



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

June 23, 2021

Via E-mail and U.S. Mail

The Honorable Charles Schumer
Senate Majority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

Senator Richard Durbin
Chair of the Senate Judiciary Committee
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510

Senator Charles Grassley
Ranking Member of the Senate Judiciary
Committee
U.S. Senate
135 Hart Senate Office Building
Washington, DC 20510

Re: Support for the Equality Act

Dear Senate Leaders:

We, the undersigned State Attorneys General, urge the Senate to swiftly pass the Equality Act, H.R. 5 (“the Act”), in its entirety. The Act creates a uniform federal standard prohibiting discrimination against lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) Americans in employment, education, federally-funded programs, public accommodations, housing, credit, and jury service, a change which is much needed and long overdue.

In June 2020, the United States Supreme Court’s landmark decision in *Bostock v. Clayton County, Georgia*, held that employers violate Title VII of the Civil Rights Act of 1964 if they fire employees for being gay or transgender.¹ The Court correctly held that employment discrimination based on one’s sexual orientation or gender identity is discrimination on the basis of sex prohibited by Title VII, a conclusion already reached by many lower courts.² *Bostock* clarified that LGBTQ

¹ See *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020).

² *Id.*

individuals who face discrimination in employment have legal protections under existing federal law. Despite this decision, the absence of explicit federal prohibitions on sexual orientation and gender identity discrimination leaves many LGBTQ individuals vulnerable to harmful discrimination in education, housing, credit, and health care. Furthermore, no federal law currently prohibits discrimination on the basis of sex in other parts of American society, including public accommodations, federally-funded programs, and the jury system, leaving LGBTQ people, women, and all individuals who face sex-based discrimination in these areas without recourse under federal law. Congress can address these problems by passing the Equality Act.

I. An Overview of the Equality Act

The Equality Act strengthens federal legal protections for LGBTQ individuals by providing express, consistent protections across multiple federal civil rights laws. First, the Act clarifies that existing prohibitions on discrimination on the basis of sex under Titles III, IV, and VII of the Civil Rights Act of 1964; the Fair Housing Act; the Equal Credit Opportunity Act; and the Jury Selection and Services Act include discrimination on the basis of sexual orientation and gender identity. These changes will create and expand protections for LGBTQ individuals facing discrimination in education, employment, housing, credit, and public facilities. Second, the Act will newly prohibit discrimination on the basis of sex (including sexual orientation and gender identity) in Title II of the Civil Rights Act of 1964, which prohibits discrimination in public accommodations, and Title VI of the Civil Rights Act of 1964 (which prohibits discrimination by federal funding recipients). The Act would further amend Title II to modernize the definition of public accommodations to include places or establishments that provide (1) exhibitions, recreation, exercise, amusement, gatherings, or displays; (2) goods, services, or programs; and (3) transportation services,³ and to prohibit specific forms of sex discrimination in public accommodations, such as denying services to people because they are pregnant or breastfeeding, or denying transgender people access to sex-specific restrooms corresponding with their gender identity. Additionally, the Act would clarify that the Attorney General may intervene in federal court actions alleging denial of equal protection of the laws based on sexual orientation and gender identity.

II. Longstanding Discrimination Against LGBTQ People

The Act is a critical step towards addressing the longstanding history of discrimination against LGBTQ individuals in the United States and providing essential civil rights protections for LGBTQ individuals who continue to face discrimination in their daily lives. While the Supreme Court's decision in *Bostock* represented unprecedented progress in the fight for civil rights protections, it also highlighted the need for robust, explicit federal civil rights protections for the LGBTQ community.

Intolerance and pervasive discrimination against LGBTQ people persists across society, including in public accommodations, federally-funded programs, housing, education, employment, credit, and the jury system:⁴ 44% of transgender Americans report having been denied equal treatment or

³ H.R. 5, 3.

⁴ While the Equality Act provides civil rights protections to all LGBTQ people, the acronyms used in the following statistics reflect only the specific populations surveyed in each particular study.

service at least once in a place of public accommodation;⁵ nearly one quarter of transgender Americans report housing discrimination based on their gender identity;⁶ 71% of LGBTQ youth reported experiencing discrimination due to their sexual orientation or gender identity in 2019;⁷ 36% of LGBTQ individuals experienced harassment or discrimination in the workplace in 2020;⁸ and between 1990 and 2015 same-sex applicant couples were 73% more likely to be turned down for a mortgage than different-sex applicant couples.⁹ The Act is a necessary catalyst for change in the protection of LGBTQ people.

III. A Critical Tool for Civil Rights Enforcement

A federal prohibition barring discrimination against LGBTQ people would assist State Attorneys General with civil rights enforcement. As the chief legal officers of our jurisdictions, State Attorneys General have a vital interest in protecting the health, safety, and wellbeing of our residents.¹⁰ This interest includes protecting constituents from unlawful discrimination on the basis of sex, sexual orientation, and gender identity. Many state offices possess the authority to launch investigations, bring legal actions, and enforce laws on behalf of our states and constituents. The Act would expand the civil rights enforcement toolkit by clarifying and expanding federal protections against discrimination, in addition to state legal remedies we have. For instance, the Act amends specific provisions of federal laws that State Attorneys General routinely enforce, such as the Equal Credit Opportunity Act and Fair Housing Act, by including sexual orientation and gender identity in the list of protected groups.¹¹

The Act would also expand civil rights protections beyond the current patchwork offered by state laws by creating a national standard.¹² First, the Act would supplement and strengthen state efforts to combat discrimination. The Act's protections are consistent with those of a number of current state civil rights statutes.¹³ Moreover, some states, including Illinois, California, Colorado,

⁵ James, S. E., Herman, J.L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., *The Report of the 2015 U.S. Transgender Survey*, Washington, DC: National Center for Transgender Equality (2016).

