



Gay and Transgender Discrimination Outside the Workplace

Why We Need Protections in Housing, Health Care, and Public Accommodations

Crosby Burns and Philip Ross July 2011

Many people know that gay and transgender individuals experience high rates of discrimination and harassment in the workplace. They know, for example, that many Americans are being judged not on the quality of their work but on irrelevant characteristics such as sexual orientation and gender identity. Activists and lawmakers have long advocated for laws such as the Employment Non-Discrimination Act, or ENDA, that would protect gay and transgender workers from senseless discrimination on the job. But gay and transgender Americans continue to experience discrimination in all spheres of life—not just the workplace.¹

The current version of ENDA—which was recently introduced in both houses of Congress—prohibits discrimination in public and private employment on the basis of sexual orientation and gender identity. Similar civil rights bills prohibiting discrimination on the basis of race, sex, and age, however, have historically prohibited discrimination not only in employment but in all spheres of public life. And as we'll show, sexual orientation and gender identity-based discrimination in housing, health care, and public accommodations is alive and well. This is especially true for gay and transgender people of color.

Gay and transgender Americans may be discriminated against in renting or buying housing due to antigay or transphobic landlords and property managers. Health care providers, too, may harbor animus toward gay and transgender individuals and consequently deliver suboptimal care or even refuse to see patients who identify as such. And gay and transgender individuals may experience an outright refusal of services when attempting to access a host of public accommodations including restaurants, parks, hotels, libraries, buses, museums, and elsewhere simply because of their sexual orientation or gender identity.

Unfortunately, no federal law currently exists to shield gay and transgender individuals from this type of discrimination. A patchwork of state and local laws offers some of these protections to gay and transgender Americans. But the lack of a comprehensive federal law means that a restaurant owner in El Paso, Texas can kick a gay couple out of

his establishment simply because the couple shared a kiss with one another. A landlord in West Virginia can decline to show a property to a lesbian couple. And a doctor in Indiana can deny service to a patient based on her gender identity.

Gay and transgender victims of discrimination have no legal recourse to rectify their grievances in each of these instances.

Additional states and municipalities should enact laws that provide full legal protections for gay and transgender Americans from such egregious forms of discrimination. Further, states and municipalities with existing nondiscrimination statutes and ordinances should vigorously enforce them to the fullest extent of the law.

Most importantly, Congress should pass a comprehensive federal law that prohibits all forms of discrimination based on sexual orientation and gender identity, including discrimination in housing, health care, and public accommodations in addition to the crucial passage of legislation to outlaw employment discrimination based on these categories.

Until then gay and transgender Americans will continue to be exposed to discrimination that harms them, their families, and our national sense of fairness, justice, and equality.

This memo examines this problem more closely to show why comprehensive legislation is needed to protect these Americans. It documents discrimination in housing, health care, and public accommodations before moving to the need for stronger protections at the federal, state, and local level given that the current patchwork protections are inadequate.

Specifically, we recommend:

- Enacting strong federal, state, and local laws prohibiting discrimination on the basis of sexual orientation and gender identity in employment and in housing, health care, and areas of public accommodation
- Extending the Fair Housing Act’s scope to include “sexual orientation” and “gender identity” in its list of protected categories
- State and local agencies strongly enforcing their nondiscrimination protections and investigating any and all complaints of discrimination based on sexual orientation or gender identity
- Health care facilities adopting policies that would help ensure equal access to quality health care for gay and transgender patients
- Areas of public accommodation ensuring their nondiscrimination policies include sexual orientation and gender identity

Evidence and rates of discrimination in the housing and rental markets

On January 24, 2011 the U.S. Department of Housing and Urban Development, or HUD, [released a report](#) recognizing that “there is evidence... that lesbian, gay, bisexual, and transgender individuals and families are being arbitrarily excluded from some housing opportunities in the private sector.”

HUD, in making this determination, cited the most comprehensive study on [transgender discrimination](#) to date conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality, or NCTE, as well as a [2007 study of sexual orientation discrimination](#) conducted by the Michigan Fair Housing Commission. HUD is currently administering its own national study of gay and transgender discrimination in housing, which it will release later this year.

According to these and other sources clear evidence exists that both gay and transgender people experience higher incidences of discrimination in the housing and rental markets than the general population.

