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AN EXAMINATION OF DISCRIMINATION AGAINST TRANSGENDER AMERICANS IN THE WORKPLACE

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS

COMMITTEE ON EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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AN EXAMINATION OF DISCRIMINATION AGAINST TRANSGENDER AMERICANS IN THE WORKPLACE

Thursday, June 26, 2008
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 11:08 a.m., in room 2175, Rayburn House Office Building, Hon. Robert Andrews [chairman of the subcommittee] presiding.

Present: Representatives Andrews, Miller, Kildee, McCarthy, Wu, Holt, Sánchez, Hare, Clarke, Kline, McKeon, Boustany, Price, Foxx, and Walberg.

Also Present: Representative Payne.

Staff Present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Tico Almeida, Labor Policy Advisor; Jody Calemine, Labor Policy Deputy Director; Carlos Fenwick, Policy Advisor, Subcommittee on Health, Employment, Labor and Pensions; David Hartzler, Systems Administrator; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Ann-Frances Lambert, Administrative Assistant to Director of Education Policy; Danielle Lee, Press/Outreach Assistant; Sara Lonardo, Junior Legislative Associate, Labor; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Megan O'Reilly, Labor Policy Advisor; Rachel Racusen, Deputy Communications Director; Meredith Regine, Staff Assistant; Margaret Young, Staff Assistant, Education; Mark Zuckerman, Staff Director; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Alexa Marrero, Minority Communications Director; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Ken Serafin, Minority Professional Staff Member; and Hannah Snoke, Minority Legislative Assistant.

Chairman ANDREWS. Ladies and gentlemen, we are going to proceed. We do appreciate the patience of our guests. The full committee had to complete action on education legislation that we began yesterday and concluded this morning, so we thank you for your patience.

Good morning, ladies and gentlemen, and welcome to the subcommittee. In all likelihood, someone is going to go apply for a job today and the employer is not going to tell him or her this, but the

employer is going to say, you know, I am not comfortable with the way that person looks, with the way he or she presents him or herself, so I am not going to hire the person.

In all likelihood, someone today is being considered for a promotion or an opportunity in his or her job. And behind closed doors an employer may well say, you know, this person makes us uncomfortable because of the way he or she looks or he or she presents him or herself. Under the present state of the law, if that is the reason given to deny someone a job, to fire them from a job they already have, or to deny them a promotion or move up, under Federal law it is legal, it is permissible to do that.

I will confess to you a bias from the outset that to me this makes no sense whatsoever. I think if someone is the best code writer of the software company they should get the job. I think if someone is the best auto mechanic they should get the job. I think if they are the best bank teller they should get the job. The question of someone's orientation, someone's presentation should be absolutely irrelevant to the consideration of whether they get the job or the promotion. The purpose of this hearing is to explore the law in this area, which I would start from the premise as saying it does permit these kind of denials to take place and whether that should change or not. I think it should, I think it should.

We are going to hear this morning from a number of witnesses who will provide a varying number of perspectives on this question. One of the elemental principles in American law we hope is merit. That whether or not someone is hired, whether or not someone is promoted, whether or not someone has economic opportunities is a function of how well they do their job or how well they would do their job and not a function of what I would call irrelevant prejudicial criteria. I feel strongly that someone's presentation is an irrelevant criteria. I think it has nothing to do with how well someone writes code or conducts bank transactions or fixes someone's car.

And I aspire to the day when the law will protect every person in that position, and that he or she is able to go to work, do as well as he or she can and be judged on performance at work and not on prejudice of any other decision made.

We are going to hear from a variety of witnesses this morning who will address those concerns. And we look forward to vigorous questioning from the members of the subcommittee as we move forward. I would also note for the record that there is context for this hearing. And that was this committee and the House's consideration of the Employment Non-Discrimination Act in the fall of 2007. It needs to be said, it needs to be reminded, that the bill that passed the House of Representatives did not include protection for transgender people. I believe it should have.

