



March 24, 2021

Honorable Dick Durbin
Chair, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Charles Grassley
Ranking Member Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Durbin and Ranking Member Grassley:

I am the Executive Director of GLBTQ Legal Advocates & Defenders (GLAD). GLAD is New England's leading legal rights organization dedicated to ending discrimination on the basis of sexual orientation, HIV status, and gender identity and expression. Since 1978, GLAD has engaged in legal advocacy representing individuals throughout the six New England states who have faced discrimination in a broad range of contexts including in state and private employment. GLAD's geographic focus includes Massachusetts, Connecticut, Rhode Island, Maine, Vermont, and New Hampshire.

As part of the organization's public education efforts, GLAD also staffs a legal information helpline – called GLAD Answers – that, among other things, provides information and legal referrals to persons facing discrimination in their lives – whether in employment, housing, public accommodations, education, credit and, in fact, jury service. Both through our public presence as the longest established legal advocacy organization in our region and through GLAD Answers, we have received regular reports of discrimination faced by members of our community.

GLAD supports the passage of the Equality Act (H.R. 5/ S. 393) that would amend various provisions of the Civil Rights Act of 1964, the Fair Housing Act (42 U.S.C. §3601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. §§1691-1691f) and the law on juries and jury selection (28 U.S.C., Chapter 121) to add the characteristic of “sex” in some cases and to add – as included within sex – the characteristics of “sexual orientation and gender identity.”

As you know, in the landmark case of *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020), the Supreme Court considered the scope of the protection against sex discrimination in employment under Title VII of the Civil Rights Act of 1964 and ruled that discrimination “because of sex” necessarily included discrimination on the basis of both sexual orientation and gender identity. Because of that decision in *Bostock*, there is every reason to believe that every federal statute – and, indeed, every state statute – that prohibits sex discrimination will ultimately

properly be interpreted to also prohibit discrimination based on sexual orientation and gender identity. The reasoning of the *Bostock* decision ineluctably leads to that conclusion.

That said, it is difficult to imagine how long it will take to effectively bring all of those federal and state laws into conformity with the reasoning of *Bostock* and actually secure the much-needed protections that Congress can provide in one simple and efficient action by voting to enact the Equality Act.

Moreover, not every statute that should protect against sex discrimination does so. For example, our current federal public accommodations nondiscrimination laws (42 U.S.C. §§2000a(a) and 2000a-1) do not currently protect against sex discrimination. The Equality Act would rectify that omission. (Equality Act, §3(a)). The same is true with respect to programs receiving federal financial assistance (42 U.S.C. §2000d). The Equality Act would rectify that omission as well. (Equality Act, §6).

In addition, some elements of the Civil Rights Act of 1964 need updating. For example, and again looking at 42 U.S.C. §2000a(a) and public accommodations, the nearly 60-year-old definition of what constitutes a public accommodation is too narrow in the context of our current civil society. Again, the Equality Act properly updates those definitions (Equality Act, §3(a)) and other provisions of law.

For these and other reasons, the time to act is now; and the place for action now is in the Congress of the United States. As noted above, Congress can provide the nationwide protection that is urgently needed against discrimination and cover so many areas of need simply by amending existing civil rights laws to protect more citizens in need of those protections and to do so uniformly throughout the nation.

While it might seem easier to some to sit back and wait and watch while the courts slowly and methodically address each of the areas of existing discrimination when cases happen to develop and make their way to the highest relevant courts that can set the law for their jurisdiction, that approach does a grave disservice to citizens who need protection from discrimination now and to employers, businesses and ordinary Americans who want to know what the law requires of them.

More importantly, it is a principal role of Congress – and not the principal role of courts – to declare and establish matters of general public policy and to codify them in the United States Code. This is particularly so with respect to the inclusion of various categories of people within our nondiscrimination laws because these laws “reflect[] ... the importance, both to the individual and to society, of removing the barriers to economic advancement and political and social integration that have historically plagued disadvantaged groups,” and “serve compelling interests of the highest order.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 625-26 (1984).

In short, it is the job of Congress to codify what all of the Justices of the Supreme Court have either recognized explicitly or have not disputed: that “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in

dignity and worth” *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n.*, 138 S.Ct. 1719, 1727 (2018); *see also Bostock v. Clayton County*, 140 S.Ct. at 1751 (extending the protections of Title VII to transgender individuals and noting that to deny coverage of a law to those unpopular at the time of the law’s passage “... would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law’s terms”).

Beyond the Justices of the Supreme Court, Congress should look to the strong support of the American people for the Equality Act – support that has been growing stronger every year.

On March 23, 2021, the nonprofit, nonpartisan independent research organization Public Religion Research Institute (“PRRI”) issued a report “Despite Partisan Rancor, Americans Broadly Support LGBTQ Rights – Findings from the 2020 American Values Atlas.” (“PRRI Report”) <https://www.prri.org/wp-content/uploads/2021/03/PRRI-Mar-2021-LGBTQ.pdf> (last viewed March 24, 2021).¹

According to the PRRI Report, “More than three in four Americans (76%) favor laws that would protect lesbian, gay bisexual and transgender Americans from discrimination in jobs, housing, and public accommodations.” (PRRI Report, p. 7).