Housing discrimination based on sexual orientation

The Michigan Fair Housing Commission’s study found that a substantial number of individuals experienced discrimination in the housing and rental markets based on their sexual orientation:

- Thirty percent of same-sex couples were treated negatively when attempting to buy or rent property.
- Same-sex couples were shown less desirable properties, quoted higher rent prices, received less favorable customer service, or encountered an outright refusal to sell or rent properties.
- Gay individuals reported verbal harassment from landlords, realtors, and lenders.

Behind these statistics are the stories of individuals and couples who were denied access to equitable housing based on sexual orientation:

- [William Hubert](#) is a quadriplegic who was leasing an apartment in Southern California. He hired a live-in attendant, Cindy Kelly, to tend to his needs. Hubert was swiftly and inexplicably evicted from his apartment when the landlord found out Cindy was a lesbian and Hubert associated with gay people.
- A [same-sex couple in Northern California](#) endured years of living next to their neighbors, who repeatedly called the gay couple “f-----g faggots,” “queers,” and “butt f-----g boy lovers.”

- A HIV-positive gay apartment tenant in New York City suffered repeated verbal and written attacks from his landlord over a period of a year and a half. The landlord went so far as to burglarize the man's apartment, disable his locks, and turn off his electricity. The landlord even distributed notices around the building that disclosed the tenant's HIV status to the other residents, which resulted in further discrimination and harassment.

Luckily these incidents occurred in states or cities with policies that outlaw housing discrimination based on sexual orientation. Hubert took his landlord to court, which ruled that Hubert and his attendant could not be evicted based on sexual orientation because gay Californians are a protected class with respect to housing policies. The same-sex couple in Northern California took their neighbors to court as well, and they were compensated \$217,500 for the harassment they endured. And a court awarded the New York tenant \$100,000 for the mental anguish he endured since New York City also enacted housing protections for its gay citizens.

But victims are more likely to have their discrimination complaints dismissed or ignored if they live in localities that lack these legal protections. Gina Powers and her partner Steph Rindy, for example, were kicked out of their apartment in West Fargo, North Dakota, when their landlord found out they were in a committed same-sex relationship.

Powers describes the incident:

"He literally came to our door, knocked on it, and said, 'Yeah, you guys are out of here' ... I contacted my attorney, who assured me we had, really, no rights."

This incident prompted them to consider moving out of North Dakota to a state that would provide the couple legal recourse if they faced a similar situation in the future. Lawmakers introduced legislation that same year that would have outlawed housing discrimination in North Dakota based on sexual orientation in 2009. But it failed to pass.

Housing discrimination based on gender identity

Transgender individuals are particularly vulnerable to the exclusionary practices in the housing and rental market due to the heightened stigma and unfounded phobias based on gender identity. The Task Force and NCTE's study on transgender discrimination reveals the following statistics due in part to gender identity-based discrimination in housing and rental markets:

- Nineteen percent of transgender individuals report being denied a home or apartment and 11 percent report being evicted from their residence for being transgender.
- Nineteen percent became homeless because of their transgender status, a rate significantly higher than the general population.
- Only 32 percent of transgender people own homes compared to 67 percent of the general population.

Transgender Americans clearly face significant obstacles in obtaining equitable access to housing. The Task Force and NCTE found that transgender people of color experienced even higher rates of discrimination.

Many of these victims of discrimination had their stories shared before the House Judiciary Committee in March 2010 in a hearing on the Fair Housing Act. At the time, the House was considering amending the act to include sexual orientation and gender identity in its nondiscrimination provisions:

- Joanne B: “As soon as [the apartment inspectors] found out we were trans lesbians, they then demanded [my partner] have a bed in her own room or they would make it very hard on us ... Another run in with housing discrimination was above the roller rink, next to the community church that was a storefront church. Since the church, roller rink, and the apartment were owned by the same people who were a part of the storefront church [they] made sure to practice their conversion therapy on my partner and I whenever they could . . .and my partner and I were evicted.”
- Toni D: “In October of 2007, I lived in an apartment that I’d occupied since May, having just pulled myself up from homelessness. I was looking for a job daily, and getting help to pay my rent. I paid my rent a tad bit late in October, and then went full time as a woman shortly after that. I let the apartment management know what was going on with me, including showing them my letter from my therapist, which was copied and included in my file. I started going to school after that. In November, I went in to pay my rent and it was refused. I was evicted a few days before Thanksgiving.”
- Owen S: “In April of 2008 I was searching for apartments in Baltimore. I found an apartment in a nice area with affordable rent. When I met the woman I was to be renting from she raised the price from the advertised price by \$100. She also informed me that she would not take checks from me and would only accept cash. This woman was noticeably uncomfortable with me. She asked me if I was a boy or a girl and after I explained everything, her tone noticeably changed. I then had a female friend of the same age inquire about that very apartment and she was given the original price and was told that a check would be an acceptable form of payment.”