And the purpose of this hearing is for those of us who believe that to make our case and for those who disagree to make theirs, and for people to draw an intelligent and rational conclusion from that debate. I am pleased in our work on this subcommittee to have the cooperation and colleague status with my friend from Minnesota, Mr. Kline, who is the ranking member of the subcommittee for the minority side. It is a pleasure working with him because he and I try to address all these issues on the basis of sub-

stance and merit to be fair in the way we approach these issues, and I am pleased that that tradition continues for today's hearing, and I welcome him into the hearing.

[The statement of Mr. Andrews follows:]

Prepared Statement of Hon. Robert E. Andrews, Chairman, Subcommittee on Health, Employment, Labor and Pensions

Good morning and welcome to the Health, Employment, Labor, and Pensions Subcommittee Hearing entitled "An Examination of Discrimination Against Transgender Americans in the Workplace."

The purpose of today's hearing is to educate Congress and the public about the discrimination transgender American face particularly in the workplace absent a comprehensive federal law to protect them.

Workplace discrimination against a particular group of people is morally unacceptable and conflicts with the principles we hold sacred in our society. Furthermore, workplace discrimination, unchecked, harms our economy both domestically and globally.

When an employer is permitted to deny someone a job based on their identity without consequence, makes increases on our unemployment rate and diminishes our competitive edge in the global economy, making us less competitive in the global economy.

Testifying before us today are some of the most distinguished and brightest members of our society, who were denied employment or fired because they are transgender. These individuals along with the roughly 700,000 to 3 million transgender individuals living in America today run the risk of being fired, demoted or not even hired because of their gender identity.

There are 12 states, including the District of Columbia with laws in place to protect transgender individuals from workplace discrimination, as well as, many reputable companies with antidiscrimination policies. Despite these protections, studies and surveys reveal high rates of unemployment and low-income status among transgender Americans.

Today's hearing is simply a first step in identifying the problem workplace discrimination against transgender Americans.

I thank the witnesses for coming forward to the subcommittee today and look forward to hearing your testimony.

Mr. KLINE. Thank you, Mr. Chairman, for those kind remarks. And I want to thank you, Mr. Chairman, for your flexibility in scheduling this hearing. There was some issue about what day we can do it, and I appreciate your flexibility to allow it on a day we could have more member participation. I wanted to thank our witnesses, certainly our colleagues in the first panel, and the witnesses in the second panel. I am looking forward to the testimony. I think it is a fair statement to say that all of us are committed to the principle that no employee should be subject to discrimination.

But before we consider and enact any new Federal mandate, we must first determine a few things. Is a new law necessary? Is there evidence that this type of discrimination is occurring? Are current laws and employer policies unable to protect employees? We have numerous Federal and State laws and employer policies already on the books that help prevent discriminatory practices. Do we need yet another Federal law? That is part of what this hearing is about today. I look forward to the testimony of a really distinguished panel of witnesses, both panels of witnesses. And I yield back the balance of my time with asking unanimous consent that my entire statement be included in the record.

Chairman ANDREWS. Without objection.

[The statement of Mr. Kline follows:]

Prepared Statement of Hon. John Kline, Senior Republican Member, Subcommittee on Health, Employment, Labor and Pensions

Good morning. I'd like to begin by thanking the witnesses for taking time out of their schedules to be here. I would also like to express my appreciation to Chairman Andrews for his flexibility in scheduling this hearing.

The issue we are here to examine—gender identity and workplace discrimination—follows on the Majority's efforts last fall to include protections for transgender individuals in the employment non-discrimination legislation. The purpose of this general hearing is to allow for thorough and thoughtful consideration of this issue, and any future proposals that might affect the American people.

That said, I am somewhat puzzled as to why the Committee did not hold this hearing last year, before the Majority rushed to consider legislation on this issue.

Last September, this Subcommittee held the only hearing on this topic. It was a hearing on a prior bill, the Employment Non-Discrimination Act, which broadly aimed to prohibit organizations from discriminating in their employment practices against individuals on the basis of their actual or perceived sexual orientation and gender identity. During that hearing, we heard testimony from experts who cautioned that some of the provisions in that bill could be confusing, difficult to comply with, and potentially fraught with litigation. Complex questions were raised about how that bill would impact employers; whether it would preserve religious freedom and encroach on employee privacy; and how it would comply with existing anti-discrimination statutes.

