numerous loved ones that were "sad and in disbelief" at her death. Cousin Veronica Castillo described her as a "very outgoing" person who loved to party and was beloved by the local LGBTQ community.

Ciara Minaj Carter Frazier, 31, was fatally stabbed and her body left behind an abandoned building by a man with whom she was arguing on October 3 in Chicago. As reported in the Sun Times, Chicago police declared Frazier's death a homicide after appearing on the scene. She is remembered by friends and loved ones, who said that she will "always be missed."

Regina Denise Brown, 53, a trans woman of color, was found dead in her burning home in South Carolina on October 7. Authorities charged a suspect with murder in November after the suspect confessed to killing Brown during a physical altercation. Brown was described as a "great lady with a big heart" to PinkNews.

Tydi Dansbury, 37, a Black transgender woman, was fatally shot in Baltimore on November 26. Few details are known about the circumstances of her death, and the Baltimore Police Department is urging anyone with information to come forward.

Keanna Mattel, 35, a Black transgender woman, was fatally shot in Detroit, Michigan on December 7. In 2015, Mattel, who also went by the name Kelly Stough, spoke against anti-trans violence epidemic, noting that "police are unaware with our struggle so they have no sympathy for us." Friends remember Mattel as "a sweetheart and beautiful character."

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Mr. Chairman, and members of the Committee:

My name is Clint Fleckenstein. I'm appearing before you as a citizen of North Dakota and a Christian, urging this Committee to give a "Do Not Pass" recommendation to House Bill 1441 for one simple reason: it contains no protections for the constitutional rights of North Dakota citizens to the free exercise of their religious faith, and will in fact be used to attack those rights.

In past hearings for legislation like this bill, I've watched committees like this one spend hours listening to emotional anecdotes. We've heard the bill described as everything from a human rights issue to an economic development bill; we've had self-professed Christians claim that supporting various aberrant sexual behaviors is in line with their faith; proponents have quoted everyone from the Lord Jesus Christ to Barry Goldwater to support their position; and we've heard testimony contorting the Bible in remarkable ways in order to urge the passing of this bill. (Oddly enough, none of the proponents I've seen testify have ever wanted to lock horns with Islam, the second largest religion in North Dakota.) All emotional appeals aside, it's time to talk about what this bill <u>really</u> means for North Dakota.

I'm not here to declare whether these various sexual behaviors and gender identity issues are sinful. I'm not here to accuse any person of being more righteous or sinful than any other – the Bible says that <u>all</u> have sinned and come short of the glory of God. I'm talking about the law, the rights of North Dakotans, and the devastation that passing this bill would bring upon the citizens of our state - as similar legislation has done in numerous other states.

While the proponents of this bill use terms such as love, equality, fairness, seasoned with plenty of emotion, the truth is more sinister. This bill is legalized bullying. It's a tool for vengeance and persecution. It's a way for sexual activists to punish anyone who disagrees with their choice of lifestyle, all in the guise of human rights.

This may sound like hyperbole, but we have plenty of precedent to indicate how the aftermath of a bill like this looks. Such legislation in other states has left behind a litany of stories of people who, conducting their lives in accordance with their beliefs and exercising their First Amendment rights to their faith, find themselves in court for doing so. They face losing their businesses and suffering personal financial ruin. Some find themselves and their employees required to attend government-mandated re-education, presumably so they will afterwards renounce their religious beliefs on sexuality. They spend years defending themselves in court because their constitutional rights are no longer protected when legislation like this becomes law.

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The proponents of legislation like this are wordsmiths. They refer to their ideology as "love" and any opposition, no matter how civil, as "hate". They label people who disagree with them as "homophobes" or "transphobes", as if simply disagreeing with them is solely due to phobia – an irrational fear. They claim to support everyone's right to "worship" – but that's code implying that the right to exercise one's religious faith must be constrained to within a church or other house of worship – not allowed in a public place, and certainly not in one's business dealings.

When these activists find someone who doesn't want to capitulate to their pressure, they bring an army of bullies to bear: government commissions, activist organizations, a sympathetic media, the ACLU, and plenty of money…all arrayed behind this type of "public accommodations" law. What small business owner has the resources to defend themselves against such an attack?

I must point out that we are not talking about denying service altogether to people who are engage in these various sexual behaviors. Those persecuted under this law have only declined to participate in homosexual ceremonies because of their Biblical views of marriage and sexuality, and that simply can't be tolerated by the proponents of this kind of legislation.

No North Dakotan should be able to legally force another to engage in a transaction against their will and in violation of their First Amendment rights. Think of it in terms of the hypothetical question, "What happens when an unstoppable force meets an immovable object?" If one North Dakotan wants a service, in this case pertaining to a homosexual ceremony, and the other does not want to provide it based on their personal convictions, then the only appropriate resolution is for them to part ways. <u>There is no moral or legally ethical solution that involves one party using the force of law to compel the other to engage in a business transaction against their will.</u>

Please don't pass this bill. History shows that its intent is to exterminate opposing viewpoints. If you want to see the real intent of this bill, amend it to provide protective exemption for any North Dakotan conducting their lives <u>or operating their business</u> in accordance with their religious faith as guaranteed by the constitutions of both North Dakota and the United States. I suspect the reaction would be quite revealing.

One final note: I would love to see everyone in the hearing room come to believe in the Lord Jesus Christ and attain eternal salvation, but unlike the proponents of HB1441, I'm not here to demand that you pass legislation enforcing my point of view.

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The Forum
OF FARGO-MOORHEAD

EARLY EDITION FRIDAY, APRIL 3, 2015 INFORUM.COM

For the third time in six years, North Dakota lawmakers rejected a bill that would outlaw discrimination based on sexual orientation.

ND denies protection for gays

Read the full story, Page A6

These are the members of the House who voted against legal protections.

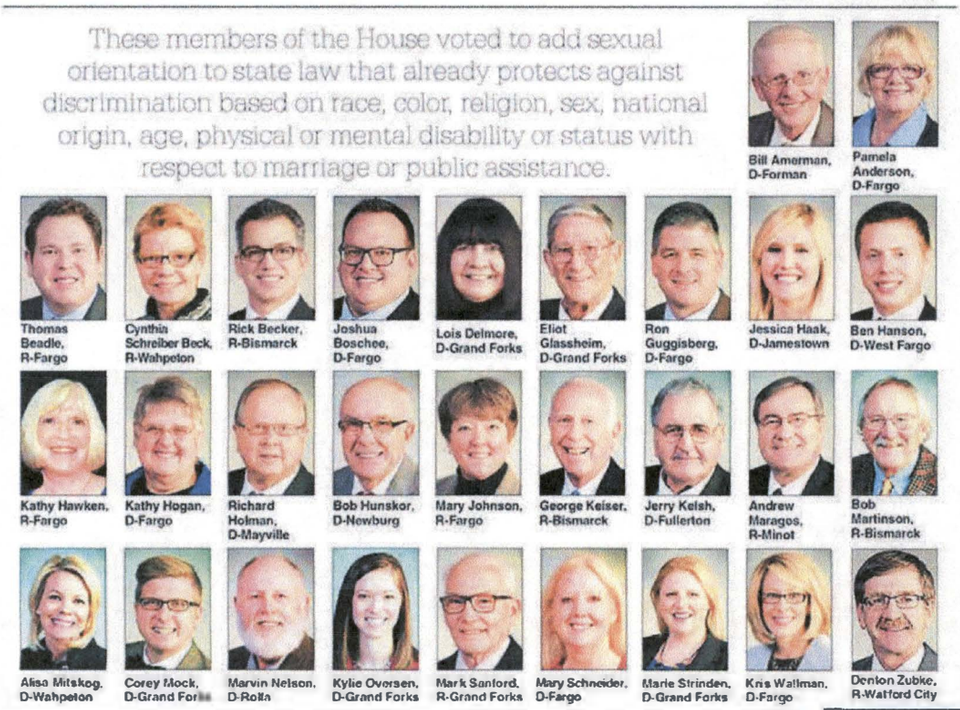
Bert Anderson, R-Crosby; Dick Anderson, R- Willow City; Rich Becker, R-Grand Forks; Roger Brabandt, R-Minot; Al Carlson, R-Fargo; Chuck Damschen, R-Hampden; Mark Dosch, R-Bismarck; Glen Froseth, R-Kenmare; Patrick Hatlestad, R-Williston; Tom Kading, R-Fargo; Karen Karls, R-Bismarck; Jim Kasper, R-Fargo; Larry Bellew, R-Minot; Wesley Belter, R-Fargo; Randy Boehning, R-Fargo; Jeff Delzer, R-Underwood; Bill Devlin, R-Finley; Jason Dockter, R-Bismarck; Craig Headland, R-Montpelier; Curt Hofstad, R-Devils Lake; Dennis Johnson, R-Devils Lake; Keith Kempenich, R-Bowman; Dwight Keifert, R-Valley City; Matthew Klein, R-Minot

Lawrence Klemin, R-Bismarck; Ben Koppelman, R-West Fargo; Kim Koppelman, R-West Fargo; Gary Kreidt, R-New Salem; William Kretschmar, R-Venturia; Vernon Laning, R-Bismarck; Diane Larson, R-Bismarck; Mike Lefor, R-Dickinson; Alex Looysen, R-Jamestown; Scott Louser, R-Minot; Lisa Meier, R-Bismarck; Mike Nathe, R-Bismarck; Jon Nelson, R-Rugby; Christopher Olson, R-West Fargo; Mark Owens, R-Grand Forks; Gary Paur, R-Gilby; Chet Pollert, R-Carrington; Karen Rohr, R-Mandan; Dan Ruby, R-Minot; Mike Schatz, R-New England; Jim Schmidt, R-Huff; Jay Siebel, R-Beulah; Peter Silbernagel, R-Casselton; Robert Skarphol, R-Tioga

Vicky Steiner, R-Dickinson; Roscoe Streyle, R-Minot; Gary Sukut, R-Williston; Nathan Toman, R-Mandan; Wayne Trottier, R-Northwood; Don Vigesaa, R-Coopers-town; Robin Weisz, R-Hurdsfield

Three legislators – Mike Brandenburg, R-Edgeley; Robert Frantsvog, R-Minot; and David Monson, R-Osnabrock – were absent or not voting.

These members of the House voted to add sexual orientation to state law that already protects against discrimination based on race, color, religion, sex, national origin, age, physical or mental disability or status with respect to marriage or public assistance.



Bill Amerman, D-Forman; Pamela Anderson, D-Fargo; Thomas Beadle, R-Fargo; Cynthia Schreiber Beck, R-Wahpeton; Rick Becker, R-Bismarck; Joshua Boschee, D-Fargo; Lois Delmore, D-Grand Forks; Eliot Glassheim, D-Grand Forks; Ron Guggisberg, D-Fargo; Jessica Haak, D-Jamestown; Ben Hanson, D-West Fargo; Kathy Hawken, R-Fargo; Kathy Hogan, D-Fargo; Richard Holman, D-Mayville; Bob Hunskor, D-Newburg; Mary Johnson, R-Fargo; George Keiser, R-Bismarck; Jerry Kelsh, D-Fullerton; Andrew Maragos, R-Minot; Bob Martinson, R-Bismarck; Alisa Mitskog, D-Wahpeton; Corey Mock, D-Grand Forks; Marvin Nelson, D-Rolla; Kylie Oversen, D-Grand Forks; Mark Sanford, R-Grand Forks; Mary Schneider, D-Fargo; Marie Strinden, D-Grand Forks; Kris Wallman, D-Fargo; Denton Zubke, R-Watford City

These legislators split their vote.

Tracy Boe, D-Mylo; Alan Fehr, R-Dickinson; Gail Mooney, D-Cummings; Naomi Muscha, D-Enderlin; Kenton Onstad, D-Parshall; Blair Thoreson, R-Fargo

The representatives above voted "yes" on outlawing discrimination in housing and employment but "no" on banning discrimination when it comes to public accommodation.

Todd Porter, R-Mandan

One representative voted "yes" to the public accommodation measure and "no" on the housing measure.

IN SUNDAY'S FORUM

OUR ANNUAL EASTER EGG HUNT IS BACK

Moorhead man gets maximum prison term in brutal beating

Karau

By Emily Welker
ewelker@forumcomm.com

MOORHEAD – A Moorhead man convicted of trying to beat his girlfriend to death with a baseball bat was sentenced Thursday to more than 17 years in prison in what judges, prosecutors and police say is the worst domestic violence case they've ever seen that didn't end up as a murder.

Members of local law enforcement agencies left Michael Karau's sentencing hearing in Clay County District Court on second-degree attempted murder charges with thumbs-up gestures and grim smiles on their faces.

BEATING: Back Page

$1.50
(Suggested retail price)

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Today's weather

Partly cloudy

▲46° ▼25°

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Comics C11
Crosswords C9, C11
Metro/State C1-3
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Clint Fleckenstein

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Fargo's Red Raven Espresso Parlor bans lawmakers that voted against sexual orientation discrimination bill

By Catherine Ross on Apr 3, 2015 at 6:48 p.m.

Fargo, ND (WDAY TV) - The day after the North Dakota House voted down a bill that would have outlawed discrimination based on sexual orientation, public outrage is spilling over into a Fargo coffee shop. The Red Raven is hoping its own ban will give lawmakers a taste of their own medicine.

The Red Raven Espresso Parlor here may not be the type of place you'd find some of our North Dakota lawmakers anyway, but that's just part of the absurdity workers here are trying to get across.