This type of discrimination results in elevated rates of homelessness for this group as well as a host of negative social outcomes associated with homelessness. According to the Task Force and NCTE’s report those who experience homelessness are far more likely to be incarcerated, do sex work for income, be HIV positive, and attempt suicide.

The bottom line: Homelessness and a lack of economic security will continue to plague many gay and transgender individuals and their families until uniform housing and rental protections are passed.

Evidence and rates of discrimination in accessing quality health care

Gay and transgender people also experience high rates of discrimination when attempting to access quality health care in the United States.

As [Lambda Legal reports](#), gay and transgender patients far too often come face-to-face with “disrespectful attitudes, discriminatory treatment, inflexible or prejudicial policies and even refusals of essential care.” Gay and transgender people have higher rates of cancer, are more likely to attempt suicide, and are less likely to have insurance than their heterosexual or nontransgender counterparts due to social stigma, culturally incompetent health care services, and other forms of discrimination.

According to the same report an astonishing 56 percent of gay individuals and 70 percent of transgender individuals report some form of discrimination, harassment, or substandard care when attempting to access quality health care services. Specifically, Lambda Legal found that:

- Eight percent of gay people and 27 percent of transgender people report an outright refusal of health care services.
- Eleven percent of gay respondents and 21 percent of transgender respondents report that health care professionals used harsh or abusive language toward them.
- Eleven percent of gay respondents and 15 percent of transgender respondents report that health professionals refused to touch them or used excessive precautions during treatment.
- Twelve percent of gay respondents and 20 percent of transgender respondents report being personally blamed for their health status or problems.
- Four percent of gay respondents and 8 percent of transgender respondents report experiencing physically rough or abusive treatment from a health care professional.

The Task Force and NCTE’s report on transgender discrimination, “[Injustice at Every Turn](#),” demonstrates similar findings. Nineteen percent of transgender respondents report being refused treatment by a health care professional, and 28 percent were subjected to harassment in medical settings.

These data reveal noticeable trends of discriminatory treatment of gay and transgender patients. Transgender patients experience even higher rates than gay patients. This is also true for gay and transgender people of color.

Further, people living with HIV experience discrimination in health care at similar and sometimes higher rates than gay and transgender people. Because a disproportionate number of gay and transgender individuals are living with HIV this group is especially at risk of encountering barriers to equitable treatment.

Lastly, Lambda Legal's figures from its study likely underestimate discrimination in health care since respondents were somewhat more privileged than the gay and transgender population as a whole. Respondents reported higher household incomes, having better health insurance coverage, and having obtained more advanced degrees than the gay and transgender population as a whole.

Alongside this data, Lambda Legal also collected numerous testimonials from individuals that faced discrimination at a host of health care facilities including doctor's offices, local health clinics, and hospitals:

- Guadalupe “Lupita” Benitez, California: “Guadalupe was denied infertility treatment by the North Coast Women’s Care Medical Group because she is a lesbian. Her former doctors are conservative Christians who claimed their religious beliefs gave them a right to withhold care from Benitez that they routinely provide to heterosexual patients.”
- Tony Ferraiolo, New Haven, Connecticut: Tony is a transgender male who called a gynecologist’s office to schedule a hysterectomy. Tony was told by the first two doctor’s offices he contacted that they did not take transgender clients, and was flatly refused service. On his third attempt, he was told that they would accept him as a client. But after his initial consultation, Tony was denied a hysterectomy when his doctor told him that it would be unethical to remove his uterus despite the fact that this was a much-needed surgery to finalize his transition from female to male.

Once again, the law matters. Luckily for Lupita, California has comprehensive nondiscrimination protections on its books that include equal access to health care based on sexual orientation. These legal protections allowed her to sue the North Coast Women’s Care Medical Group in a case in which the California Supreme Court unanimously ruled in her favor.

Tony, on the other hand, lives in Connecticut, which at the time lacked similar health care protections based on gender identity. As a result, Tony lacked the means to redress his discriminatory treatment—as do tens of thousands of transgender people in the United States today.