⁶ *Fair and Equal Housing Act*, The Human Rights Campaign, <https://www.hrc.org/resources/fair-and-equal-housing-act> (last updated March 19, 2021).

⁷ *The Trevor Project National Survey on LGBTQ Youth Mental Health 2019*, The Trevor Project, at 4.

⁸ Gruberg, S., Mahowald, L. & Halpin, J., *The State of the LGBTQ Community in 2020*, Center for American Progress, <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/10/06/491052/state-lgbtq-community-2020/#Ca=10>.

⁹ Sun, Hua and Gao, Lei, *Lending Practices to Same-Sex Borrowers*, Proceedings of the National Academy of Sciences of the United States of America, <https://www.pnas.org/content/116/19/9293#sec-11>.

¹⁰ See *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Baretz*, 458 U.S. 592, 600 (1982).

¹¹ H.R. 5, 11.

¹² Caroline Medina, Lindsay Mahowald, & Sharita Gruberg, *Millions Will Gain Nondiscrimination Protections Under the Equality Act*, CENTER FOR AMERICAN PROGRESS, (Apr. 20, 2021).

¹³ For example, the Illinois Human Rights Act ("IHRA") strictly prohibits discrimination on the basis of race, color, religion, sex, sexual orientation (including gender identity), national origin, ancestry, order of protection status, marital status, physical or mental disability, conviction record, and military status. The IHRA further defines sexual orientation as "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth." See 775 ILCS 5/1 et seq. (2013) (emphasis added). See also, 6 Del. C. § 4500-4516; HRS § 378-2 (employment), HRS § 489-3 (public accommodations), and HRS § 515-3 (housing); M.R.S. §§ 4551-4634; Nev. Rev. Stat. § 233.010; N.J.S.A. § 10:5-12; N.J.S.A. § 10:5-5(rr); N.Y. Exec. Law. §§ 292, 296; N.M. Stat. Ann. Sec. 28-1-7; 9 V.S.A. § 4500, et seq., 1 V.S.A. § 144; D.C. Code § 2-1401.01 et seq.

Minnesota, and Oregon recently made strides in expanding protections by amending jury access laws. Such laws provide that anyone who is qualified and able to serve on a jury may not be excluded from jury service in any state court on the basis of sexual orientation.¹⁴ Second, while the evolution of laws in some state legislatures is promising, enacting a federal law that reinforces these state statutes would ensure that LGBTQ individuals across the nation have the same basic civil rights. Importantly, the Act would fill the gap in the 27 states where LGBTQ Americans currently have no state-level protection against discrimination.¹⁵

State Attorneys General, including many of the signatories to this letter, have previously joined together to advocate for LGBTQ civil rights at the federal level. For example, State Attorneys General authored an amicus brief in *Bostock*, arguing that discrimination against LGBTQ employees impedes states' ability to promote equality and protect their residents' dignity, economic security, and mental health. State Attorneys General have also defended against attempts to weaken federal regulations that afford LGBTQ people nondiscrimination protections, including challenging a 2020 Rule promulgated by the U.S. Department of Health and Human Services that narrowed protections against discrimination for LGBTQ individuals in health settings, as well as opposing the last Administration's proposed amendments to the Department of Housing and Urban Development's Equal Access Rule that would have permitted federally funded temporary and emergency shelters to deny shelter to transgender and gender nonconforming persons. Clarifying the scope of existing federal civil rights laws and extending nondiscrimination protections to LGBTQ individuals through amendment of the Civil Rights Act of 1964 would secure these important rights legislatively, ultimately insulating them from changes in the courts or the executive branch.

IV. Conclusion

As State Attorneys General, we are responsible for protecting our constituents' public safety and welfare. However, current federal law does not adequately allow us to defend LGBTQ members of our communities from longstanding, entrenched discrimination. We urge you to reach a bipartisan agreement and enact the Equality Act to empower State Attorneys General to fight discrimination against our LGBTQ constituents in all aspects of society.

Respectfully,

A handwritten signature in black ink, appearing to read 'Kwame Raoul', written in a cursive style.

KWAME RAOUL
Illinois Attorney General

¹⁴ See, e.g., 705 ILCS 305/2(b) (Ill. 2019).

¹⁵ Danielle Kurtzleben, *House Passes the Equality Act: Here's What It Would Do*, N.P.R. RADIO ILLINOIS (FEB. 24, 2021).



ROB BONTA
California Attorney General



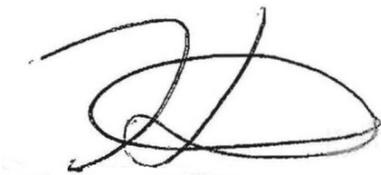
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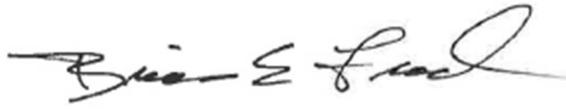
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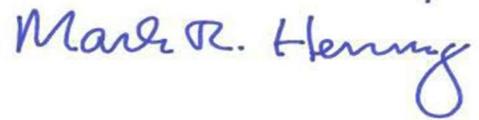
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