The move to kill a bill that would have outlawed discrimination based on sexual orientation is really grinding some gears at the Red Raven Espresso Parlor.

Joe Curry/Red Raven Owner/Worker, "It's silly to deny anybody in our community to be themselves and enjoy all the rights that I as a heterosexual white man have access to."

TRENDING

1. Mandan Woman Charged After Child Misses 19 Days of School
2. UPDATE: Up to 1,000 acres burned in grass fire in southeast Clay County
3. 90-Year-Old Man Found Tied Up, Dead in Carver County
4. Family of 3 killed by falling concrete
5. Minn. Woman Pleads Guilty to Using 31 Aliases to Get Thousands of Drugs

more 〉

LATEST

High risk for fire danger continues today
1 min ago

90-Year-Old Man Found Tied Up, Dead in Carver County
1 hour ago

Mandan Woman Charged After Child Misses 19 Days of School
1 hour ago

Hastings Man Accused of Burglarizing Grandma's Home, Stealing Car
1 hour ago

Minn. Woman Pleads Guilty to Using 31 Aliases to Get Thousands of Drugs
1 hour ago

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That's why, a day after the measure to ban discrimination failed, the Red Raven is brewing up a ban of its own. Effective immediately, if you're among those who voted against Senate Bill 2279 you'll be shut out completely from the Red Raven.

Curry, "We're soley basing that on age, gender, race, beliefs, color, religion or disability."

But no-voters can get special priveleges.

Curry, "They're welcome to come in if they're accompanied by a gay, lesbian, bisexual, queer or asexual person."

Sound a little absurd? That's what many here think about the thought process of these lawmakers.

Tom Ricker/North Dakota AFL-CIO, "They're just highlighting the shamefulness of those who voted against it."

Word of the coffee shop's ban has been spreading, and even leaders from a state labor and industrial organization are stopping by for their coffe breaks.

Ricker, "We support all working people in North Dakota, and this business obviously supports all people so we want to patronize businesses that support people."

And while the Red Raven's workers don't want to discriminate, they're trying to give lawmakers a taste of their own exclusion.

Curry, "Still in this time period we're denying rights to everybody."

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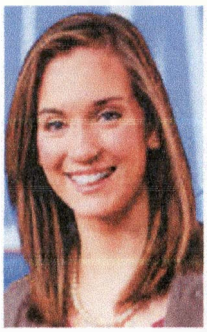
Reporter Catherine Ross talked with the bill's primary sponsor, Josh Boschee, today. He plans to reintroduce similar legislation next session and says he's hopeful public outrage like this will encourage lawmakers to second-guess voting no.



Catherine Ross
CRoss@wday.com

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Testimony on House Bill 1441

William Schuh, Private Citizen

Chairman Weisz and Honorable Members of the House Human Services Committee
Please Vote Do Not Pass on House Bill 1441

This bill is designed to normalize disordered, unhealthy, and dangerous behaviors, mainly developmental in origin and cause, as specially protected civil liberties. In doing so it empowers proponents to force acceptance of those behaviors on others, affecting their rights of conscience, free speech, and free association. Furthermore its direct and indirect effects on the education and development of minors, will threaten their normal development, through recruitment, confusing formation in education, and impairment of therapy in difficult situations.

1. **The homosexual lifestyle is intrinsically unhealthy,** and many common practices are violent and dangerous, particularly among males. This is not a behavior that should be normalized and encouraged.

   - The proposed protected behaviors are unhealthy. The American College of Pediatricians[1], citing 41 refereed medical journals and government studies, has identified more than 20 diseases and conditions common to, and in many cases almost exclusive to homosexual practitioners. Many are dangerous, traumatic, and some, like AIDS, fatal.

   - "A Canadian study[2] of a major Canadian urban center estimated that due to HIV about half of all 20-year old homosexual and bisexual men would not live to the age of 65, and that by "the most liberal estimates" gay and bisexual men were living with a life expectancy comparable to the whole male population in 1871.

   - There is a huge social cost of these behaviors. AIDS was at one time 80% unique to homosexuals and intravenous drug users (and from there spread to the general population). The worldwide medical cost of AIDS is 25 about billion dollars and trending to 30 billion. This does not count the untreated, the infection of innocent parties, ex. spouses, and the pain, suffering and social collapse resulting.

2. **Unlike race and gender, homosexual inclinations are not genetically determinant.** Several twin studies have indicated about 65 to 73 percent unique environmental experience for males, about 80 percent environmental experience for females. Largest and most credible study was the

[1] American College of Pediatricians. Facts about youth: male homosexual behavior. http://factsaboutyouth.com/posts/male-homosexual-behavior/. Accessed Dec. 1, 2018)

[2] Hogg, R S, S A Strathdee, KJ Craig, MV O'Schaughnessy, J S Montaner, and M T Schechter. 1997. Modeling the impact of HIV disease on mortality in gay and bisexual men. International Journal of Epidemiology, Vol. 26, Issue 3, pp. 657-671.

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Langstrom study[3] (abstract appended) which employed twenty-five thousand subjects. Similar results were found by others, notably Whitan and others[4]. These indicate a prenatal susceptibility, but not a determinism. The Experience factor means that it can be influenced and taught. Young people in formation can be influenced and trapped into an early addiction.

History and ethnology demonstrate that homosexuality, once socially approved, is not a static thing. Whole societies have fallen into the common practice.

3. **There are therapies.** Psychoanalysts have studied and worked with therapies for a century. These were reviewed by Peter Blos (known as the "father of adolescent psychology") in his books, On Adolescence and Adolescent Passages[5]. Among causes are early experience, molestation, and problematic family dynamics and impaired role identification transitions, weak transitional ego development, or experiences leading to hatred of the opposite gender. Some simply choose to practice it. Transitional ego development problems and therapies were discussed by Friedenberg in The Vanishing Adolescent[6]. There are therapies, both psychoanalytic and behavioral, particularly before the end of the adolescence transition (which can last well into the 20s in our culture).[7]

4. **The American Psychiatric Association's removal of homosexuality from its list of psychiatric and emotional disorders was achieved, not by research, but by the formation of a homosexual lobbying group called the "Gay APA" within the APA, which lobbied the chairman of the Nomenclature Committee, Dr. Robert Spitzer, to remove the 81 words describing it.** The reasoning given was "there is no therapy, we're fine, and its easier to change society than change us." This is documented in an excellent Public Radio piece of journalism, titled "The 81 Words.[8]" "The 81 Words" describes how researchers working with therapies were then persecuted, blackballed, and could no long publish. Dr. Spitzer later concluded that there were, in fact, therapies that were effective in some cases.

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[3] La˚ngstro¨m, Niklas, Æ Qazi Rahman, Eva Carlstro¨m, Paul Lichtenstein, 2010, Genetic and Environmental Effects on Same-sex Sexual Behavior: A Population Study of Twins in Sweden . Arch Sex Behav 39:75–80 DOI 10.1007/s10508-008-9386-1

[4] Whitam FL1, Diamond M, Martin J. 1993. Homosexual orientation in twins: a report on 61 pairs and three triplet sets. Arch Sex Behav. 22(3):187-206.

[5] Blos, Peter. The Adolescent Passage. International Universities Press Inc. NY. 1979. 521 pp.

[6] Friedenberg, Edgar The Vanishing Adolescent, (Boston Beacon Press, 1964).

[7] One therapist, Joseph Nicolosi, describes male homosexuality as: "*primarily a symptom of gender trauma. Although some people may have been born with biological conditions (prenatal hormonal influences, inborn emotional sensitivity) that make them especially vulnerable to such trauma, what distinguishes the male homosexual condition is that there was an interruption in the normal masculine identification process. Homosexual behavior is a symptomatic attempt to "repair" the original wound that left the boy alienated from the innate masculinity that he has failed to claim. This differentiates it from heterosexuality, which arises naturally from undisturbed gender-identity development.*"

[8] Spiegel, Alex. 81 Words. National Public Radio. This American Life. https://www.thisamericanlife.org/204/transcript, https://www.thisamericanlife.org/204/81-words (oral).

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5. **Controlling the narrative:** Ad Hominem persecution, marginalization, and intimidation. This is a very powerful movement, and the organs of propaganda quickly attack anyone who would suggest that disordered sexual behaviors not be normalized. Examples:

   - Persecution of therapists and therapy research (81 words)

   - The Laramie Project exploited the gruesome horrendous murder of a young homosexual man, Matthew Shephard, as an example of societal hate crimes and persecution. An investigative journal[9] piece by Julie Bindel (herself gay), exposed that the victim was a homosexual prostitute and drug dealer murdered by another homosexual prostitute and drug dealer in an apparent deal gone bad, not a hate crime. The author was attacked by homosexual groups for telling the truth.

6. **Dysphoria, and the recruitment of young people:** Promotion of "Gender Ideology" is causing confusion for developing young people.[10] The removal of societal acknowledgement and support for a normal pattern of psychological development in conformance with biological gender and the critical integration of physical, emotional, psychological, and hormonal elements during childhood and adolescence is harmful and dangerous.

   - Attacks on therapies and therapists, and attempts to make them illegal (California, Ontario). These amount to nothing less than the support of recruitment of young people.

   - **The term "perceived" in the bill, which would prohibit discouraging young people from seeking homosexual or other disordered experiences, enshrines developmental confusion** and dysphoria as a natural right, and undercuts parental rights in seeking therapies. It amounts to nothing less than recruitment.

The nature of the movement promoting this bill is incremental, aggressive, and relentless. Any step in this direct will result in further pressures for the next step.

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[9] Bindel, Julie. The truth behind America's most famous gay-hate murder. The Guardian. https://www.theguardian.com/world/2014/oct/26/the-truth-behind-americas-most-famous-gay-hate-murder-matthew-shepard. Accessed Dec. 28, 2018.

[10] Critella, Michelle (MD), and Vizcarrando, Felippe E. (MD, MA). Pediatricians: Gender Ideology is the latest assault on our children. https://www.lifesitenews.com/opinion/pediatricians-gender-ideology-is-the-latest-assault-on-our-children. July 2, 2018.

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Arch Sex Behav (2010) 39:75–80
DOI 10.1007/s10508-008-9386-1

ORIGINAL PAPER

Genetic and Environmental Effects on Same-sex Sexual Behavior: A Population Study of Twins in Sweden

Niklas Långström · Qazi Rahman · Eva Carlström · Paul Lichtenstein

Received: 8 October 2007 / Revised: 29 February 2008 / Accepted: 19 April 2008 / Published online: 7 June 2008
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Abstract There is still uncertainty about the relative importance of genes and environments on human sexual orientation. One reason is that previous studies employed self-selected, opportunistic, or small population-based samples. We used data from a truly population-based 2005–2006 survey of all adult twins (20–47 years) in Sweden to conduct the largest twin study of same-sex sexual behavior attempted so far. We performed biometric modeling with data on any and total number of lifetime same-sex sexual partners, respectively. The analyses were conducted separately by sex. Twin resemblance was moderate for the 3,826 studied monozygotic and dizygotic same-sex twin pairs. Biometric modeling revealed that, in men, genetic effects explained .34–.39 of the variance, the shared environment .00, and the individual-specific environment .61–.66 of the variance. Corresponding estimates among women were .18–.19 for genetic factors, .16–.17 for shared environmental, and 64–.66 for unique environmental factors. Although wide confidence intervals suggest cautious interpretation, the results are consistent with moderate, primarily genetic, familial effects, and moderate to large effects of the nonshared environment (social and biological) on same-sex sexual behavior.

Keywords Sexual behavior · Sexual orientation · Population survey · Twin study

N. Långström (✉)

Introduction

The prevalence of same-sex (or homosexual) sexual behavior varies over time and geographical region; population-based surveys suggest lifetime estimates of 3–20% for men and 2–9% in women (Caceres, Konda, Pecheny, Chatterjee, & Lyerla, 2006; Sell, Wells, & Wypij, 1995). The origin of same-sex sexual behavior is of obvious interest to theories regarding the development of sexual preferences (Rahman, 2005). However, the issue is also important for professionals concerned with sexual health in general and the psychological health of non-heterosexual populations. Same-sex behavior remains a substantial correlate of sexually transmitted infections in men and is also associated with increased risk of physical and psychiatric morbidity among both men and women in the general population (Cochran & Mays, 2000;

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My Jay Scott; I'm a master's student of mechanical engineering and bachelor of physics and computer science at North Dakota State University in Fargo. I am an LGBT North Dakotan; and I have come all the way to Bismarck this morning to testify against House Bill 1141 in its current form.

I do not normally go out in public dressed like this. Normally, I go out dressed like a man. I do this because I am afraid. I am afraid of the looks that I will get. I am afraid someone might try to follow me or get in my face or try to harass me. I can't dress like this when I go to school. If my adviser, my supervisor, my professors, or my fellow students saw me this way, they would not respect me as they respect me now, not knowing who I am. I fear for them to know who I am. I fear for my landlord to know who I am. I live in fear, every day, because I live in North Dakota.

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I've met other people like me in this state who also live in fear. They all tell me the same thing: they want to leave. We are not safe here, we are not welcome here, and we are not protected here. One by one I see them go, fleeing to other places and other states, where their humanity and their contribution to society will be more valued. Those that can't afford to leave stay in hiding, like I do. I see them succumb to poverty and depression and suicide and yes, even murder. North Dakota is no home for people like me. But I want to stay.