Thankfully, Connecticut passed transgender protections earlier this year in employment, housing, health care, and public accommodations, which go into effect later this year.

Social stigma and prejudicial treatment lead to substandard treatment and denial of access of care, which contribute to a host of health disparities within the gay and transgender community. [CAP has documented](#) many of these disparities:

- Heterosexual adults are more likely to have health insurance than gay or transgender adults.
- Gay women are less likely to get preventive services for cancer such as mammograms.
- Gay youth and lesbian and bisexual adults are more likely to be obese or overweight than heterosexuals.
- Gay and transgender individuals are significantly more likely to contemplate committing suicide.
- Gay and transgender individuals smoke tobacco, consume alcohol, and use drugs at higher rates than their heterosexual and nontransgender counterparts—usually in an effort to cope with social stigma against gay and transgender people.

Ending discrimination in accessing quality health care would significantly reduce these and other health disparities within the gay and transgender community.

Evidence and rates of discrimination in areas of public accommodation

Gay and transgender discrimination can exist in a range of public accommodation spaces in addition to the workplace, the home, and the doctor’s office. This includes but is not limited to unequal treatment in restaurants, bars, libraries, museums, parks, hotels, shops, and public transportation such as buses and trains. A significant amount of evidence reveals that gay and transgender people are obstructed and often excluded from areas of public accommodation just like other discriminated-against minorities.

Both gay and transgender individuals report staggering rates of discrimination in public spaces. A 2001 survey of gay New York residents conducted by Empire State Pride Agenda found that when eating at a restaurant, entering a store, or checking in at a hotel:

- Thirty-seven percent of respondents said they were made to feel unwelcome.
- Twenty-seven percent reported experiencing inappropriate treatment or hostility.
- Twenty-five percent were verbally harassed.
- Six percent had been denied service.
- Five percent experienced physical harassment.

The Task Force and NCTE’s report on transgender discrimination chronicles discrimination in places of public accommodation as well as housing and health care:

- A majority (53 percent) of transgender Americans reports being verbally harassed or disrespected in an area of public accommodation.
- Forty-four percent of respondents report being denied equal treatment or service at least once in a place of public accommodation.
- Eight percent report being physically attacked or assaulted in places of public accommodation.

Just as with housing and health care it appears that discrimination in public spaces against gay and transgender Americans is alive and well. And like housing and health care it appears that transgender individuals bear the brunt of discrimination at disproportionately higher rates.

Just as before there are compelling stories behind the numbers:

- Empire State Pride Agenda: “While buying a bike I met with a salesperson at the store. I was accompanied by my boyfriend and we put a deposit on a bike. We came back a few days later to get the bike and the salesperson said they sold it. When I complained about having left a deposit, the salesperson very loudly said, ‘get the f--- out of here you faggots’ and continued to repeat this in front of everyone in the store including the manager/owner.”
- Task Force and NCTE: “I was intentionally discriminated against by a motel owner. He told me he would not give me a room because I was a cross dresser, and to leave the property or he was going to call the police and tell them that a hooker was in the parking lot selling drugs.”

This type of discrimination is senseless, irrational, and just plain wrong. But far too many gay and transgender Americans live in fear of discrimination and harassment even in their own communities because it continues to exist.

The scope of existing protections in housing, health care, and public accommodations

No federal law currently protects gay and transgender Americans from these types of discrimination despite the clear evidence of discrimination based on sexual orientation and gender identity in housing, health care, and areas of public accommodations. Moreover, Congress is not considering any piece of legislation that would put in place much-needed protections for gay and transgender Americans in these three areas.

Many countries outside the United States recognize the need for legal protections for gay and transgender populations from all forms of discrimination and not just employment.

Canada, for example, added sexual orientation to its list of protected groups in 1996 under the Canadian Human Rights Act, which guaranteed that gay citizens can pursue life “without being hindered in or prevented from doing so by discriminatory practices” in the areas of goods, services, facilities, and public accommodations. Uruguay, Denmark, Mexico, and Australia are some of the at least 31 countries that have enacted protections for gay and/or transgender people in the areas of housing, health care, or public accommodations.

Here at home, Congress has failed to establish nationwide protections for gay and transgender Americans, but numerous states and municipalities have enacted laws that ensure equality in all areas of public life.

