



AP PHOTO/ERIC BRONNER

# We the People

## Why Congress and U.S. States Must Pass Comprehensive LGBT Nondiscrimination Protections

---

By Sarah McBride, Laura E. Durso, Hannah Hussey, Sharita Gruberg, and Bishop Gene Robinson  
December 2014

# Introduction and summary

*Our nation's uneven but dogged journey toward truer and more meaningful freedoms for our citizens has brought us continually to a deeper understanding of the first three words in our Constitution: we the people. 'We the People' have become a broader, more diverse family than once imagined. ... We have arrived upon another moment in history when We the People becomes more inclusive, and our freedom more perfect.<sup>1</sup>*

— Judge Arenda Wright Allen, *Bostic v. Schaefer*

Individuals' ability to fully and freely participate in society is fundamental to every person's pursuit of the American Dream. Throughout the 230-year history of the United States, the nation has slowly but steadily expanded access to every vital facet of daily life—from housing to employment to the public marketplace—for communities of Americans who were once excluded. Through exhaustive efforts, each generation has broadened the nation's perception of "we the people." But despite this progress, too many Americans are still left behind, excluded from the country's most basic legal protections.

Today, it is still legal to fire, refuse housing, or deny service to Americans because of their sexual orientation and gender identity in 29 states.<sup>2</sup> In most states, lesbian, gay, bisexual, and transgender, or LGBT, Americans currently lack explicit protections against discrimination in employment, housing, education, credit, and public accommodations. LGBT individuals and families report unacceptable levels of discrimination in the workplace, when seeking goods or services in their community's places of public accommodation, at school, or when seeking housing.<sup>3</sup> This discrimination leads to disproportionate rates of unemployment, poverty, homelessness, and negative health outcomes for LGBT people and their families.

Forty years ago on the fifth anniversary of the Stonewall Riots in New York, Reps. Bella Abzug (D-NY) and Ed Koch (D-NY) introduced the Equality Act of 1974, the first federal law designed to protect gay, lesbian, and bisexual Americans from discrimination.<sup>4</sup> While fundamentally flawed in its exclusion of protections for transgender Americans, the Equality Act would have provided basic protections

from discrimination based on sexual orientation in employment, housing, and public accommodations. Since the introduction of the Equality Act, only 17 states plus the District of Columbia have passed laws protecting all LGBT residents in employment, housing, and public accommodations—meaning that a majority of the states and the federal government still lack the basic protections for LGBT Americans that are afforded other populations.<sup>5</sup>

As marriage equality continues to spread across the country and inclusion and acceptance of LGBT individuals takes hold, it is past time to ensure basic protections for all Americans to fully participate in society. In 14 states, individuals can legally marry their same-sex partner on Sunday and then legally be fired from their jobs on Monday simply for exercising that right.<sup>6\*</sup> LGBT Americans should not be denied equal access to their communities' marketplaces and the nation's economy simply because of who they are or whom they love.

This report catalogues the multiple areas of public life in which LGBT people are not afforded uniform and explicit protections under federal or state law. It reviews evidence of the discrimination that LGBT Americans face when seeking and attempting to keep jobs, gaining education, securing shelter, applying for loans, or seeking to access public spaces and businesses. The report then outlines the turbulent history of state and federal nondiscrimination protections for both the LGBT community and other protected classes. The report also analyzes opponents' arguments against nondiscrimination protections; in particular, it scrutinizes the discussions around religious-based justification for discrimination and objections to transgender individuals utilizing sex-segregated facilities in accordance with their gender identity.

Based on this analysis, the report recommends the following actions to address discrimination against LGBT Americans in everyday life:

- Congress should pass a comprehensive nondiscrimination bill banning discrimination based on sexual orientation and gender identity in employment, public accommodations, housing, credit, and federal funding.
- State and local governments should pass similar protections for their residents. In addition to federal legislation, these measures are necessary to ensure that LGBT individuals have the same layers of protections and solutions that are available to non-LGBT individuals.

- Congress and state legislatures should appropriate necessary funds for full enforcement of nondiscrimination protections.
- State governments should utilize existing sex and/or gender-identity and sexual-orientation protections to ensure inclusive and respectful treatment of LGBT employees, residents, and customers, including regulations and guidance that ensure transgender individuals will be treated in accordance with their stated gender identity in all facilities, programs, and covered interactions.
- Both government and private institutions should collect more data to fully document and understand the discrimination that LGBT Americans face.
- Private businesses and government entities should establish or expand workplace diversity and competency trainings for employees.
- Congress should amend the Religious Freedom Restoration Act, or RFRA, to clarify that the law cannot be misconstrued to allow discrimination against third parties.

The United States' story is one of an ever-widening circle of access and opportunity. Full and equal access to these facets of life is not only essential for the pursuit of happiness, but also for individuals' civic and civil participation, lives, and well-being. While these basic protections will not eliminate all discrimination that LGBT Americans face in the country, they will provide equality under the law in the protections and remedies afforded to all people, regardless of their sexual orientation or gender identity.

*\*Correction, December 10, 2014: This report incorrectly stated the number of states where individuals can legally marry their same-sex partner and then be fired. The correct number is 14 states.*

---

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values. We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is “of the people, by the people, and for the people.”

---

Center for American Progress