The bill's sponsors scrambled to address these questions and concerns. Ultimately, they decided to split the original ENDA bill, separating the protections based on sexual orientation and gender identity and attempting to address some of the technical concerns. But only the new bill involving sexual orientation discrimination was rushed to the House Floor for a vote. The flawed bill still raised many of the same serious concerns that were previously identified. After the bill passed the House in November 2007, it stalled in the Senate, where it still awaits action.

I can only speculate as to why no legislative action was taken on the other bill that sought protections based on gender identity. Despite the good intentions of those who supported these proposals, there still appeared to be too much uncertainty and too many unanswered questions. This explains why we are here today, examining an issue that perhaps should have been reviewed in greater detail before rushing to legislate.

We are all committed to the principle that no employee should be subject to discrimination. Before we consider and enact any new federal mandates, however, we must first determine whether a new law is necessary. Is there evidence that this type of discrimination is occurring? Are current laws and employer policies unable to protect employees? We have numerous federal and state laws and employer policies already on the books that help prevent discriminatory practices. Do we need yet another federal law? It is my view that the role of this Committee, and Congress, is to build upon this framework only when needed, and to avoid legislating for its own sake.

I look forward to hearing the testimony to be offered by our witnesses about the practical impact, benefits, and problems associated with this issue. I'm pleased that we will hear multiple perspectives on this topic, and hope this testimony will help ensure that any future well-intentioned efforts do not result in harmful, unintended consequences.

I yield back the balance of my time.

Chairman ANDREWS. Without objection, the opening statement of any member of the committee who wishes to include may as well. The chairman of the full committee, Mr. Miller, is here. I would ask if he would care to make an opening statement.

Mr. MILLER. No.

Chairman ANDREWS. Is Mr. McKeon here also? I would extend the same courtesy to Mr. McKeon should he be interested?

Mr. MCKEON. No.

Chairman ANDREWS. Okay. We are going to proceed with the first panel being two of our esteemed colleagues in the House; Representative Barney Frank, who is the chairman of the Financial Services Committee, an active member on so many issues. He has

devoted countless hours to the housing crisis facing this country today. I know he is involved in very important negotiations with the Senate as we speak on how to address that crisis. I want to thank him for two things this morning; one is his leadership in so many areas of American law, and his good spirited approach to these issues.

In the middle of our days we sometimes need to laugh with each other and not at each other. And Barney Frank has the unique ability to help us see the humorous insights at some very stressful times. And then the second is obviously for his leadership on civil rights issues in general and these issues in particular. Many of us believe that Mr. Frank is an inspiration for his work, and we are honored that he is with us here today.

Representative Tammy Baldwin has a rare skill in the Congress that she is a great listener in a place where people love to talk. And she is a good talker too, a very good talker. But I very much enjoy the fact that I have seen her interact in situations that are sometimes stressful and divisive and she always listens with respect and dignity to the other side of any question. She has developed an outstanding legislative record in areas of consumer protection, environmental affairs, civil rights, education, national defense policy. And it is our honor to have her with us today as well.

So I would ask if our two colleagues would begin with opening statements. I will tell you one thing this subcommittee has done in sort of an unofficial practice, is that because we want to get to our lay witnesses as quickly as we can, we open the panel to any questions from our colleagues, but we frankly—I won't say we discourage questions. I will say it. We discourage questions to our colleagues unless someone has something they really want to ask so we can get to the lay witnesses as quickly as we can. So Representative Frank and Representative Baldwin, thank you very much for your attendance, and you may begin.

STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Ms. BALDWIN. Thank you, Chairman Andrews and Ranking Member Kline, for inviting the two of us, and inviting me to testify at this very historic hearing. Many of my colleagues have asked me about the phrase "gender identity" and why employment protection is based on gender identity and expression ought to be included in any employment discrimination legislation this Congress takes up. And I will do my best to answer any lingering questions and clarify what drives many in the LGBT community to demand an inclusive approach to eliminating discrimination in the workplace, one that does not leave behind the smallest and most vulnerable part of our community. As you may know, gender identity is a person's internal sense of his or her gender. In the vast majority of the population, an individual's gender identity and his or her birth sex match. But for a small minority of people, gender identity and anatomical sex conflict.

