

Discrimination In the Workplace – 2015 U.S. Commission on Civil Rights Testimony by Gina Duncan, Director of Transgender Equality

{Recognition of Notables}

My name is Gina Duncan and I am the Transgender Inclusion Director of Equality Florida, the state's largest LGBT advocacy organization with over 200,000 members and corporate allies. In my role, I do a great deal of public policy work in the area of workplace LGBT protections and I also work with major employers across the country to craft and implement transgender inclusive workplace policies.

Equality Florida has worked to pass fully inclusive Human Rights Ordinances across the state and we are proud to say that today 55% of the population of the Sunshine State is now protected against discrimination in the areas of employment, housing and public accommodations. And currently, we are working to pass Florida's Competitive Workforce Act to provide statewide, consistent and equitable protections for all LGBT Floridians. This legislation would alleviate the patchwork of ordinances across the state, which while effective in their own right, are inconsistent in usage and enforcement. Unfortunately, the Competitive Workforce Act has been introduced since 2010, but has yet to get out of committee. We need this law in Florida.

The gender identity and expression piece of most legislation, passed and pending has come under the most scrutiny and opposition. And, frankly, the understanding of the transgender community is minimal among our elected officials locally and at the statewide level. In lobbying for legislation in Tallahassee, I am often told I am the first transgender person a lawmaker has ever met. The issue of public accommodations as they relate to transgender citizens is always the baseless point of opposition that we must overcome to pass fully inclusive laws in Florida and in states across the country.

Just this past month, for example, a bill, HB 583, now called the “Transgender Discrimination Bathroom” bill was introduced in the Florida House. This bill, under the smokescreen of public safety, openly discriminates against transgender Floridians. If passed, this bill would require transgender people to use the bathroom of their birth sex unless they could prove they were transgender by producing a driver’s license or birth certificate altered since their gender transition. Worst of all, this absurd legislation seeks to criminalize transgender Floridians for simply going about their daily lives.

This is my driver’s license. If my gender marker was not changed, this bill would require that I use the men’s restroom or face harassment, costly litigation or even arrest. This bill is flawed in structure, intent and enforceability.

This bill places undue burden on business subjecting them to costly litigation, and disrupts workplace harmony by forcing employers to discriminate against their own employees. This bill leaves schools and businesses open to costly and unnecessary litigation and would encourage them to police and monitor restrooms and incur additional costs.

Human Rights Ordinances for LGBT people exist everywhere. 17 states and 28 municipalities in Florida have passed and successfully implemented HROs with NO increase in public safety incidents whatsoever. Transgender Floridians, like all Floridians, care about safety and privacy in bathrooms AND the need to use them without fear for their safety or security.

Anti-discrimination progress has been made by the EEOC, DOJ and DOE based on Title VII, Title IX and numerous high court rulings in this area supported by Attorney General Holder. But uniform federal legislation provides the optimal platform for clarity, consistency and national enforceability. The need for the passage of the Employment Non-Discrimination Act has never been more relevant or important in protecting Transgender Americans and the entire LGBT community.

Our country is united by a fundamental principle that we are all created equal and every American deserves to be treated equally in the eyes of the law. We believe that no matter who you are, if you work hard you deserve the chance to follow your dreams and pursue your happiness. That's what America stands for.

That's why, for instance, Americans can't be fired from their jobs just because of the color of their skin or for being Christian or Jewish or a woman or an individual with a disability. That kind of discrimination has no place in our nation. And yet, right now, in 2015, in many states, a person can be fired simply for being lesbian, gay, bisexual, or transgender. They can be married, and yet be fired for placing a picture of their wedding on their desk or be harassed for walking into the wrong bathroom.

As a result, millions of LGBT Americans go to work every day fearing that, without any warning, they could lose their jobs – not because of their work performance, but simply because of who they are.

That's why Congress needs to pass ENDA which would provide strong federal protections against discrimination, making it explicitly illegal to fire someone because of their sexual orientation or gender identity. ENDA has strong bipartisan support and the support of a vast majority of Americans. It ought to be the law of the land.

Corporate America agrees. The majority of Fortune 500 companies and small businesses already have inclusive nondiscrimination policies that protect LGBT employees. These companies know that it is both the right thing to do and makes good economic sense. They want to attract and retain the best workers, and discrimination makes it harder to do that.

This should be true on a national scale. If we want to create more jobs and economic growth and keep our country competitive in the global economy, we need everyone working hard, contributing their ideas, and putting their abilities

to use doing what they do best. We should encourage the creativity and talents of every American by providing them an open and welcoming workplace, where everyone can be their authentic selves.

America is at a turning point. Marriage Equality is sweeping our nation, the Transgender Community is rapidly emerging, and we should not only become more accepting and loving as a people, we as a nation should be embracing the beauty and power of our diversity. Some, however, work to unwind this progress and take us back to the dark days of intolerance and bigotry. The crosshairs of discrimination are being trained on the LGBT community like never before.

Just as we see the need for the Supreme Court to settle the issue of marriage equality on a national scale, we see that same need for national legislation to protect LGBT citizens in the workplace. Passing ENDA would eliminate the patchwork of differing state legislation and provide consistent workplace protections across the country.

To paraphrase President Obama, “In America of all places, people should be judged on their merits: on the contributions they make in their workplaces and communities, and on what Martin Luther King Jr. called "the content of their character." That is what ENDA helps us do and our nation will be fairer and stronger for generations to come.”

Thank you.

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