A few weeks ago, a bill was considered in the Senate, SB 2303, which would have offered protections to people like me in housing and employment. I was among the people who testified in favor of that bill. The bill was defeated on the floor, narrowly. ~~More narrowly than it had ever been defeated before.~~

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Now, HB 1441 is proposed. And I find that this time my rights have not been considered important enough to include. The logic behind this bill seems to be that our state legislature is just too darn bigoted to ever support equality for someone like me; but they might be just open-minded enough to support equality for my friend Cody. So, the argument goes, this bill should stand a better chance of passing.

Yet what happens if it does pass, in its current form? In New York, liberal New York, it took sixteen years after LGB-only protections were passed for transgender protections to be added. Sixteen years! How long will it take in North Dakota? How many decades? When do the sponsors of this bill plan to introduce the followup bill to expand protections to us? Next session? The session after? Or do they just plan to leave us out in the cold?

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This bill is an attempt to divide us. It is an attempt to trade away the rights of some in exchange for the rights of others. It is an attempt to permanently close the door on transgender equality in North Dakota.

No gay or transgender person or anyone who considers themself an ally should support this bill. The LGBT community must stand together, or else we do not stand at all.

On behalf of every transgender North Dakotan who could not be here today, I beg you to amend this bill to include protections for gender identity as defined under the scientifically established guidelines of the American Psychiatric Association, or else vote do-not-pass.

We stand together, not apart.

Thank you.

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Hello,

My name is Hannah Hunter and I am a resident of Fargo, ND; and I'm here today to speak against the consideration of Bill HB 1441, which, while being an anti ~~descriminat~~ descrimination law; is not inclusive to the entire LGBTQ+ community.

This means that, I would be safe from descrimination as a lesbian, but not as a transgender woman ~~which is~~; and in fact make it harder to have rights that I should already be given without debate or question.

Human Rights for anybody living in this country should never be up for debate and ~~at~~ today is no exception; and that is why I've come to speak against Bill HB 1441, because this bill, more than anything is designed to appease some and get them to divide the LGBTQ+ community and hopefully snuff out those that are considered less desirable.

~~This is disgraceful on many~~

I would like to reiterate by saying that Human rights under our country, No matter ones nationality, race, sexuality, ~~disability~~ or gender should never be up for debate because none of those things make us more or less qualified to effectively do our jobs.

Everybody deserves to feel safe and secure in both their home and at work, ~~No matter who they are~~ but ~~already; especially~~

No matter who they are and Transgender, Non-Binary and genderfluid people are no different, but

Unfortunately, the discrimination we face is staggering, so much so that I, myself, have not been able to find a safe working environment in a year, even though I'm usually vastly overqualified for the jobs that I apply for.

Even with a background of over a decade of schooling and a skill list that varies widely, I'm finding that its almost impossible to find work, let alone work I'm qualified for even though I am more than willing to do so, if I were actually provided the opportunity ~~to do so.~~

As I stated previously, the fact that I'm transgender has no negative effects on my ability to do my job, it never has; ~~but other~~ but this bill will certainly make it so I ~~and~~ and many others will continue to have increasing difficulty to find employment.

The full acronym is LGBTQA+, not LGB and thus, should include everybody included in the community. Our goal ~~should~~ shouldn't be to pass partial protections ~~that~~ that ~~should be guaranteed to everyone~~.

It should be to ensure protections and liberties for everyone that falls under the sexual orientation and gender umbrella. To do any less seems criminal. ~~Almost as criminal as debating~~ Almost, if not ~~as~~, just as criminal as it feels to even put human rights up for debate.

~~The words "The pursuit of life, liberty,~~

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Everyone in this country deserves life liberty and to persue happiness, everyone, and this bill detracts from just that.
That is why I am speaking against it.
Please vote against this bill and help bring us legislature that will inclusively protect our rights to existence.
We all deserve equal rights.

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Doug Burgum
Governor

Michelle Kommer
Commissioner

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www.nd.gov/labor
www.nd.gov/humanrights

Testimony on HB 1441
Prepared for the House Human Services

February 11, 2019

Good morning Chairman Weisz and members of the House Human Services Committee, my name is Rheider McCormick. I am a 3L at the University of North Dakota School of Law and legal intern representing the Department of Labor and Human Rights. I appear before you today neutral on HB 1441. I would like to provide an overview of current law and how the Department of Labor and Human Rights (Department) administers the law related to claims of discrimination, how HB 1441 would change current law developments in the law regarding sexual orientation discrimination, and how HB 1441 may impact the Department.

State Discrimination Laws

The Department administers and enforces state discrimination laws under the North Dakota Human Rights Act (N.D.C.C. ch. 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. ch. 14-02.5). Under these anti-discrimination laws, the Department receives and investigates complaints alleging discrimination in employment, housing, public services, public accommodations, and credit transactions. As required by law, the Department emphasizes conciliation to resolve complaints, conducts investigations into complaints of discrimination, provides administrative hearings on complaints where there is probable cause to believe a discriminatory practice has occurred, and fosters prevention of discrimination through education about the rights and responsibilities provided under North Dakota's discrimination laws.

Department's Enforcement of Federal Law

In addition to receiving and investigating complaints under state law, the Department also investigates cases for the United States Department of Housing and Urban Development (HUD) under the Fair Housing Act and the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA).

> ***Housing.*** The Federal Department of Housing and Urban Development (HUD) has deemed the North Dakota law housing "substantially equivalent" to the Fair Housing Act, meaning that it offers at least the same protections and remedies as the federal law. The substantial equivalency status of the law allows the department to enter into work sharing agreements with HUD,

which provides funding to the department in exchange for access to the department's investigative findings in housing discrimination complaints.

Employment. In addition to its partnership with HUD, the Department was designated a Fair Employment Practices Agency (FEPA) by the Federal Equal Employment Opportunity Commission (EEOC) in October 1987. This designation permits the Department to contract with the EEOC to conduct investigations for the federal agency.

Under these contracts, complaints meeting both federal and state jurisdictions are "dual-filed" under both state and federal statutes with a single investigation conducted by the department. Both contracts award the Department funding tied to the number of cases closed during a contract period.

Developments in the area of Sexual Orientation as a Protected Category

Currently, 21 states and the District of Columbia have passed legislation that makes sexual orientation a protected category in their human rights laws. Two state laws include sexual orientation, but not gender identity as a protected category. In addition, former President Obama issued Executive Order Nos. 11246 and 11478, which, in general, ban discrimination on the basis of sexual orientation by contractors and sub-contractors of the federal government. President Trump has not altered these specific Executive Orders. However, in March 2018, the Trump administration sent a directive to the department of labor that effectively excludes a Government contractor or subcontractor that are religious in nature from adhering to these executive orders.

The EEOC currently takes the position that discrimination based upon an individual's sexual orientation is already covered under Title VII's prohibition of discrimination on the basis of sex. *I have attached to this testimony Attachment A, EEOC fact sheet describing this position.* Nationally, the EEOC has taken complaints on this basis, investigated the complaints, and issued findings that probable cause exists to believe Title VII was violated. The EEOC's current Strategic Enforcement Plan[1] (SEP) includes the "coverage of lesbian, gay, bisexual, and transgender individuals under Title VII's sex discrimination provisions" as a top Commission enforcement priority. The EEOC has been active in pursuing and prevailing in litigation on this theory. *I have attached to this testimony, Attachment B, an EEOC fact sheet reviewing recent EEOC litigation regarding Title VII and LGBT-related discrimination.*

There is a growing body of federal case law supporting sexual-orientation related discrimination as sex discrimination. Since last legislative session, the 7th Circuit in *Hively v. Ivy Tech Cmty. College* and the 2nd Circuit in *Zarda v. Altitude Express, Inc* have ruled that sexual orientation discrimination claims are actionable under Title VII. *I have attached to this testimony, Attachment C, an EEOC publication reviewing these recent federal court decisions.* This said, sexual orientation is still not expressly cited as a protected category under Title VII.

[1] Adopted in December of 2012

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HB 1441 and its Impacts

Today, when the Department receives complaints alleging sexual orientation discrimination in employment, we draft the complaint, and unlike other complaints of discrimination covered by state law, we forward the complaint to the EEOC. The Department does not investigate these complaints, as the Department has interpreted past actions by the Legislature to indicate it is not the Legislature's intent that sexual orientation be considered a protected category under the Human Rights Act.

HB 1441 would add sexual orientation as a protected category under both the Human Rights Act and the Housing Discrimination Act, prohibiting discrimination on such bases in the areas of employment, housing, public services, public accommodations, and credit transactions. There are certain exemptions for religious organizations, as set forth in the bill.

While it is difficult to determine the impact of HB 1441 on the Department, in June of 2015, at the request of Representative Joshua Boschee, the Department began manually tracking contacts related to sexual orientation, which could be helpful to developing an estimate. From that time to present, the Department received 35 contacts. These contacts included anonymous calls, walk-ins, and correspondence. Seven of these charges were forwarded to the EEOC.

Notably, these numbers do not account for any individuals who may have declined to contact the Department given that sexual orientation is not specifically named as protected categories under Title VII or North Dakota state non-discrimination laws. To fill that gap, we may look to the EEOC or other states with this protection in place. The EEOC's 2017 Fiscal Year Analysis estimates the proportion of sex discrimination charges that involve alleged discrimination on the basis of sexual orientation or transgender/gender identity status, finding sexual orientation discrimination claims to represent approximately 6.9 percent of the total sex discrimination charges filed in 2017. The same year in Minnesota (2017), approximately 3 percent of Minnesota's complaints under its human rights act were based on sexual orientation or gender identity.

The Department closed 405 investigations under state and federal discrimination statutes during calendar year 2018. If one uses a 3% increase in cases, the Department could see an increase in its caseload of approximately 12 cases per year. This being said, these numbers remain estimates, and may not accurately forecast actual activity.

Thank you and I would be happy to answer any questions the committee may have.

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Attachment C

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U.S. Equal Employment Opportunity Commission

Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII

Supreme Court Decisions on the Scope of Title VII's Sex Discrimination Provision

Oncale v. Sundowner Offshore Servs., 523 U.S. 75 (1998). The Supreme Court held that same-sex harassment is sex discrimination under Title VII. Justice Scalia noted in the majority opinion that, while same-sex harassment was "assuredly not the principal evil Congress was concerned with when it enacted Title VII . . .statutory prohibitions often go beyond the principal evil [they were passed to combat] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed. Title VII prohibits 'discriminat[ion] . . . because of . . . sex.' [This] . . . must extend to [sex-based] discrimination of any kind that meets the statutory requirements." Id. at 79-80.

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). The Supreme Court recognized that employment discrimination based on sex stereotypes (e.g., assumptions and/or expectations about how persons of a certain sex should dress, behave, etc.) is unlawful sex discrimination under Title VII. Price Waterhouse had denied Ann Hopkins a promotion in part because other partners at the firm felt that she did not act as woman should act. She was told, among other things, that she needed to "walk more femininely, talk more femininely, [and] dress more femininely" in order to secure a partnership. Id. at 230-31, 235. The Court found that this constituted evidence of sex discrimination as "[i]n the . . . context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender." Id. at 250. The Court further explained that Title VII's "because of sex" provision strikes at the "entire spectrum of disparate treatment of men and women resulting from sex stereotypes." Id. (quoting City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978) (internal citation omitted)).

Federal Court Decisions Supporting Coverage for Transgender Individuals as Sex Discrimination

Chavez v. Credit Nation Auto Sales, L.L.C., 2016 WL 158820 (11th Cir. Jan. 14, 2016). Reversing summary judgment for the employer on the plaintiff's claim that she was terminated from her job as an auto mechanic because she is transgender, the court remanded the case for trial because there was sufficient circumstantial evidence to create a triable issue of fact as to whether gender bias was a motivating factor. The employer asserted that the plaintiff was fired for sleeping on the job and noted that other employees had been fired for the same offense. However, less than two months before the plaintiff's termination, her supervisor had said that her transgender status made him "nervous" and would negatively impact the business and coworkers. Moreover, the plaintiff had received an excellent performance appraisal prior to disclosing her gender transition, and the employer deviated from its progressive disciplinary policy in imposing termination in the plaintiff's case.

Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011). The plaintiff, a transgender female, brought a claim under 42 U.S.C. § 1983 alleging unlawful discrimination based on sex in violation of the Equal Protection Clause when she was terminated from her position with the Georgia General Assembly. Relying on Price Waterhouse and other Title VII precedent, the court concluded that the defendant discriminated against the plaintiff based on her sex by terminating her because she was transitioning from male to female. The court stated that a person is considered transgender "precisely because of the perception that his or her behavior transgresses gender stereotypes." As a result, there is "congruence" between discriminating against transgender individuals and discrimination on the basis of "gender-based behavioral norms." Because everyone is protected against discrimination based on sex stereotypes, such protections cannot be denied to transgender individuals. "The nature of the discrimination is the same; it may differ in degree but not in kind." The court further concluded that discrimination based on sex stereotypes is subject to heightened scrutiny under the Equal Protection Clause, and government termination of a transgender person for his or her gender nonconformity is unconstitutional sex discrimination. Although in this case the defendant asserted that it fired the plaintiff because of potential lawsuits if she used the women's restroom, the record showed that the plaintiff's office had only single-use unisex restrooms, and therefore there was no evidence that the defendant was actually motivated by litigation concerns about restroom use. The defendant provided no other justification for its action, and therefore, the plaintiff was entitled to summary judgment.

Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005). Plaintiff, who "was a male-to-female transsexual who was living as a male while on duty but often lived as a woman off duty [and] had a reputation throughout the police department as a homosexual, bisexual or cross-dresser," alleged he was demoted because of his failure to conform to sex stereotypes. The court held that this stated a claim of sex discrimination under Title VII.

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Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004). The plaintiff alleged that he was suspended based on sex after he began to express a more feminine appearance and notified his employer that he would eventually undergo a complete physical transformation from male to female. The court held that Title VII prohibits discrimination against transgender individuals based on gender stereotyping. The court determined that discrimination against an individual for gender-nonconforming behavior violates Title VII irrespective of the cause of the behavior. The court reasoned that the "narrow view" of the term "sex" in prior case law denying Title VII protection to transgender employees was "eviscerated" by Price Waterhouse, in which the Supreme Court held that Title VII protected a woman who failed to conform to social expectations about how women should look and behave.

Rosa v. Parks W. Bank & Trust Co., 214 F.3d 213 (1st Cir. 2000). Citing Title VII case law, the court concluded that a transgender plaintiff, who was biologically male, stated a claim of sex discrimination under the Equal Credit Opportunity Act by alleging that he was denied a loan application because he was dressed in traditionally female attire.

Schwenck v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000). Citing Title VII case law, the court concluded that a transgender woman stated a claim of sex discrimination under the Gender Motivated Violence Act based on the perception that she was a "man who 'failed to act like one.'" The court noted that "the initial approach" taken in earlier federal appellate Title VII cases rejecting claims by transgender plaintiffs "has been overruled by the language and logic of Price Waterhouse."

Baker v. Aetna Life Ins., et al., __ F. Supp. 3d __, 2017 WL 131658 (N.D. Tex. Jan. 13, 2017). The court ruled that an employee stated a claim against her employer for sex discrimination in violation of Title VII based on denial of coverage under employer-provided health insurance plan for costs associated with surgery related to gender transition.

Mickens v. General Electric Co., No. 3:16CV-00603-JHM, 2016 WL 7015665 (W.D. Ky. Nov. 29, 2016). The court denied the employer's motion to dismiss a Title VII sex discrimination claim in which a transgender plaintiff alleged he was unlawfully denied use of the male bathroom close to his work station, and then was fired for attendance issues resulting from having to go to a bathroom farther away. He also alleged that once his supervisor learned of his transgender status, he was singled out for reprimands, and no action was taken in response to his reports of coworker harassment. Rejecting the employer's argument that discrimination based on transgender status is not actionable under Title VII, the court cited Sixth Circuit precedent recognizing that, in light of Price Waterhouse, the prohibition against gender discrimination in Title VII "can extend to certain situations where the plaintiff fails to conform to stereotypical gender norms." The court held that the complaint sufficiently pled a Title VII sex discrimination claim, noting that "[s]ignificantly, plaintiff alleges that GE both permitted continued discrimination and harassment against him and subsequently fired him because he did not conform to the gender stereotype of what someone who was born female should look and act like."

Roberts v. Clark Cty. Sch. Dist., No. 2:15-cv-00388-JAD-PAL, 2016 WL 5843046 (D. Nev. Oct. 4, 2016). Expressly adopting the EEOC's holdings in Macy and Lusardi, the court ruled that plaintiff, a transgender school police officer, was subjected to sex discrimination in violation of Title VII when he was told by his employer that he could not use either the men's or women's bathroom at work.

Doe v. Ariz., 2016 WL 1089743 (D. Ariz. Mar. 21, 2016). The plaintiff, a corrections officer, alleged the Department of Corrections violated Title VII's prohibition on sex discrimination based on gender identity when supervisors tolerated harassment of him and breached his confidentiality by informing prison inmates of his transition. Denying the employer's motion to dismiss, the court noted that the EEOC and courts have held that Title VII's sex discrimination provision prohibits workplace discrimination based on gender identity, and that the claim was described with sufficient clarity in the EEOC charge to render it exhausted.

Fabian v. Hosp. of Central Conn., 172 F. Supp. 3d 509 (D. Conn. 2016). Plaintiff, an orthopedic surgeon, brought a Title VII sex discrimination claim alleging she was not hired because she disclosed her identity as a transgender woman who would begin work after transitioning to presenting as female. Analyzing Title VII's legislative history and case law in extensive detail, the court held that Price Waterhouse abrogates the narrow view of 0Title VII's plain language that previously excluded sex discrimination claims by transgender individuals, citing supportive rulings by the 6th, 9th, and 11th Circuits, as well as the EEOC's decision in Macy. See also Adkins v. City of New York, 143 F. Supp. 3d 134 (S.D.N.Y. 2015) (allowing equal protection claim by transgender individual to proceed under 42 U.S.C. Section 1983).

Lewis v. High Point Regional Health Sys., 79 F. Supp. 3d 588 (E.D.N.C. 2015). Plaintiff, a certified nursing assistant, alleged she was denied hire for several positions because of her transgender status. At the time of her interviews, she was anatomically male, and was undergoing hormone replacement therapy in preparation for sex reassignment surgery in the future. The district court denied the employer's motion to dismiss the case because the employer had argued only that sexual orientation was not covered under Title VII and sexual orientation and gender identity are two distinct concepts. The court therefore allowed plaintiff's transgender discrimination claim to proceed under Title VII.

Finkle v. Howard Cty., Md., 12 F. Supp. 3d 780 (D. Md. 2014). Denying the county's motion to dismiss or for summary judgment on a Title VII claim brought by a volunteer auxiliary police officer, the court ruled that the officer was an "employee" for Title VII purposes, and that her claim that she was discriminated against "because of her obvious transgendered status" raised a cognizable claim of sex discrimination. The court reasoned: "[I]t would seem that any discrimination against transsexuals (as transsexuals) - individuals who, by definition, do not conform to gender stereotypes - is proscribed by Title VII's proscription of discrimination on the basis of sex as interpreted by Price Waterhouse. As Judge Robertson offered in Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008), '[u]ltimately I do not think it matters for purposes of Title VII liability whether the Library withdrew its offer of employment because it perceived Schroer to be an insufficiently masculine man, an insufficiently feminine woman, or an inherently gender-nonconforming transsexual.'"

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Parris v. Keystone Foods, 959 F. Supp. 2d 1291 (N.D. Ala. 2013), appeal dismissed, No. 13-14495-D (11th Cir. Dec. 26, 2013). Plaintiff, a transgender female, alleged that she was discharged from her job at a chicken processing facility because of her "gender non-conformity." The district court, citing Glenn v. Brumby, recognized that the plaintiff's claims were covered by Title VII's sex discrimination prohibitions, but granted summary judgment to the employer on the ground that plaintiff's comparator evidence and evidence of discriminatory remarks by coworkers did not show that her discharge was motivated by her gender identity as opposed to the legitimate non-discriminatory reason proffered by the employer.

Radtke v. Miscellaneous Drivers & Helpers Union Local #638 Health, Welfare, Eye, & Dental Fund, 867 F. Supp. 2d 1023 (D. Minn. 2012). Assessing a claim under ERISA for wrongful termination of benefits to a legal spouse of a transgender individual, the court quoted the language from Smith v. City of Salem that the Supreme Court's decision in Price Waterhouse "eviscerated" the "narrow view" of "sex" articulated in earlier Title VII cases, and observed: "An individual's sex includes many components, including chromosomal, anatomical, hormonal, and reproductive elements, some of which could be ambiguous or in conflict within an individual."

Schroer v. Billington, 577 F. Supp. 2d 293 (D.D.C. 2008). The plaintiff, a transgender female, was offered a position as a terrorism research analyst before she had changed her name and begun presenting herself as a woman. After the plaintiff notified the employer that she was under a doctor's care for gender dysphoria and would be undergoing gender transition, the employer withdrew the offer, explaining that the plaintiff would not be a "good fit." The court stated that since the employer refused to hire the plaintiff because she planned to change her anatomical sex by undergoing sex reassignment surgery, the employer's decision was literally discrimination "because of ... sex." The court analogized the plaintiff's claim to one in which an employee is fired because she converted from Christianity to Judaism, even though the employer does not discriminate against Christians or Jews generally but only "converts." Since such an action would be a clear case of discrimination "because of religion," Title VII's prohibition of discrimination "because of sex" must correspondingly encompass discrimination because of a change of sex. The court concluded that decisions rejecting claims by transgender individuals "represent an elevation of 'judge-supposed legislative intent over clear statutory text,'" which is "no longer a tenable approach to statutory construction."

Lopez v. River Oaks Imaging & Diagnostic Grp., Inc., 542 F. Supp. 2d 653 (S.D. Tex. 2008). The plaintiff alleged that she was subjected to sex discrimination when the employer rescinded its job offer after learning that she was transgender. Denying the employer's motion for summary judgment, the court concluded that the plaintiff's claim was actionable as sex discrimination under Title VII on the theory that she failed to comport with the employer's notions of how a male should look. A finder of fact might reasonably conclude that the employer's statement that the job offer was rescinded because she had "misrepresented" herself as female reflected animus against individuals who do not conform to gender stereotypes.

Mitchell v. Axcan Scandipharm, Inc., No. 05-243, 2006 WL 456173, at *2 (W.D. Pa. 2006). Plaintiff alleged sex-based harassment and termination in violation of Title VII after the employer learned that plaintiff had been diagnosed with gender identity disorder and plaintiff began presenting at work as a female after having presented as a male during the first four years of employment. Denying the employer's motion to dismiss, the court held that because the complaint "included facts showing that his failure to conform to sex stereotypes of how a man should look and behave was the catalyst behind defendant's actions, plaintiff has sufficiently pleaded claims of gender discrimination."

Tronetti v. TLC HealthNet Lakeshore Hosp., No. 03-cv-375E, 2003 WL 22757935, at *4 (W.D.N.Y. 2003). Relying on the reasoning in Schwenck v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000), the court ruled that plaintiff's sex discrimination claims of hostile work environment harassment and discriminatory discharge arising from her transition and sex reassignment surgery were actionable under Title VII, based on factual allegations that she was discriminated against for "failing to act like a man." See also Doe v. United Consumer Fin. Servs., No. 1:01-cv-1112, 2001 WL 34350174, at *2-5 (N.D. Ohio 2001).

Creed v. Family Express Corp., 101 Fair Empl. Prac. Cas. (BNA) 609, 2007 WL 2265630 (N.D. Ind. Aug. 3, 2007). The plaintiff, a transgender female, alleged facts permitting an inference that she was terminated because of gender stereotypes; specifically, that she was perceived by her employer to be a man while employed as a sales associate and was fired for refusing to present herself in a masculine way. See also Hunter v. United Parcel Serv., 697 F.3d 697 (8th Cir. 2012) (affirming summary judgment for the employer under both Title VII and state law, the court did not rule that such discrimination was not actionable under Title VII, but rather that there was no evidence that the prospective employer knew or perceived that plaintiff was transgender during the job interview, and therefore a prima facie case of sex discrimination was not established).

Miles v. New York Univ., 979 F. Supp. 248, 249-50 (S.D.N.Y. 1997). Noting that the phrase "on the basis of sex" in Title IX is interpreted in the same manner as similar language in Title VII, the court held that a transgender female student could proceed with a claim that she was sexually harassed "on the basis of sex" in violation of Title IX.

Federal Court Decisions Supporting Coverage of Sexual Orientation-Related Discrimination as Sex Discrimination

Hively v. Ivy Tech Cmty. Coll. of Ind., __ F.3d __, 2017 WL 1230393 (7th Cir. Apr. 4, 2017) (en banc). In an 8-3 en banc decision, the Seventh Circuit agreed with the EEOC that Title VII's prohibition on sex discrimination incorporates a prohibition on sexual orientation discrimination, overruling its contrary prior precedent. Chief Judge Wood, writing for the majority, first relied on the "comparative method" of analysis, reasoning that "Hively alleges that if she had been a man married to a woman . . . and everything else had stayed the same, Ivy Tech would not have refused to promote her and would not have fired her. . . .This describes paradigmatic sex discrimination." The majority also relied upon the gender-stereotyping theory articulated in Price Waterhouse: "Viewed through the lens of the gender non-conformity line of cases,"

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the majority said, "Hively represents the ultimate case of failure to conform to the female stereotype (at least as understood in a place such as modern America, which views heterosexuality as the norm and other forms of sexuality as exceptional): she is not heterosexual." Next, the majority relied on the "associational theory," likening discrimination because of same-sex relationships to discrimination because of mixed-race relationships. Finally, the majority pointed to the "backdrop" of the Supreme Court's decisions regarding sexual orientation. Tracing the evolution of case law from Romer v. Evans, 517 U.S. 620 (1996), through Obergefell v. Hodges, 135 S. Ct. 2584 (2015), the majority described an evolving sense that laws "'burden[ing] the liberty of same-sex couples . . . abridge central precepts of equality.'" Judge Posner joined the majority opinion but wrote separately to argue that more than 50 years after its enactment, Title VII "invites an interpretation that will update it to the present," observing that "[n]othing has changed more in the decades since the enactment of the statute," he said, "than attitudes toward sex," and concluding that "[t]he compelling social interest in protecting homosexuals (male and female) from discrimination justifies an admittedly loose 'interpretation' of the word 'sex' in Title VII to embrace homosexuality . . . ." Two other concurring judges joined the bulk of the majority opinion, but not its reliance on the "backdrop" of Supreme Court opinions regarding sexual orientation, and wrote separately to emphasize that "[o]ne cannot consider a person's homosexuality without also accounting for their sex" because sexual orientation discrimination involves discriminating against a woman because she is (a) a woman, who is (b) sexually attracted to women, and therefore sexual orientation discrimination is necessarily motivated in part by the employee's sex. The three dissenting judges criticized the majority for "deploy[ing] a judge-empowering, common-law decision method . . . [producing] a statutory amendment courtesy of unelected judges," reasoning that courts must interpret a statute "as a reasonable person would have understood it at the time of enactment."