Currently, 21 states and the District of Columbia outlaw sexual orientation discrimination in employment as well as housing and public accommodations, which usually includes health care facilities. Fifteen states and the District of Columbia outlaw discrimination based on gender identity in these areas, too.² Additionally, at least 240 local jurisdictions prohibit discrimination based on sexual orientation in employment, and in most cases, housing and public accommodations. At least 60 of these include gender identity as a protected group.

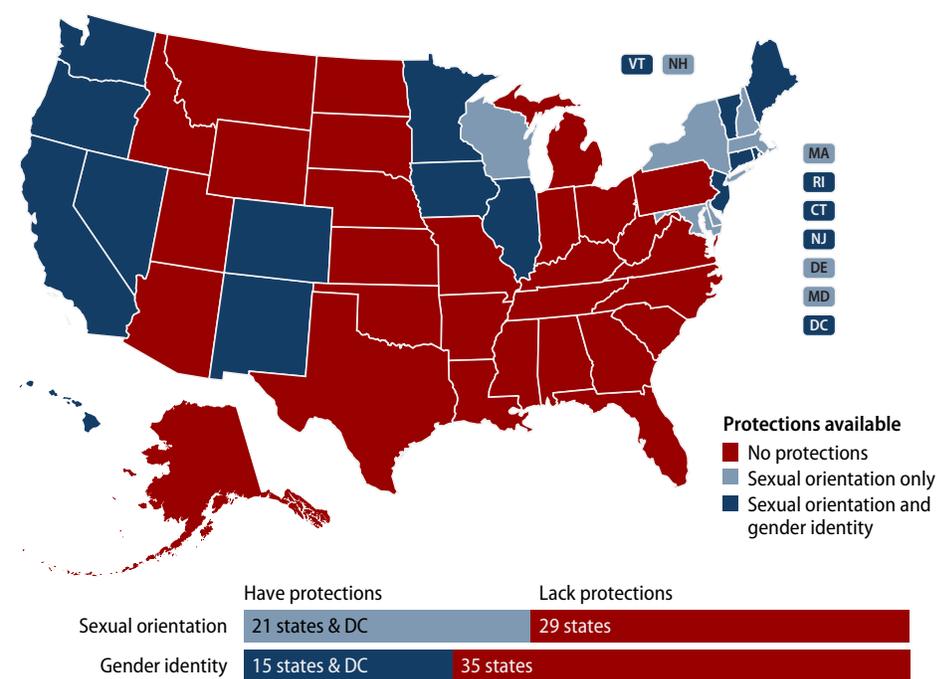
Historically not all states with protections for gay and transgender citizens in one area had protections in another. Hawaii lawmakers, for example, enacted protections for transgender individuals in housing and public accommodations in 2005 and 2006, respectively. Only this year did they enact employment protections for transgender workers.

The fact that today all states with employment protections have protections in housing and public accommodations—and vice versa—indicates that state lawmakers now recognize more than ever that gay and transgender individuals are threatened by the specter of discrimination not only in the workplace but in all spheres of life.

At the federal level, the Obama administration has taken important steps toward eliminating discrimination against gay and transgender Americans. The president continues to voice his support for ENDA, which would expand our nation’s nondiscrimination employment laws to include sexual orientation and gender identity.

Gay and transgender protections by state

States prohibiting gay and transgender discrimination in employment, housing, and public accommodations (including health care)



Note: Gender identity protection laws in Connecticut and Nevada will go into effect on October 1, 2011.

Further, President Obama issued a memo in April 2010 directing the Department of Health and Human Services to issue regulations prohibiting discrimination against gay and transgender patients in hospitals receiving Medicaid and Medicare payments, finally providing full hospital visitation rights to same-sex couples and their families.

And on January 20, 2011, HUD proposed new regulations to ensure “that its core programs are open to all eligible individuals and families, regardless of sexual orientation or gender identity.”

While these local, state, and federal policies are important steps, more must be done to combat sexual orientation and gender identity-based discrimination.

How to combat gay and transgender discrimination in housing, health care, and public accommodations

Legal protections for gay and transgender individuals in all areas of public life are essential for fair and equal treatment of all Americans. A number of policy changes at the local, state, and federal levels would help to alleviate the debilitating effects of discrimination against gay and transgender people:

Enact strong federal, state, and local laws prohibiting discrimination on the basis of sexual orientation and gender identity in employment and in housing, health care, and areas of public accommodation

- **Federal:** Congress should swiftly pass ENDA to give the gay and transgender workforce the protections they deserve. Congress, given the right political circumstances, might also consider including housing, health care, and public accommodations within the scope of ENDA’s nondiscrimination language. Otherwise it should focus on legislation that would provide uniform protections to gay and transgender Americans in all spheres of life after ENDA’s passage. A federal law would complement existing state nondiscrimination laws, as well as provide Americans living in states without those laws legal protection from discrimination.
- **State:** The 29 states that lack comprehensive protections based on sexual orientation and the 35 states that lack those protections based on gender identity should recognize the high rates of discrimination facing gay and transgender citizens by enacting nondiscrimination laws similar to those that currently exist in other states.
- **Local:** Municipalities should pass local ordinances that shield gay and transgender citizens from all forms of discrimination.