Looking at party affiliation, support for LGBT nondiscrimination protections stands, in 2020, at 85% among Democrats, 78% among Independents, and 62% among Republicans. (*Id.*)

Similarly, “[b]road majorities of all major religious groups favor nondiscrimination protections for LGBT Americans. More than six in ten members of every religious group support nondiscrimination laws.” (*Id.* at p. 10). The numbers are impressive:

White mainline Protestants – 82%
 Religious unaffiliated Americans – 82%
 Hispanic Catholics – 81%
 Jewish Americans – 79%
 Mormons – 78%
 White Catholics – 77%
 Other Catholics of color – 74%
 Black Protestants – 73%
 Other Protestants of color – 72%
 Hispanic Protestants – 68%
 White evangelical Protestants – 62%

¹ Results are based on “a subset of 10,052 telephone interviews (including 6,981 cell phone interviews) conducted in 10 weeks spread across the year [2020].” (PRRI Report, p. 23). The report contains a full description of the survey methodology. (PRRI Report, Appendix 1, p. 23).

(*Id.* at p. 10).

Interestingly, and importantly, “[g]eographic differences in support for LGBT nondiscrimination laws are relatively small.” (*Id.* at p. 12). Again, the numbers in support are impressive:

The Pacific² – 79%
 The Mid-Atlantic – 79%
 New England – 77%
 The South Atlantic – 76%
 The East North Central – 75%
 The West South Central – 75%
 The Mountain division – 75%
 The West North Central – 72%
 The East South Central – 69%

(*Id.* at p. 12).

Finally, the PRRI Report notes that “Americans who live in urban areas (77%) and suburban areas (77%) are somewhat more likely than those who live in rural areas (70%) to favor nondiscrimination protections.” (*Id.* at p. 12). The Midwest is the only area of the country where there is a somewhat substantial difference in support – 77% urban, 79% suburban and 64% rural. (*Id.*). In all other regions of the country, the difference is never greater than 5%. (*Id.*).

As just noted, one of the important things that the PRRI report highlights is that people of faith strongly support the Equality Act. This clearly demonstrates that the Equality Act does not present some zero-sum clash between two supposedly distinct and utterly oppositional groups – the religious community and the LGBTQ community. Far from it. The vast majority of Americans who identify with some religious tradition quite clearly see no conflict between their faith and civil rights protections for LGBTQ people.

That said, we are well aware that our country is in a particular moment historically where the changes in the legal status of LGBTQ people also provoke discomfort in some persons, perhaps even more so as they feel their beliefs disrespected.

Clearly, our nation and the democratic process recognizes the value of religious free exercise and religious pluralism in our diverse society. GLAD shares those values as we know that faith is deeply meaningful to many Americans, including many LGBTQ Americans, and that religious organizations play a valuable role in securing the common good.

² Which states fall in each of these regions is set forth on a map in Figure 1.4 in the Report. (*Id.* at p. 13).

This is precisely where Congress – given its historical legislative actions and its grasp of the present moment – is exquisitely positioned to legislate in the best interests of all.

Historically, Congress has faced the urgency of civil rights in contexts where certain religious views felt threatened by the need to act to acknowledge and protect the dignity of American citizens. There was a time – not that long ago – when religious beliefs about race, marriage and sexuality and related issues were invoked to deny equal treatment for Black Americans and other people of color, of women, and of people who are both, under nondiscrimination laws. *E.g.*, *Piggie Park Enters., Inc.*, 390 U.S. 400, 402 n.5 (1968) (restaurant owner refusing to allow all customers to be served together because of religious views about race); *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1364-65 (9th Cir. 1986) (challenging differential pay based on sex based on belief that men are Biblically charged as heads of households).

There were deeply-held beliefs embodied in so-called “segregation theology” that provided support for many supporters of racial discrimination and segregation. Nonetheless, those views did not stop Congress from enacting the Civil Rights Act of 1964.

Rather, Congress has, over time, worked diligently to achieve a real and proper balance between religious practice and avoiding a range of harms to others. These include, for example, protections for religious exercise within various provisions of the Civil Rights Act of 1964: in public accommodations (42 U.S.C. §2000a); in public facilities (42 U.S.C. §2000b); in public education (42 U.S.C. §2000c-6); and in employment (42 U.S.C. §§2000e, 2000e-2, 2000e-16).

There are also religious protections in the Fair Housing Act in the sale or rental of housing (42 U.S.C. §3604); in the provision of certain real estate transactions or brokerage services (42 U.S.C. §§3605, 3606); and in federal jury service (28 U.S.C. §1862).

All of these religious protections are incorporated in existing federal laws that the Equality Act simply seeks to amend to add protections based on sex, sexual orientation and gender identity. The nature of the religious protections remain unchanged, and there is no desire or intention to change or lessen them.

Therefore, as a bottom line, as those protections for religious belief have been honed, practiced and honored over the years, they should be similarly adequate and appropriate to the existence of an amended Civil Rights Act to add sex, sexual orientation and gender identity.

All that said, as GLAD hopes this letter makes clear, we believe that it behooves Congress to consider the Equality Act now without delay and to update our civil rights laws, including protecting LGBTQ Americans from the many harms of discrimination, while also giving respectful consideration of religious practices that do no harm to others.

GLAD appreciates all your efforts to advance this vital piece of legislation and stands ready to be of assistance in any way that we can in the process of bringing the Equality Act to final passage in the Senate.

Sincerely,

A handwritten signature in blue ink, appearing to read "Janson Wu".

Janson Wu, Executive Director
GLBTQ Legal Advocates & Defenders