Two other appellate courts, in rulings by divided three-judge panels, have recently reached the opposite conclusion, finding that they were bound by circuit precedent disallowing sexual orientation discrimination claims under Title VII; however, there were extensive separate opinions written in each case reasoning that the older precedent should be overturned. See Anonymous v. Omnicom Grp., Inc., 2017 WL 1130183 (2d Cir. Mar. 27, 2017) (concurring, two judges extensively critiqued the circuit precedent disallowing Title VII sexual orientation discrimination claims, and endorsed all three rationales set forth by the EEOC in Baldwin); Evans v. Ga. Reg'l Hosp., 2017 WL 943925 (11th Cir. Mar. 10, 2017), pet. for reh'g en banc filed (Mar. 31, 2017) (ruling that the sexual orientation discrimination is not actionable but the claim could proceed because the facts supported a permissible Title VII claim of sex discrimination based on gender nonconformity; dissenting, one judge reasoned that plaintiff's sexual orientation discrimination claim should also have been permitted to proceed, because when a woman alleges "she has been discriminated against because she is a lesbian, she necessarily alleges that she has been discriminated against because she failed to conform to the employer's image of what women should be - specifically, that women should be sexually attracted to men only").

Muhammad v. Caterpillar Inc., 767 F.3d 694 (7th Cir. Sept. 9, 2014, as amended on denial of reh'g, Oct. 16, 2014). Plaintiff alleged that hostile work environment harassment relating to his perceived sexual orientation was sex-based harassment in violation of Title VII. Affirming the district court's grant of summary judgment to the employer, the appellate court ruled that the employer took prompt remedial action once on notice of the harassment. As urged by the EEOC in an amicus brief filed in connection with plaintiff's petition for rehearing, the court denied the petition but amended its original decision to delete language that had stated sexual orientation-related discrimination claims are not actionable under Title VII.

Latta v. Otter, 771 F.3d 456 (9th Cir. 2014). The Ninth Circuit Court of Appeals held that statutes and constitutional amendments in Idaho and Nevada prohibiting same-sex marriages and refusing to recognize same-sex marriages validly performed in other states violated the Equal Protection Clause. The opinion of the court held that the laws were invalid as they discriminated on the basis of sexual orientation without sufficient justification. It also noted that "the constitutional restraints the Supreme Court has long imposed on sex-role stereotyping . . . may provide another potentially persuasive answer to defendant's theory." Id. at 474. A concurrence by Judge Berzon focused exclusively on the sex discrimination argument. Her opinion stated that she would have found that the Idaho and Nevada laws unlawfully discriminated on the basis of sex as, among other reasons, "the social exclusion and state discrimination against lesbian, gay, bisexual, and transgender people reflects, in large part, disapproval of their nonconformity with gender-based expectations." Id. at 495.

Boutillier v. Hartford Pub. Schs., No. 3:13-cv-01303, 2016 WL 6818348 (D. Conn. Nov. 17, 2016). Plaintiff, an elementary school teacher, alleged that discrimination against her based on her sexual orientation violated Title VII's sex discrimination prohibition. The court denied the employer's motion for summary judgment, citing the pendency of the issue before the circuit's appellate court and mixed circuit precedent, as well as arguments it found persuasive in support of plaintiff's claim. The court reasoned that Title VII's plain language as well as precedent supported plaintiff's claim, concluding that "straightforward statutory interpretation and logic dictate that sexual orientation cannot be extricated from sex; the two are necessarily intertwined in a manner that, when viewed under the Title VII paradigm set forth by the Supreme Court, place sexual orientation discrimination within the penumbra of sex discrimination." See also Boutillier v. Hartford Pub. Schs., 2014 WL 4794527 (D. Conn. Sept. 25, 2014) (denying employer's motion to dismiss).

EEOC v. Scott Med. Health Ctr., P.C., __ F. Supp. 3d __, 2016 WL 6569233 (W.D. Pa. Nov. 4, 2016). The Commission alleged that harassment and constructive discharge based on the sexual orientation of a teleworker was actionable as sex discrimination under Title VII. Denying the employer's motion to dismiss, the court held that "Title VII's 'because of sex' provision prohibits discrimination on the basis of sexual orientation." The court explained: "There is no more obvious form of sex stereotyping than making a determination that a person should conform to heterosexuality. As the EEOC states, " [d]iscriminating against a person because of the sex of that person's romantic partner necessarily involves stereotypes about 'proper' roles in sexual relationship-that men are and should only be sexually attracted to women, not men." The court stated that in its view, a line between sex discrimination and sexual orientation discrimination is "a distinction without a difference. Forcing an employee to fit into a gendered expectation-whether that expectation involves physical traits, clothing, mannerisms or sexual attraction-constitutes sex stereotyping and, under Price Waterhouse, violates Title VII." The

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court concluded that such discrimination, "based upon nothing more than the aggressor's view of what it means to be a man or a woman, is exactly the evil Title VII was designed to eradicate."

Winstead v. Lafayette Cty. Bd. of Cty. Comm'rs, 197 F. Supp. 3d 1334 (N.D. Fla. 2016). Employee of county emergency medical services department brought Title VII sex discrimination claim alleging discrimination based on sexual orientation or perceived sexual orientation. Denying the employer's motion to dismiss, the court explained that it found persuasive the sex stereotyping rationale articulated in the EEOC's decision in Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), and observed: "To hold that Title VII's prohibition on discrimination 'because of sex' includes a prohibition on discrimination based on an employee's homosexuality or bisexuality or heterosexuality does not require judicial activism or tortured statutory construction. It requires close attention to the text of Title VII, common sense, and an understanding that '[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." (quoting Manhart, 435 U.S. at 707 n.13).

Videckis v. Pepperdine Univ., 150 F. Supp. 3d 1151 (C.D. Cal. 2015). Pepperdine University filed a renewed motion to dismiss plaintiff's Title IX claim, stating that the plaintiff alleged sexual orientation discrimination and not sex discrimination. The district court denied the motion, explicitly holding that "sexual orientation discrimination is a form of sex or gender discrimination." The court cited with approval the Commission's decision in Baldwin v. Dep't of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), explaining that sexual orientation discrimination is sex discrimination "because it involved treatment that would not have occurred but for the individual's sex; because it was based on the sex of the person(s) the individual associates with; and/or because it was premised on the fundamental sex stereotype, norm, or expectation that individuals should be attracted only to those of the opposite sex."

Isaacs v. Felder, 143 F. Supp. 3d 1190 (M.D. Ala. 2015). Granting the employer's motion for summary judgment on plaintiff's Title VII claim due to insufficient evidence of discriminatory intent on the facts of the case, the court nevertheless explicitly rejected arguments that sexual orientation discrimination cannot be challenged under Title VII: "This court agrees instead with the view of the Equal Employment Opportunity Commission that claims of sexual orientation-based discrimination are cognizable under Title VII. In [Baldwin], the Commission explains persuasively why 'an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII' ... Particularly compelling is its reliance on Eleventh Circuit precedent [prohibiting discrimination based on a protected characteristic because of a personal association]. Cf. Parr v. Woodmen of the World Life Ins. Co., 791 F.2d 888, 892 (11th Cir. 1986) ('Where a plaintiff claims discrimination based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of his race [in violation of Title VII].').' ....To the extent that sexual orientation discrimination occurs not because of the targeted individual's romantic or sexual attraction to or involvement with people of the same sex, but rather based on her or his perceived deviations from 'heterosexually defined gender norms,' this, too, is sex discrimination, of the gender-stereotyping variety .... See also Latta v. Otter, 771 F.3d 456, 486 (9th Cir. 2014) (Berzon, J., concurring) ('The notion underlying the Supreme Court's anti-stereotyping doctrine in both Fourteenth Amendment and Title VII cases is simple, but compelling: '[n]obody should be forced into a predetermined role on account of sex,' or punished for failing to conform to prescriptive expectations of what behavior is appropriate for one's gender. See Ruth Bader Ginsburg, 'Gender and the Constitution,' 44 U. Cin. L.Rev. 1, 1 (1975)."

Strong v. Grambling State Univ., 159 F. Supp. 3d 697 (W.D. La. 2015). The court analyzed on the merits plaintiff's claim that he was subject to sex discrimination in violation of Title VII based on his "gender status as heterosexual" because "women and homosexuals earn higher salaries than he does and receive pay increases where he does not." Granting the employer's motion for summary judgment, the court found there was insufficient evidence to support an inference of discriminatory intent.

Hall v. BNSF Ry. Co., 2014 WL 4719007 (W.D. Wash. Sept. 22, 2014). Denying an employer's motion to dismiss a Title VII sex discrimination claim challenging the employer's policy of providing health insurance coverage for employees' legally married opposite-sex spouses but not same-sex spouses, the court found that the allegations were sufficient to allege discrimination based on the sex of the employee.

Terveer v. Billington, 34 F. Supp. 3d 100 (D.D.C. 2014). Denying the employer's motion to dismiss the plaintiff's Title VII sex discrimination claims for denial of promotion and harassment because of non-conformance with sex stereotypes, the court found sufficient the plaintiff's allegations that he is "a homosexual male whose sexual orientation is not consistent with the Defendant's perception of acceptable gender roles," that his "status as a homosexual male did not conform to the Defendant's gender stereotypes associated with men [at his workplace]," and "his orientation as homosexual had removed him from [his supervisor's] preconceived definition of male."

Koren v. Ohio Bell Tel. Co., 894 F. Supp. 2d 1032 (N.D. Ohio 2012). Denying defendant's motion for summary judgment where plaintiff alleged his supervisor discriminated against him based on sex stereotypes because he is married to a man and took his husband's last name, the court held: "That *is* a claim of discrimination because of sex." (emphasis in original).

Heller v. Columbia Edgewater Country Club, 195 F. Supp. 2d 1212, 1224 (D. Or. 2002). In a Title VII sex harassment case brought by a lesbian employee who was subjected to negative comments about her sex life, the court stated that the belief that men or women should only be attracted to or date persons of the opposite sex constitutes a gender stereotype. "If an employer subjected a heterosexual employee to the sort of abuse allegedly endured by Heller-including numerous unwanted offensive comments regarding her sex life-the evidence would be sufficient to state a claim for violation of Title VII. The result should not differ simply because the victim of the harassment is homosexual." In this case, the court held, a jury could find that [the manager] repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men."

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Centola v. Potter, 183 F. Supp. 2d 403 (D. Mass. 2002). In dicta, the court explained: "Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women."

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Attachment B

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U.S. Equal Employment Opportunity Commission

Fact Sheet: Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination

(Last Updated 7-08-16)

Overview

The Commission adopted its current Strategic Enforcement Plan (SEP) in December of 2012. The SEP includes "coverage of lesbian, gay, bisexual and transgender individuals under Title VII's sex discrimination provisions, as they may apply" as a top Commission enforcement priority.

Consistent with this priority, the Commission's General Counsel formed an LGBT working group that provides advice and input to the Agency's litigators on developing litigation-related vehicles. This work group also coordinates internal initiatives and policies, trains internal staff, and conducts outreach with external stakeholders.

In addition, Agency litigators have filed lawsuits and amicus curiae briefs in various courts addressing a multitude of LGBT discrimination-related issues. These include:

Litigation

Pending Cases

- ***EEOC v. Bojangles Restaurants, Inc.,***(E.D. N.C., Civ. No. 5:16-cv-00654-BO, filed July 6, 2016). The EEOC sued Bojangles Restaurants, Inc., a North Carolina corporation operating a chain of fast food restaurants, alleging that it discriminated against charging party, Jonathan Wolfe, a transgender woman, by subjecting her to a hostile work environment because of her gender identity in violation of Title VII. Specifically, the EEOC alleges that Wolfe was repeatedly subjected to offensive comments about her gender identity and appearance, in particular belittling comments by managers demanding that Wolfe engage in behavior and grooming practices that are stereotypically male. The EEOC is seeking injunctive relief to prohibit Bojangles Restaurants from engaging in unlawful sex discrimination in the future, as well as backpay, compensatory damages, and punitive damages for Wolfe.
- ***EEOC v. Scott Medical Health Center, P.C.,*** (W.D. Pa., Civ. No. 2:16-cv-00225-CB, filed March 1, 2016). The EEOC sued Scott Medical Health Center, P.C., a provider of pain management and weight loss services, alleging that it discriminated against charging party Dale Baxley on the basis of sex in violation of Title VII when it subjected him to harassment because of his sexual orientation and/or because he did not conform to the employer's gender-based expectations, preferences, or stereotypes. The Commission further alleges that the defendant failed to take action to stop the harassment after Baxley complained, resulting in his constructive discharge. According to the EEOC's lawsuit, Baxley's immediate supervisor knew that Baxley was gay and frequently assailed him with highly offensive anti-gay epithets, and other vulgar epithets based on sex stereotypes. When Baxley complained about the harassment to the medical director, the medical director took no corrective action. After two to three more weeks of continued harassment, Baxley resigned to avoid being subjected to the highly offensive conduct. The EEOC is seeking injunctive relief to prohibit Scott Medical Health Center, P.C. from engaging in unlawful sex discrimination in the future, as well as backpay, compensatory damages, and punitive damages for Baxley.
- ***EEOC v. R.G. & G.R. Harris Funeral Homes Inc.*** (E.D. Mich., Civ. No. 2:14-cv-13710-SFC-DRG, filed Sept. 25, 2014). The EEOC sued Detroit-based R.G. & G.R. Harris Funeral Homes Inc., alleging that it discriminated based on sex by firing a funeral director/embalmer because she is transgender, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII. The Commission alleges that Amiee Stephens had been employed by Harris as a funeral Director/Embalmer since October 2007 and had always adequately performed the duties of that position. In 2013, she gave Harris a letter explaining she was undergoing a gender transition from male to female, and would soon start to present (e.g., dress) in appropriate business attire at work, consistent with her gender identity as a woman. Two weeks later, Harris's owner fired Stephens, telling her that what she was "proposing to do" was unacceptable. Defendant filed a

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motion to dismiss the complaint on November 19, 2014. The EEOC opposed the motion on December 10, 2014. On April 23, 2015, the court denied defendant's motion to dismiss. The court acknowledged that "even though transgendered/transsexual status is currently not a protected class under Title VII, Title VII nevertheless 'protects transsexuals from discrimination for failing to act in accordance and/or identify with their perceived sex or gender.'" *Id.* at 8. The court concluded that the EEOC had sufficiently pled a sex-stereotyping gender-discrimination claim under Title VII because the Commission alleged that Stephen's failure to conform to sex stereotypes was the driving force behind the funeral home's decision to fire Stephens. *Id.* at 14.