A common way that many transgender people describe this feeling is to say something to the effect of being trapped in the wrong body. Gender identity and sexual orientation are not the same, and transgender people may be heterosexual, lesbian, gay, or bisexual.

There are thousands of transgender Americans who lead incredibly successful stable lives. They are dedicated parents; they contribute immeasurably to their communities and to their country. I personally know transgender people who work in fields as diverse as defense contracting, broadcasting, community organizing and the legal profession and I could go on. They have transitioned successfully, many with the full support of their employers.

Despite these successes, because an individual was born one sex and presents oneself to the world as another, or in a way that other people may think is inconsistent with how a man or a woman should present themselves, he or she may face many forms of discrimination.

Hate crimes against transgender Americans are tragically common. Transgender people also face discrimination in the mundane tasks of the every day; trying to find housing, applying for credit or even seeing a doctor. And of course, the focus of today's hearing, in trying to provide for themselves and their families.

As some of you know, I practiced law in a small general practice firm before I was elected to the Wisconsin assembly. On occasion, I represented clients who were fired from jobs in violation of Wisconsin's landmark 1982 nondiscrimination law that added sexual orientation to our State's anti-discrimination statutes. During that time, I met a transgender woman who has left a lasting impression upon me. This woman had been fired from a management position at a large local employer when she announced to her boss that she intended to transition. And because Wisconsin's law gave her no legal recourse, she faced an impossible situation and ended up moving to a different State. I remember a time in my own life when I thought I had to choose between living my own life with truth and integrity about who I am as a lesbian or pursuing the career of my dreams in public service. Among the things that made me change my mind was Wisconsin's nondiscrimination law that had passed only four years before I first ran for local office as an out lesbian. The importance of nondiscrimination laws cannot be overstated. Substantively they provide real remedies and a chance to seek justice.

Symbolically they say to America, judge your fellow citizen by their integrity, character and talents, not their sexual orientation or gender identity or race or religion for that matter. Symbolically, these laws also say that an irrational fear, an irrational hate have no place in our work places. Today, 39 percent of Americans live in areas explicitly banning discrimination based on gender identity and expression. And at least 300 major U.S. businesses now ban discrimination based on gender identity and expression. Corporate America and the American people are way ahead of the Congress in acknowledging the basic truth we hold to be self-evident that all of us are created equal, and the laws of the land should reflect that equality. It is high time that America declared discrimination based on gender identity and expression to be unlawful.

Mr. Chairman, I wholeheartedly support your committee's efforts to do just that. For the record, I support, like you, an inclusive bill which ensures that hard working Americans cannot be denied job opportunities, fired or otherwise discriminated against just because of their sexual orientation, gender identity or gender expression.

All of us who have had the honor of working in this institution know that one of the greatest things about America is that it is not only a Nation, it is also an idea. And our American dream promises that no matter where we start, no matter who we are, that if we work hard, we will have the opportunity to advance. This committee can help fulfill that promise. Thank you, Mr. Chairman.

Chairman ANDREWS. Thank you very much Congresswoman Baldwin for the incisive legislative record you built and the dignity with which you conduct yourself. Thank you.

[The statement of Ms. Baldwin follows:]

Prepared Statement of Hon. Tammy Baldwin, a Representative in Congress From the State of Wisconsin

Thank you Chairman Andrews, Ranking Member Kline, and members of the Committee for allowing me the opportunity to testify today at this historic hearing.

Many of my colleagues have asked about the phrase "gender identity" and why employment protections based on gender identity and expression ought to be included in any employment discrimination legislation Congress takes up. I'll do my best to answer any lingering questions and clarify what drives many in the LGBT community to demand an inclusive approach to eliminating discrimination in the workplace—one that does not leave the smallest and most vulnerable part of our community behind.