Extend the Fair Housing Act's scope to include "sexual orientation" and "gender identity" in its list of protected categories

- The Fair Housing Act of 1968, which followed on the heels of the Civil Rights Act, prohibited discrimination concerning the sale, rental, and financing of homes based on race, color, national origin, and religion. It was a catalyst for integrating people of color into neighborhoods that formerly excluded them. In 1974 the term "gender" was added to that list as were "disabled" and "family status" in 1988. Regrettably, "sexual orientation" and "gender identity" have yet to be added to this index of protected categories. Congress should pass legislation that expands the scope of the Fair Housing Act to include these categories.

State and local agencies should strongly enforce their nondiscrimination protections and investigate any and all complaints of discrimination based on sexual orientation or gender identity

- Enforcement agencies in states that have already passed nondiscrimination legislation in employment, housing, health care, and areas of public accommodation for gay and transgender people should thoroughly investigate any and all reported incidents of discrimination and harassment against gay and transgender individuals.
- Agencies should provide individuals an easily accessible way to file a discrimination complaint as well as provide free trainings for housing providers, health care administrators, and other public entities to understand how to comply with the law.
- Government agencies should use pair-testing methods "wherein carefully matched individuals or properties are subject to observed and recorded treatment in the private marketplace" to detect and eliminate discrimination in housing.
- Agencies should seek and courts should extend harsh penalties for those found guilty of discrimination to deter others from discriminating on the basis of sexual orientation or gender identity.

Health care facilities should adopt policies that would help ensure equal access to quality health care for gay and transgender patients

- Health care facilities should adopt nondiscrimination policies within their patient's bill of rights or in their nondiscrimination policies to ensure that all patients have access to high-quality health care regardless of their sexual orientation, gender identity, or HIV status.

- Hospitals, clinics, and other health care facilities should require that all employees attend cultural competency training on health issues particular to the gay and transgender community and on sexual orientation and gender identity more broadly.
- As the Task Force recommends, “Doctors and other health care providers who harass, assault, or discriminate against transgender ... patients should be disciplined and held accountable according to the standards of their professions.”

Areas of public accommodation should ensure their nondiscrimination policies include sexual orientation and gender identity

- All areas of public accommodation—restaurants, retail stores, and public bus systems, for example—should incorporate sexual orientation and gender identity into their nondiscrimination policies and train staff on how to follow these policies.

Conclusion

Americans should be judged on their credit and their financial standing when renting or buying a home and not on their sexual orientation or gender identity. Americans also should be able to access quality health care based on their medical condition and not on their sexual orientation or gender identity. And Americans should be able to enjoy a meal out with their family, a trip to the grocery store, or a simple bus ride home without fear of discrimination or harassment based on their sexual orientation or gender identity.

Unfortunately this is not the case for many gay and transgender Americans. Nothing is more important than having a roof over your head, maintaining good health, and being able to safely live in your community. But gay and transgender Americans continue to experience high rates of discrimination and harassment in the workplace and in all spheres of public life.

Protections exist for gay and transgender Americans in some states and localities. But more is needed to fully shield them from senseless, needless, and irrational discriminatory treatment. As we move toward greater equality for gay and transgender people in relationship recognition and open service in the military we must also consider the all-too-common discrimination directed at gay and transgender Americans in all facets of life.

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Endnotes

1 In this report, the term gay is used as an umbrella term to describe people who identify as gay, lesbian, or bisexual.

2 This includes Nevada and Connecticut, which both passed gender identity nondiscrimination laws earlier this year that include protections in employment, housing, healthcare, and public accommodations. Gov. Brian Sandoval (R-NV) signed Nevada's bill into law, which will go into effect October 1, 2011. Gov. Dannel Malloy (D-CT) signed Connecticut's bill into law as well, which will also go into effect October 1, 2011.