- ***Broussard v. First Tower Loan LLC***(E.D. La., Civ. No. 2:15-cv-01161-CJB-SS) (court granted EEOC's Motion to intervene on September 17, 2015). Plaintiff Tristan Broussard filed this Title VII suit against his former employer, First Loan Tower LLC, alleging he was fired on the basis of gender identity in violation of Title VII. Broussard was a manager-trainee for defendant. While completing employment paperwork, he was required to produce his driver's license as a valid form of identification. A manager questioned why the license listed his sex as "F" and Broussard explained he is a transgender man. Several days later, First Tower's Vice President informed Broussard that he must dress and act as a female in the workplace because it was confusing to customers. As a condition of employment, First Tower required him to sign a statement agreeing to act and be treated as a female rather than as a male while working for First Tower Loan. Broussard refused, and First Tower fired him.

  Broussard's complaint alleges that First Tower Loan's decided to terminate him because he is transgender and because of his inability to conform to First Tower Loan's stereotypical expectations of gender. He further alleges that defendant's requirements that he should agree to be treated as female, including dress and conduct, violates Title VII's prohibition on employment discrimination because of sex. Broussard first filed charges with the EEOC. The Commission investigated the discrimination charged and issued a notice of right to sue. In September 2015, the court granted the EEOC's motion to intervene. The Commission's lawsuit seeks injunctive relief to prohibit First Tower Loan from engaging in unlawful sex discrimination in the future, as well as lost wages, compensatory and punitive damage for Broussard.

  On December 10, 2015, the court issued an order staying the EEOC's suit pending private arbitration between Broussard and the defendant. On January 7, 2016, the Commission filed a motion to reconsider that order staying the EEOC's claims. This motion is pending before the court.

Resolved Cases

- ***EEOC v. Pallet Companies d/b/a IFCO Sys. North Am., Inc.*** (hereinafter "IFCO"), (D. Md., Civ. No. 1:16-cv-00595-CCB, filed Mar. 1, 2016, settled June 28, 2016). The EEOC sued IFCO, a provider of reusable plastic containers, alleging that it discriminated against charging party, Yolanda Boone on the basis of sex by terminating her for complaining about harassment. The EEOC alleged that Boone, a lesbian woman, was harassed because of her sexual orientation and/or her non-conformity with the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII. The EEOC further alleged that Boone's supervisor harassed her by repeatedly making comments, sometimes accompanied by sexually suggestive gestures, about her sexual orientation and nonconformity with stereotypical female gender norms. A few days after Boone complained to management and contacted IFCO's employee complaint hotline, IFCO retaliated against her by terminating her employment. As part of the settlement agreement, IFCO agreed to pay $202,200 in damages ($182,200 for Boone and $20,000 to the Human Rights Campaign Foundation). The two year consent decree also enjoins IFCO from engaging in sex discrimination or retaliation in the future and requires IFCO to retain an expert on sexual orientation, gender identity, and transgender training to assist in developing a training program for IFOC's staff on LGBT workplace issues, among other injunctive relief.
- ***EEOC v. Deluxe Financial Services Corp.,*** (D. Minn., Civ. No. 0:15-cv-02646-ADM-SER, filed June 4, 2015, settled January 20, 2016). The EEOC sued Deluxe Financial Services Corporation, a check-printing and financial services corporation, alleging that after charging party, Britney Austin, began to present at work as a woman and informed her supervisors that she was transgender, Deluxe refused to let her use the women's restroom in violation of Title VII. The Commission further alleged that supervisors and coworkers subjected her to a hostile work environment, including hurtful epithets and intentionally using the wrong gender pronouns to refer to her. As part of a settlement agreement, Deluxe agreed to pay $115,000 in damages. Furthermore, a three-year consent decree provides that Deluxe will not make exclusions in their healthcare benefits plan for medically necessary care based on transgender status, will revise employment policies including a commitment to preventing unlawful sex discrimination, and will provide employee training explaining that unlawful sex discrimination includes discrimination based on sex-stereotypes, gender-identity, and transgender status.
- ***EEOC v. Lakeland Eye Clinic, P.A.*** (M.D. Fla., Civ. No. 8:14-cv-2421-T35 AEP, filed Sept. 25, 2014, settled April 9, 2015). The EEOC sued Lakeland Eye Clinic, an organization of health care professionals, alleging that it discriminated based on sex by firing an employee because she is transgender, because she was transitioning from male to female, and/or because she did not conform to the employer's gender-based expectations, preferences, or stereotypes in violation of Title VII. According to the EEOC's lawsuit, the defendant's employee had performed her duties satisfactorily throughout her employment. However, after she began to present as a woman and informed the clinic she was transgender, Lakeland fired her. In April

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2015, Defendant agreed to settle the case by entering into a two year consent decree which includes injunctive relief and $150,000 in monetary damages.

Appellate Cases

- ***EEOC v. Boh Bros. Constr. Co. LLC*** (5th Cir. 11-30770). The Commission won a jury verdict in the amount of $451,000 in this Title VII enforcement action with evidence showing that Chuck Wolfe, the supervisor of an all-male construction crew, harassed Kerry Woods, one of his subordinates, and created a hostile work environment. The district court subsequently reduced the verdict to $301,000 because of statutory limits and also provided injunctive relief to prevent future discrimination. A panel of the Fifth Circuit reversed the jury verdict, and the EEOC sought rehearing en banc. In September 2013, a 10-6 majority of the Court of Appeals upheld the jury verdict except for the punitive damages award.

  The Appellate Court held that a plaintiff alleging same-sex harassment can show that the harassment occurred because of sex by showing that it was motivated by the harasser's subjective perception that the victim failed to conform to gender stereotypes. The Court agreed with the Commission that this rule follows from *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), and *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998). The Court ruled that the focus is on the "harasser's subjective perception of the victim" and even an employer's "wrong or ill-informed assumptions about its employee may form the basis of a discrimination claim" since "[w]e do not require a plaintiff to prop up his employer's subjective discriminatory animus by proving that it was rooted in some objective truth." The Court then ruled that the Commission had offered sufficient evidence to sustain the jury's verdict that Wolfe harassed Woods because of sex (here, because Wolfe viewed Woods as "not manly enough"), and that Wolfe's harassment of Woods was sufficiently severe or pervasive to create a hostile environment. *See* 732 F.3d 444 (5th Cir. 2013) (en banc).

Amicus Briefs

Transgender Status & Gender-Identity

- ***Dawson v. H & H Electric, Inc.*** (E.D. Ark. No. 4:14cv00583 SWW) (amicus brief filed June 26, 2015). Plaintiff filed this Title VII suit against her employer, alleging discrimination on the basis of her transgender status. At the time she was hired, plaintiff used her birth name and presented as a male. After a gender dysphoria diagnosis, plaintiff began transitioning from male to female and legally changed her name. Plaintiff repeatedly asked to use her legal name at work and was denied. Following a series of discriminatory behavior from H & H's vice president, he ultimately fired plaintiff stating, "you do great work, but you are too much of a distraction." H & H moved for summary judgment, arguing that transgender status is not a cognizable claim under Title VII.

  In an amicus curiae brief, the EEOC argued *Price Waterhouse* makes clear that transgender discrimination is cognizable as discrimination because of sex under Title VII. The Commission noted that numerous federal district courts have concluded that transgender discrimination is cognizable under Title VII. Additionally, the Commission argued that the defendant's reliance on the rationale in *Sommers* and *Ulane* is misplaced because the Supreme Court rejected the rationale in those cases. The Commission further argued that the Supreme Court in *Oncale* explicitly rejected the idea that Title VII only proscribes types of discrimination specifically contemplated by Congress. Furthermore, Congressional inaction does not exclude the plaintiff's claim under Title VII. Accordingly, the plain language of Title VII prohibits discrimination based on transgender status, and the court should hold that transgender discrimination is cognizable as sex discrimination under Title VII.

  On September 15, 2015, the District Court denied H & H's motion for summary judgment. The court found that plaintiff pled facts sufficient to state a sufficient claim that H & H discriminated against her because of her sex in violation of Title VII. Notably, the court did not specifically address the Commission's argument. Instead, it based the analysis on gender non-conforming behavior, rather than status as a transgender individual. The court concluded that plaintiff provided ample evidence from which a reasonable juror could find that she was terminated because of her sex. The plaintiff carried her burden to show that H & H's proffered reason was pretext for sex discrimination.

- ***Eure v. Sage Corp.***, (5th Cir. No. 14-51311) (amicus brief filed April 22, 2015). Plaintiff, a transgender individual, alleged that defendant violated Title VII by discriminating against him because of his sex/gender. Plaintiff stated that the defendant reduced his work hours because he is transgender. Further, plaintiff alleged that defendant cut his supervisor's pay as retaliation for hiring him. Plaintiff and his supervisor resigned as a result of defendant's conduct. Plaintiff appealed the district court's grant of summary judgment in favor of defendant. In granting summary judgment, the district court asserted that plaintiff presented evidence specifically on status as a transgender person, and not in terms related to conformance with gender stereotypes. The district court held that failure to present evidence showing that the discrimination was motivated by plaintiff's failure to act as a stereotypical woman fails to establish a cognizable gender stereotyping claim and cannot succeed in showing that the discrimination was "because of sex" under Title VII.

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In an amicus brief, the EEOC argued that the 5th Circuit should reverse the grant of summary judgment because the district court incorrectly interpreted the scope of Title VII's protections against discrimination "because of...sex." The Commission explained that a transgender plaintiff may state a claim for discrimination because of sex, if the defendant's action was motivated by the plaintiff's nonconformance with a sex stereotype or norm. The Commission further argued that a plaintiff asserting transgender discrimination need not provide specific evidence of gender stereotyping because "consideration of gender stereotypes will inherently be part of what drives discrimination against a transgendered individual." Additionally, the EEOC argued that the evidence presents a genuine dispute of fact, from which a reasonable jury could infer that defendant discriminated against the plaintiff because of his sex.

On August 26, 2015, the EEOC requested the circuit court to allow it to participate in oral arguments on behalf of the plaintiff. On September 17, 2015, the plaintiff withdrew his appeal.

- ***Jamal v. Saks & Co.*** (S.D. Tex. No. 4:14-cv-02782) (amicus brief submitted with motion for leave to file Jan. 22, 2015). Plaintiff, a transgender individual, alleged that defendant violated Title VII by harassing and discharging her because of her sex/gender. Plaintiff alleged that managers and co-workers referred to her using male pronouns, despite her requests to use female pronouns. Further, plaintiff alleged that management told her to change her appearance to a more masculine one, not to wear makeup or feminine clothing, and to separate her home life from her work life. She filed an EEOC charge and was fired ten days later. Defendant filed a motion to dismiss arguing that Title VII does not protect "transsexuals." Defendant further argued that plaintiff failed to comply with the administrative prerequisites to suit because her EEOC charge described her as a male yet her complaint used the pronoun "her." Finally, defendant argued that plaintiff could not state a claim for retaliation because she had no reasonable belief that the conduct she complained of violated Title VII.

  In its proposed amicus brief, the EEOC argued that the district court should deny defendant's motion to dismiss and hold that discrimination against an individual because she is transgender violates Title VII. As it did in in its amicus brief in *Lewis* (above), the EEOC explained that courts recognize that Title VII's prohibition on sex discrimination encompasses discrimination based on the failure to conform to gender expectations. Thus, discrimination against a transgender individual for non-conformance with gender norms is sex discrimination. Further, the EEOC contended, specific evidence of gender stereotyping is not necessary because consideration of gender stereotypes is inherently part of what drives transgender discrimination. Additionally, the EEOC argued, the district court should hold that plaintiff's EEOC charge satisfied the administrative prerequisite to a suit alleging transgender discrimination, as the discrimination alleged in the charge is the same discrimination as that alleged in the complaint. Finally, the EEOC urged the district court to hold that plaintiff's act of filing a charge with the EEOC and opposing conduct that a reasonable person would believe is unlawful is protected activity for purposes of a retaliation claim. The EEOC explained that Title VII's "participation clause" protects an individual from retaliation for filing a charge, without limitation (e.g., a showing that plaintiff's charge was filed "in good faith"). Plaintiff's "opposition clause" claim also should proceed because she could have a good faith, reasonable belief that transgender-based discrimination violates Title VII.