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Hate crimes against transgender Americans are tragically common. Transgender people also face discrimination in the mundane tasks of the everyday—trying to find housing, apply for credit, or even see a doctor * * * and, of course, in the focus of today's hearing: trying to provide for themselves and their families.

Some of you know that I practiced law for a few years in a small general practice firm before I was elected to the Wisconsin Assembly. On occasion, I represented clients who were fired in violation of Wisconsin's 1982 non-discrimination law that added sexual orientation to our state's anti-discrimination statutes. During that time, I met a transgender woman who left a lasting impression, though she was never a client. This woman had been fired from a management position at a large local employer when she announced to her boss that she intended to transition. And because Wisconsin law gave her no legal recourse, she faced an impossible situation—and ended up moving to a different state.

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crimination based on gender identity and expression. Corporate America and the American people are way ahead of the Congress in acknowledging the basic truth we hold to be self-evident * * * that all of us are created equal * * * and the laws of the land should reflect that equality. It is high time that America declare discrimination based on gender identity and expression unlawful.

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Thank you.

Chairman ANDREWS. Mr. Chairman.

STATEMENT OF HON. BARNEY FRANK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. FRANK. Mr. Chairman, to you and to the chairman of the full committee my deepest appreciation. Having become a chairman of a full committee, I understand the problems of trying to fit everything in. And there are a lot of members who would have put this hearing, let us be honest, pretty low on the totem pole. And in fact, it wouldn't have been hard to find an excuse not to have this hearing. And give us the opportunity to meet our responsibility, confront something some people might pretend not to be here.

My colleague has given you a very good explanation of this issue, although I have to say, to get focused, when she said that people express this as having a feeling they are trapped in the wrong body, I was talking to the chairman of the full committee, the phrase having something trapped in the wrong body is how we often feel when our legislation goes to the Senate. We have a lot of legislation trapped in the wrong body.

But to get to this issue, and my colleague has laid it out, first of all, we should be very clear, the overwhelming majority of legal interpretation is that gender identity is not covered when you ban sexual orientation. It simply isn't covered. And frankly, nobody who thinks it should be covered uses that argument. I mean, if you think it should be covered, if there is any uncertainty—let us put it this way. Whenever members of this body object to something on the grounds that it is redundant, I am skeptical. We are a profession, many of us lawyers, where redundancy is part of our code here in Congress. I mean, using a few extra words is rarely something that we object to.

So when people say they don't want it because it is redundant, they mean I don't want it, but I don't really want to tell you why I don't want it. But in this case, there is no argument for redundancy. Any lawyer will tell you. People are excluded.

The next argument is, well, it can be disruptive. I mean, these are for people who say there should be equality. And I appreciate the gentleman from Minnesota saying a principle I think we all agree with; that people should not be denied a chance to earn a living because of some essential element of their personality that is really relevant directly to them and causes no harm to anyone else. So the argument though is sometimes it can be disruptive. I have

been—I filed a gay rights bill in 1972, unlike my colleague, who was both younger and had the chance being from Wisconsin, and she said because of that law she didn't have to face this choice of living without—but I did and I made the wrong choice for a while, and behaved irresponsibly because of it. I was ultimately able to get freed from it.

And let me just say at this point what I hope will be relevant as people get to know people in the transgender community and as we make progress here, I recognized when I first got involved in politics, if I was honest about who I was I would have made some people nervous, but they got used to me. I just want to reassure people here, you are going to get used to them. I understand this is new and we are human beings and new and different sometimes make us nervous. But you know, look, Tammy Baldwin and I, early on in our careers, given the nature of prejudice, frankly in this society, we were seen as exceptions. People were nice to us, but we were exceptions, we were the good ones.

Well, we didn't want to be exceptions. And now I think we are not exceptions, we are examples. We are examples of the benefits all around when you overcome prejudice. Let us give the country a chance to expand that experience to people of transgender. And as for the disruption, I filed the gay rights bill in 1972. I have filed and worked for any discrimination measures; sexual orientation, race, gender, ethnicity, disability.