  On January 26, 2015, Saks withdrew its motion to dismiss plaintiff's claim. On March 4, 2015, the parties filed a stipulation agreeing to dismiss the action with prejudice.

- ***Lewis v. High Point Reg'l Health Sys.*** (E.D.N.C. No. 5:13-cv-838-BO) (amicus brief filed Oct. 30, 2014). Plaintiff, a transgender female, alleges that defendant violated Title VII by failing to hire her in 2013 because of her sex/gender. Plaintiff alleges that during the interview process, she was interviewed by a group of peer nurses who ridiculed her regarding her sex. Defendant informed plaintiff that it was looking for someone with more experience. Although plaintiff had the qualifications for the position, she was not hired; rather, she alleges that an individual with less experience was hired for the position. Defendant filed a motion to dismiss arguing that Title VII does not prohibit "sexual orientation" discrimination.

  In an amicus brief, the EEOC argued the district court should deny defendant's motion to dismiss and hold that failing to hire an individual because she is transgender violates Title VII. The EEOC explained that sexual orientation is a different concept altogether than transgender status or gender identity. The EEOC further explained that courts have recognized that Title VII's prohibition on sex discrimination encompasses discrimination based on the failure to conform to gender expectations. Thus, discrimination against a transgender individual for non-conformance with gender norms is sex discrimination. Further, the EEOC argued, specific evidence of gender stereotyping is not necessary because consideration of gender stereotypes is inherently part of what drives transgender discrimination.

  On October 30, the district court granted the EEOC's motion for leave to file its amicus brief. The court noted that "[i]t is clear that this Court's ruling will implicate the interpretation and effective enforcement of Title VII, and therefore the EEOC has an interest in this matter. Further, as plaintiff is *pro se,* and the EEOC is the expert agency on the matter of Title VII, the EEOC's amicus brief will be of aid to the Court in its decisional process."

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On January 15, 2015, the district court denied defendant's motion to dismiss (as well as plaintiff's motion for summary judgment). The court noted that "[n]owhere in her complaint does plaintiff allege discrimination on the basis of sexual orientation." Further, the court concluded, "neither the Supreme Court nor the Fourth Circuit's Title VII jurisprudence has addressed transgender[] status, which, as amicus EEOC points out, is different than sexual orientation." The Court declined to resolve whether "plaintiff's complaint fits within a gender-stereotyping framework" since "the issue was not raised in defendant's motion to dismiss . . . ." *See Lewis v. High Point Regional Health System*, 79 F. Supp. 3d 588 (E.D.N.C. Jan. 15, 2015).

- ***Chavez v. Credit Nation Auto Sales, LLC*** (N.D. Ga. No. 1:13-cv-0312) (amicus brief filed June 5, 2014). Plaintiff worked as a mechanic for Credit Nation, a company that sells and repairs cars. In 2009, she informed her employer that she intended to transition from male to female. Some months later, she was terminated after a supervisor photographed her sleeping in a car during working hours. She then filed suit under Title VII, alleging that she was fired because of her gender. In moving for summary judgment, defendant argued that the plaintiff did not exhaust her administrative remedies because she failed to file a timely charge. The Commission filed an amicus curiae brief in the district court, limited to this issue. The Commission argued that the charge-filing limitations period should be tolled because before finally accepting the plaintiff's charge, EEOC had twice refused on the ground that "transgendered persons cannot file claims for sex discrimination under Title VII."

  In ruling on the summary judgment motion, the district court rejected defendant's exhaustion argument. Without mentioning EEOC's brief, the court noted that the "limitations period under Title VII may be equitably tolled if the EEOC misleads a complainant regarding the nature of his or her rights." In the court's view that is what happened here. The court stated that "Title VII prohibits employers from discriminating against employees for failing to act and appear according to expectations defined by gender." (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989); *Glenn v. Brumby*, 683 F.3d 1312, 1316 (11th Cir. 2011)). The court reasoned that because the "'very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior, . . . [d]iscrimination against a transgender individual because of the gender nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender.'" (citing *Brumby*, 683 F.3d at 1317) (adding that the "majority of federal courts" agree). Accordingly, the court concluded, "the EEOC misled [p]laintiff when it told [her] that she could not bring a claim for gender discrimination under Title VII," and, so, limitations on the claim "is required to be equitably tolled." The court went on to grant defendant's motion, however, finding no issue of fact as to whether the proffered reason for her termination - sleeping on the job - was pretextual. *See* 2014 WL 4585452 (N.D. Ga. Sept. 12, 2014).

  On January 14th, 2016, the Eleventh Circuit issued a decision affirming the district court's ruling in favor of summary judgment for defendant on the issue of pretext, but reversed on the issues of (1) defendant's discriminatory intent, and (2) whether or not gender bias was a motivating factor in the termination decision, finding that plaintiff did present triable issues of fact. *See Chavez v. Credit Nation Auto Sales, LLC*, 2016 WL 158820 (11th Cir. Jan. 14, 2016).

  The 11th Circuit held that plaintiff did not create a jury issue as to pretext because (a) she admitted to sleeping in her car on the clock, and (b) the defendant had previously fired a different employee for this same conduct. However, as to the termination, the court ruled that plaintiff presented sufficient evidence to demonstrate that gender bias was a motivating factor, including the skeptical attitude of her supervisor regarding her transition, instructions about how she was to dress at work and to and from work, her employer's concern about her gender expression as being disruptive, a bypassed disciplinary process that was supposed to precede any termination action, etc. *See Chavez*, 2016 WL 158820 at *6-9. The court stated that this issue should have survived summary judgment because it is enough that the plaintiff shows that "discriminatory animus existed and was at least 'a motivating factor.'" *See id.* at *8.

- ***Pacheco v. Freedom Buick GMC Truck, Inc.***(W.D. Tex. Civ. No. 7:10-cv-00116) (amicus brief submitted as attachment with motion for leave to file Oct. 17, 2011; district court denied motion for leave to file Nov. 1, 2011). Plaintiff Alex Pacheco filed suit alleging that defendant Freedom Buick GMC Truck, Inc. discharged her because she is transgender and failed to conform to male gender stereotypes, and that this is discrimination because of sex in violation of Title VII. Freedom moved for summary judgment. The Commission sought to file an amicus curiae brief in which the Commission took the position that, as a matter of law, disparate treatment of an employee because she is transgender is discrimination because of sex. The amicus brief argued that this is so for at least two reasons: (1) under the reasoning of the Supreme Court's decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), discrimination against a transgender individual because he or she does not conform to gender norms or stereotypes is discrimination "because of . . . sex" under Title VII; and (2) following the reasoning in *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008), discrimination because an individual intends to change, is changing, or has changed his or her sex, is likewise prohibited by Title VII. The amicus brief also took the position that there were genuine issues of material fact that should preclude summary judgment on Pacheco's claim.

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The Commission filed a motion for leave to file this amicus brief in the district court, and attached a copy of the brief to this motion. Freedom opposed the EEOC's motion for leave to file. The district court entered an order denying Freedom's motion for summary judgment. Later, the district court entered a separate order denying the EEOC's motion for leave to file its amicus brief. However, the district court did not strike the EEOC's motion for leave to file (or the proposed amicus brief, which was attached to the EEOC's motion) from the public docket sheet for the case.

Sexual Orientation

- ***Christiansen v. Omnicom Group, Inc.*** (2nd Cir. No. 16-748) (amicus brief filed June 28, 2016). Plaintiff-Appellant Matthew Christiansen brought a Title VII lawsuit against Omnicom, alleging that his employer subjected him to a sexually hostile work environment by harassing him because he was gay and perceived as unmanly. The District Court for the Southern District of New York dismissed Christiansen's complaint for failure to state a claim. The court stated that it was "constrained" by binding circuit precedent, *specifically Simonton v. Runyon, 232 F.3d 33 (2d Cir. 2000)* and *Dawson v. Bumble & Bumble*, 398 F.3d 211 (2d Cir. 2005). However, the court noted that the "broader legal landscape" has changed greatly since *Simonton*. Moreover, the court stated that drawing a line between discrimination based on sexual orientation and that based on sexual stereotyping was difficult. Yet, given that *Simonton* is still good law, the court was obligated to adhere to precedent.

  Plaintiff appealed the decision to the Second Circuit. The EEOC filed an *amicus curie* brief in support of Christiansen, arguing that sexual orientation discrimination is cognizable as sex discrimination under Title VII. The EEOC outlined three theories under which Christiansen's claim can proceed. First, Title VII's prohibition on discrimination based on sex stereotypes extends to discrimination based on sexual orientation. Second, Title VII's prohibition on discrimination based on interracial associations extends to discrimination based on same-sex associations. Third, Title VII's prohibition on sex discrimination extends to discrimination based on sexual orientation.

  Additionally, the EEOC argued that the Second Circuit should reconsider *Simonton* for two reasons: the legal underpinnings for the decision have shifted, and the rule that Title VII does not prohibit discrimination based on sexual orientation is outdated.

- ***Evans v. Georgia Regional Hospital***(11th Cir. No. 15-15234) (amicus brief filed January 11, 2016). Plaintiff-Appellant Jameka Evans brought a Title VII lawsuit against her employer Georgia Regional Hospital claiming that she was discriminated and retaliated against because of her sexual orientation and her nonconformity to gender-based stereotypes. The district court for the Southern District of Georgia dismissed Evans' complaint for failure to state a claim on which relief may be granted. The district court concurred with the magistrate judge's report and recommendation, which stated that sexual orientation discrimination is not protected under Title VII. The magistrate judge explained that Title VII "was not intended to cover discrimination against homosexuals." Additionally, the magistrate judge said that Evans could not state a claim for retaliation because she could not have had a reasonable belief that she was opposing conduct made unlawful by Title VII. The district court conducted a de novo review of the record and, without any discussion, adopted the magistrate judge's report and recommendation and dismissed the complaint with prejudice.

  In its amicus brief, the EEOC argued that Title VII's prohibition on sex discrimination encompasses a prohibition on discrimination because of sexual orientation. This is a question of first impression in the Eleventh Circuit. Consistent with *Baldwin v. Foxx*, EEOC Appeal No. 0120133080, 2015 WL 4397641 (EEOC July 15, 2015), the EEOC argued that sexual orientation discrimination is covered under Title VII because Title VII prohibits discrimination based on sex stereotypes, prohibits discrimination based on association, and prohibits employers from considering a plaintiff's sex.

  The EEOC also argued that the district court erred in dismissing Evans's retaliation claim. First, the EEOC argued that in complaining about discrimination based on sexual orientation, Evans opposed conduct that was actually made unlawful by Title VII. Second, the EEOC argued that even if the Eleventh Circuit disagrees that sexual orientation discrimination is covered by Title VII, the statute shields not only employees who oppose acts that are illegal under the statute, but also employees who object in good faith to practices that they reasonably believe are illegal, even if they are not. Based on the Eleventh Circuit's precedent holding that Title VII prohibits discrimination against transgender individuals, coupled with the EEOC's well-publicized position that Title VII prohibits discrimination based on sexual orientation, Evans's belief that she was opposing unlawful conduct was objectively reasonable.

- ***Burrows v. The College of Central Florida***(11th Cir. No. 15-14554) (amicus brief filed January 6, 2016). Plaintiff-Appellant Barbara Burrows filed a Title VII suit against her employer, The College of Central Florida, alleging that because of her sexual orientation, her employer did not renew her contract as an administrator and later eliminated her position as a professor as part of a series of cutbacks. The district court for the Middle District of Florida held that Burrow's claim of gender discrimination failed because it constituted a "repackaged" claim of sexual orientation discrimination, which is not prohibited underTitle VII. Plaintiff appealed the decision to the Eleventh Circuit. The EEOC filed an amicus brief in support of Burrows, arguing

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that the district court's interpretation of Title VII is contrary to a growing consensus that sexual orientation discrimination claims involve (1) illegal sex stereotyping, (2) illegal gender-based associational discrimination, and (3) impermissible consideration of a plaintiff's sex. *See* Brief for U.S. Equal Employment Opportunity Commission as Amicus Curiae Supporting Appellant, *Burrows v. The College of Central Fla.*, at *7-8 (11th Cir. No. 15-14554). The Commission cited to the Eleventh circuit decision holding that non-conformity to gender stereotypes is a form of sex discrimination. *See Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011). Thus, discrimination based on sexual orientation cannot be separated from an individual's sex, because the root of discrimination is that the individual discriminated against is not adhering to heterosexual concepts of behavior normative of each sex.

The EEOC further argued that discrimination based on sexual orientation also constitutes associational discrimination, because the individual is treated differently based on the sex of those with whom they associate. Race-based association discrimination has been prohibited under Title VII, and so it follows that this prohibition should apply to claims of sex-based association discrimination. Finally, the EEOC reiterated that the broad concept of sexual orientation cannot be understood without reference to an individual's sex; thus, any discrimination based on sexual orientation necessarily involves the impermissible consideration of an employee's sex.