And I will address for those who say, well, you got to do it all at once, I have never done it all at once. As a matter of fact, for a long time, I have worked for legislation which protected other people, not me. I finally got old enough to benefit from age discrimination in legislation. But every bill that I have ever been involved with where we tried to ban discrimination has met the same argument; I got nothing against those people, they are okay, but it will be disruptive. I have heard that with regard to sexual orientation, with affirmative action.

Certainly I mean, not with race, aside from affirmative action, with ethnicity, with gender, with disability. People always say it is going to be disruptive and it never is. I wish somebody who has got some time would go back and look at every anti-discrimination measure we have ever enacted and see the similarity of the arguments, and nobody goes back and says, well, where was the disruption? There almost never is disruption. As a matter of fact, the sad truth about any discrimination legislation, as people know, there are some people here who practiced it, it tends to be under enforced because the people who want to discriminate can get sophisticated, and the burden of proof is always on the one who is charging discrimination.

So the argument that it can be disruptive just doesn't work. The argument that it is already done, it is not true. So as to need, you are going to hear from a witness who applied for and was granted a job by the Library of Congress. We are not talking about some benighted institution out in some remote part of the country. The Library of Congress, our intellectual and cultural center, a person was hired. And when that individual told the hiring agent, well, I am going through a gender change, she lost her job. And she lost her job, and I am deeply offended by this because the hiring people

said, oh, do you know what, you are going to working on terrorism, Members of Congress won't respect you.

Well, I very much resent having that prejudice imputed to me and to you. And I hope that the Library of Congress will come to its senses and rescind this terribly bigger decision. But let us be clear. You asked if there is a need if this can help a qualified military veteran here in the Library of Congress. Of course, there is a need in other parts of the country. And let me just close personally. And I understand, let us again be honest, I realized—look, when I first realized I was gay, it made me uncomfortable 50 years ago. It is not something—sexuality and difference, they come together, they get to the core of our human frailty, but we do get used to each other.

And in virtually every case where we have confronted a prejudice it has worked out fine and we now boast about the lack of it. We are simply saying this is a new category to some people. But everything else that applies in every other case applies here. And for people for whom you think, well, gee, it makes you uneasy, well, how do you think it makes the people who are themselves transgender feel? Does anybody think anybody would volunteer to engage—to feel the kind of tension that my colleagues have so well described, to feel trapped in the wrong body? And these are people who have courageously tried to deal with that so that they can maximize their ability to live the same lives we all want to live.

Why would we deny them protection? I understand—as I said, people got used to it. But that is all they are asking. Nobody is asking anybody to have dinner with people that make you uneasy or take them to the movies. Let them work, let them work. People are asking for the right to have a job and be judged on that job by the way in which they do the job. Why should that be considered disruptive? And the fact that they are this or that or the other, it is no more relevant than it used to be about their race or their gender or their sexual orientation.

And as my colleague pointed out, American corporations have benefited from this. No one is being given a license to misbehave, no one is being given a license here to be bizarre, although this institution has a tolerance for the bizarre that maybe other institutions would well emulate. But that is all we are asking.

So just to summarize, you have heard from my colleague who we are talking about. Not a huge number of people. But they are people who, first of all, had a deep anguish and have courageously dealt with that. And they are only asking to be constructive citizens and to be allowed their personal space. But to be judged in their impersonal work, their economic work, solely by their merits. They are not now protected by the law. The argument that it would be disruptive is simply not true.

It hasn't been disruptive in major corporations or in those States that have done it. These are people who are grappling with something that many here, let us be honest, are probably grateful that you don't have to grapple with. Can't you help them? That is all we are talking about. We are talking about responding as a compassionate society knowing that fighting discrimination legally has worked well for this country, to extend it to a group that may be new, that is certainly new, may be disturbing to a few people. But

there is no more reason to deny them that than there was to anybody else. Thank you.

Chairman ANDREWS. Thank you. And we appreciate the compliments to the committee. But the way we operate here is we don't measure our duty by the quantity of those who are aggrieved. We measure it by the depth of the grievance that those who have been discriminated against suffer. So we are not concerned about how many people have been discriminated against, we are concerned about the gravity of the discrimination. The way that I would like to proceed is if—do any of our members have questions on the majority side for either of our colleagues? That is very good.