- ***Muhammad v. Caterpillar Inc.*** (7th Cir. No. 12-173) (amicus brief filed October 9, 2014). Plaintiff-Appellant Warnether Muhammad filed this Title VII suit against his employer Caterpillar, Inc., alleging that his co-workers created a sex- and race-based hostile work environment. He also alleged that his supervisor unlawfully retaliated by suspending him after he complained about the harassment. The alleged harassment included anti-gay comments and conduct. The district court granted the defendant's motion for summary judgment on all claims. A panel of the U.S. Court of Appeals for the Seventh Circuit affirmed, in part on the grounds that Title VII does not prohibit sexual-orientation harassment, or retaliation against individuals who oppose it in the workplace. Muhammad petitioned for panel rehearing.

  In an amicus curiae brief supporting the petition, the Commission argued that part of the panel's ruling rests on the sweeping proposition that Title VII's prohibition on discrimination "because of sex" does not prohibit discrimination based on sexual orientation. Yet an increasing number of courts, as well as the EEOC (the primary Agency charged with enforcing the statute), have recognized that intentional discrimination based on an individual's sexual orientation can be proved to be grounded in sex-based norms, preferences, expectations, or stereotypes. For example, in *Terveer v. Billington*, 2014 WL 1280301 (D.D.C. Mar. 31, 2014), the U.S. District Court for the District of Columbia held that a plaintiff's allegation that discrimination occurred because of "plaintiff's status as a homosexual" - without more - plausibly suggested the discrimination was based on gender stereotypes, and thus stated a Title VII *sex*-discrimination claim. Accordingly, Title VII's anti-retaliation rule protects individuals who in good faith oppose sexual-orientation discrimination in the workplace. The EEOC argued that for these reasons, the panel should modify the categorical statements to the contrary in its opinion, overruling the Circuit's precedent if necessary.

  On October 16, 2014, the panel denied the petition for rehearing. But in a significant step, the panel issued an amended opinion removing its original rulings regarding the scope of Title VII coverage. The opinion no longer repeats or relies upon statements from prior Seventh Circuit decisions that Title VII does not prohibit sexual-orientation discrimination or retaliation for related opposition conduct. The revised panel opinion affirms the district court's summary-judgment for Caterpillar on other grounds, on which the Commission took no position. *See* 767 F.3d 694 (7th Cir. 2014), 2014 WL 4418649 (7th Cir. Sept. 9, 2014, as Amended on Denial of Rehearing, Oct. 16, 2014).

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Attachment A

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U.S. Equal Employment Opportunity Commission

What You Should Know About EEOC and the Enforcement Protections for LGBT Workers

- Overview
- Examples of LGBT-Related Sex Discrimination Claims
- Applicable Federal Law
- Charge Data
- Conciliation and Litigation
- Federal Sector Enforcement
- Training and Outreach
- Resources
- Other Laws

See Also:

- Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination
- Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII
- Federal Sector Cases Involving LGBT Individuals
- Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities
- Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964

Overview

EEOC interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on **gender identity or sexual orientation.** These protections apply regardless of any contrary state or local laws.

Through investigation, conciliation, and litigation of charges by individuals against private sector employers, as well as hearings and appeals for federal sector workers, the Commission has taken the position that existing sex discrimination provisions in Title VII protect lesbian, gay, bisexual, and transgender (LGBT) applicants and employees against employment bias. The Commission has obtained approximately $6.4 million in monetary relief for individuals, as well as numerous employer policy changes, in voluntary resolutions of LGBT discrimination charges under Title VII since data collection began in 2013. A growing number of court decisions have endorsed the Commission's interpretation of Title VII.

The information provided below highlights what you should know about EEOC's outreach and enforcement in this area.

Examples of LGBT-Related Sex Discrimination Claims

Some examples of LGBT-related claims that EEOC views as unlawful sex discrimination include:

- Failing to hire an applicant because she is a transgender woman.
- Firing an employee because he is planning or has made a gender transition.
- Denying an employee equal access to a common restroom corresponding to the employee's gender identity.
- Harassing an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies, and which the employee has communicated to management and employees.
- Denying an employee a promotion because he is gay or straight.
- Discriminating in terms, conditions, or privileges of employment, such as providing a lower salary to an employee because of sexual orientation, or denying spousal health insurance benefits to a female employee because her legal spouse is a woman, while providing spousal health insurance to a male employee whose legal spouse is a woman.
- Harassing an employee because of his or her sexual orientation, for example, by derogatory terms, sexually oriented comments, or disparaging remarks for associating with a person of the same or opposite sex.
- Discriminating against or harassing an employee because of his or her sexual orientation or gender identity, in combination with another unlawful reason, for example, on the basis of transgender status and race, or sexual orientation and disability.

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See How to File a Charge of Employment Discrimination for information about filing a Title VII charge of sex discrimination in employment related to gender identity or sexual orientation bias. There is a different complaint process for federal employees.

Applicable Federal Law

EEOC is responsible for enforcing federal laws that make it illegal to discriminate in employment against a job applicant, employee, or former employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. These federal laws also prohibit employers from retaliating against workers who oppose discriminatory employment practices - for example, by reporting incidents of sexual harassment to their supervisor or human resources department - or against those who participate in an employment discrimination proceeding - for example by filing an EEOC charge, cooperating with an EEOC investigation, or participating in an employment discrimination lawsuit.

While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the Commission, consistent with Supreme Court case law holding that employment actions motivated by gender stereotyping are unlawful sex discrimination and other court decisions, interprets the statute's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.

Over the past several years the Commission has set forth its position in several published decisions involving federal employment. These decisions explain the legal basis for concluding that LGBT-related discrimination constitutes sex discrimination under Title VII, and give examples of what would be considered unlawful. In so ruling, the Commission has not recognized any new protected characteristics under Title VII. Rather, it has applied existing Title VII precedents to sex discrimination claims raised by LGBT individuals. The Commission has reiterated these positions through recent *amicus curiae* briefs and litigation against private companies.

Sex Discrimination - Transgender Status

In *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012), the Commission held that intentional discrimination against a transgender individual because that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII.

The *Macy* decision explains that allegations of gender identity/transgender discrimination necessarily involve sex discrimination. Such cases can be viewed as sex discrimination based on non-conformance with gender norms and stereotypes under the Supreme Court's 1989 decision in *Price Waterhouse v. Hopkins*, and based on a plain reading of the statute's "because of . . . sex" language.

Applying *Macy*, the Commission has also held that an employer's restrictions on a transgender woman's ability to use a common female restroom facility constitutes disparate treatment, *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), that intentional misuse of a transgender employee's new name and pronoun may constitute sex-based discrimination and/or harassment, *Jameson v. U.S. Postal Service*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013), and that an employer's failure to revise its records pursuant to changes in gender identity stated a valid Title VII sex discrimination claim, *Complainant v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014).

Sex Discrimination - Sexual Orientation

In *Baldwin v. Dep't of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015), the Commission held that a claim of discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII.

The *Baldwin* decision explains that allegations of sexual orientation discrimination necessarily involve sex-based considerations. First, discrimination on the basis of sexual orientation necessarily involves treating an employee differently because of his or her sex. For example, a lesbian employee disciplined for displaying a picture of her female spouse can allege that an employer took a different action against her based on her sex where the employer did not discipline a male employee for displaying a picture of his female spouse. Sexual orientation discrimination is also sex discrimination because it is associational discrimination on the basis of sex. That is, an employee alleging discrimination on the basis of sexual orientation is alleging that the employer took the employee's sex into account by treating him or her differently for associating with a person of the same sex. Finally, discrimination on the basis of sexual orientation is sex discrimination because it necessarily involves discrimination based on gender stereotypes, including employer beliefs about the person to whom the employee should be attracted.

Charge Data

In FY 2015, EEOC received a total of 1,412 charges that included allegations of sex discrimination related to sexual orientation and/or gender identity/transgender status. This represents an increase of approximately 28%

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over the total LGBT charges filed in FY 2014 (1,100). EEOC resolved a total of 1,135 LGBT charges in FY 2015, including through voluntary agreements providing approximately $3.3 million in monetary relief for workers and achieving changes in employer policies so that discrimination would not recur. This reflects increases of 34% in the number of resolutions over FY 2014 (847) and 51% in the amount of monetary relief over FY 2014 ($2.19 million). The chart below shows charges received or resolved during FY 2015.

FY 2015			
	Total LGBT	**Sex-Gender Identity/Transgender**	**Sex-Sexual Orientation**
Total Receipts	1,412	271	1,181
Total Resolutions	1,135	184	975
Settlements	96	12	85
	8.5%	6.5%	8.7%
Withdrawals w/Benefits	57	6	53
	5.0%	3.3%	5.4%
Administrative Closures	203	38	168
	17.9%	20.7%	17.2%
No Reasonable Cause	737	110	644
	64.9%	59.8%	66.1%
Reasonable Cause	42	18	25
	3.7%	9.8%	2.6%
Successful Conciliations	13	7	6
	1.1%	3.8%	0.6%
Unsuccessful Conciliations	29	11	19
	2.6%	6.0%	1.9%

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FY 2015			
	Total LGBT	**Sex-Gender Identity/Transgender**	**Sex-Sexual Orientation**
Merit Resolutions	195	36	163
	17.2%	19.6%	16.7%
Monetary Benefits (Millions)*	$3.3	$0.3	$3.0

Note: Charges may have multiple allegations under multiple statutes, so totals will not tally with breakdowns of specific bases or issues and are subject to updates. Monetary benefits include amounts which have been recovered exclusively or partially on non-LGBT claims included in the charge.

See our table of all charge receipts and resolutions under Title VII.

Conciliation and Litigation

When the Commission finds reasonable cause to believe that discrimination has occurred, it seeks to resolve the matter voluntarily through informal means of conciliation, conference, and persuasion. If the Commission is unable to secure a voluntary resolution, it has authority to file suit in federal court. In several cases, the Commission has filed LGBT-related lawsuits under Title VII challenging alleged sex discrimination. Read about examples of pending and resolved EEOC litigation involving Title VII sex discrimination claims brought on behalf of LGBT individuals, as well as EEOC amicus briefs filed in suits brought by private individuals raising these issues.

Federal Sector Enforcement

In the federal sector, EEOC has implemented its priority for covering LGBT individuals in a variety of ways:

- Tracking gender identity and sexual orientation appeals in the federal sector
- Issuing 20 federal sector decisions in FY 2015, including finding that gender identity-related complaints and sexual orientation discrimination-related complaints can be brought under Title VII through the federal sector EEO complaint process. For example, in *Lanita G. v. U.S. Postal Service*, EEOC Appeal No. 0120142154 (Nov. 18, 2015), EEOC reversed the Agency's dismissal of a hostile work environment claim on the basis of sexual orientation because such an allegation is necessarily an allegation of sex discrimination under Title VII.
- Establishing an LGBT workgroup to further EEOC's adjudicatory and oversight responsibilities
- Issuing guidance, including instructions for processing complaints of discrimination by LGBT federal employees and applicants available on EEOC's public web site
- Providing technical assistance to federal agencies in the development of gender transition policies and plans
- Providing LGBT related outreach to federal agencies through briefings, presentations, and case law updates

Training and Outreach

EEOC is addressing LGBT legal developments in numerous outreach and training presentations to the public. During FY 2015, field office staff conducted more than700 events and reached over 43,000 attendees where LGBT sex-discrimination issues were among the topics discussed. In the federal sector during FY 2015, there were approximately 53 presentations delivered to over 4,400 federal sector audience members. These events reached a wide variety of audiences, including employee advocacy groups, small employer groups, students and staff at colleges and universities, staff and managers at federal agencies and human resource professionals. To assist in this outreach, EEOC is distributing a brochure, Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Employees.

Resources

The Commission has issued various technical assistance publications on LGBT issues, including:

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- Fact Sheet on Recent EEOC Litigation Regarding Title VII & LGBT-Related Discrimination, www.eeoc.gov/eeoc/litigation/selected/lgbt_facts.cfm
- Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII, www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm
- Federal Sector Cases Involving LGBT Individuals, www.eeoc.gov/federal/reports/lgbt_cases.cfm
- Brochure on Preventing Employment Discrimination Against Lesbian, Gay, Bisexual, or Transgender Employees, http://www.eeoc.gov/eeoc/publications/brochure-gender_stereotyping.cfm.
- OPM-EEOC-OSC-MSPB Guide: Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment, www.opm.gov/LGBTGuide
- Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964, www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm

Useful resources from other agencies include:

- OPM Guidance on Employment of Transgender Individuals www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/
- U.S. Department of Labor/OSHA Guide to Restroom Access for Transgender Workers, https://www.osha.gov/Publications/OSHA3795.pdf
- U.S. Department of Justice Memorandum on Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964, http://www.justice.gov/file/188671/download

Other Laws

Be aware of other laws that also may apply:

- Federal contractors and sub-contractors are covered by a separate, explicit prohibition on transgender or sexual orientation discrimination in employment pursuant to Executive Order 13672 and implementing regulations issued and enforced by the U.S. Department of Labor's Office of Federal Contract Compliance. For more information, see Frequently Asked Questions on E.O. 13672 Final Rule, www.dol.gov/ofccp/LGBT/LGBT_FAQs.html
- State or local fair employment laws may explicitly prohibit discrimination based on sexual orientation or gender identity. Contact information for state and local fair employment agencies can be found on the page for EEOC's field office covering that state or locality. On the other hand, if a state or local law permits or does not prohibit discrimination based on sexual orientation or gender identity, the EEOC will still enforce Title VII's discrimination prohibitions against covered employers in that jurisdiction because contrary state law is not a defense under Title VII. Applicants and employees in those jurisdictions should contact the EEOC directly if they believe they have been subjected to sex discrimination based on sexual orientation or gender identity.