Mr. FRANK. Can I ask, as the chairman of a full committee, can I ask you two questions? How do you get them to not make opening statements and not ask questions?

Chairman ANDREWS. Ask Mr. Miller. He is good at that. Any on the minority side for our colleagues? I would propose that we have a number of floor votes, we will go cast our votes, we will immediately return and proceed with the next panel and we will stand in adjournment until then.

[Recess.]

Chairman ANDREWS. Ladies and gentlemen, the subcommittee will reconvene. We thank you for your patience. Hopefully there will be a hiatus in floor votes so we can get to our business.

I am going to begin by reading the biographies of our witnesses who are here for our second panel. And we will then proceed with statements from the panelists and questions from our colleagues that are present here.

COL Diane Schroer served for 25 years in the Army Special Forces as a key strategist on homeland security. After entering the Army, Colonel Schroer completed Ranger and Airborne School and eventually rose to position senior assessment director. The Colonel is an honors graduate of the U.S. Army Special Forces Qualification Course and holds an undergraduate degree from Northern Illinois University.

Colonel, welcome, and thank you for your service to our country.

Diego Sanchez is the director of Public Relations and External Affairs for the AIDS Action Committee. Mr. Sanchez has 26 years of experience in public and media relations—we could use you—marketing and diversity management. Hispanic Business magazine named him among the top 100 most powerful Latinos/Latinas in corporate America. Mr. Sanchez is a Rhodes Scholar candidate and an UMass Boston emerging leader senior fellow. He holds a BA from the University of Georgia.

Welcome, Mr. Sanchez. Glad you are with us.

JC Miller is a partner at the law firm of Thompson Hine LLP focusing on labor and employment law as well as business litigation. Prior to entering private practice, Ms. Miller was an assistant attorney general for the State of Florida, chief of litigation for the Florida Department of Labor and Employment Security, and special counsel to the Florida Department of Corrections. She holds a BA from Smith College and a JD from the University Of Notre Dame Law School.

Welcome, Ms. Miller. Glad that you are with us.

Bill Hendrix has worked for the Dow Chemical Company since 1989 and has been active in the company's Gay, Lesbian and Allies at Dow, which is GLAD, the acronym, network almost since its inception in 2000. Mr. Hendrix has made presentations on LGBT topics at the Out and Equal Conference and for local employee resource groups. He also serves on the Board of the Indiana Youth Group, a local LGBT youth advocacy agency. Mr. Hendrix holds a Ph.D. from Iowa State University.

Welcome. It is Dr. Hendrix, I guess it should be then, right? Welcome.

Glen Lavy is senior counsel and senior vice president for marriage litigation for the Alliance Defense Fund. Before joining the ADF, Mr. Lavy practiced litigation matters such as securities fraud, antitrust and tax law. He also worked for two years as senior law clerk to the Honorable John L. Coffey, United States Court of Appeals for the Seventh Circuit. Mr. Lavy is a graduate of the Harvard Law School where he served as executive editor of the Harvard Journal of Law and Public Policy.

Welcome, Mr. Lavy. We are glad that you are with us.

Sabrina Marcus Taraboletti worked for 23 years as a space shuttle aeronautics engineer with a NASA contractor at the Kennedy Space Center. Ms. Taraboletti currently works for the Florida Department of Transportation. She earned her undergraduate degree from SUNY Maritime College, earning a Coast Guard license to be a Merchant Marine Officer.

Welcome, Ms. Taraboletti. Glad you are with us.

And finally, last but not least, Shannon Minter is legal director for the National Center for Lesbian Rights, one of the Nation's leading advocacy organizations for lesbian, gay, bisexual, and transgender people. He also serves on the American Bar Association Commission on Sexual Orientation and Gender Identity and holds a J.D. from the finest law school in America, the Cornell Law School, and an honorary degree from the City University of the New York School of Law.

I say that because I am hopelessly biased but also inscrutably accurate.

In front of you, you will see a panel of lights. This is so that we can keep people's testimony under some time constraints and get to questions from the members of the committee.

Your written statements will be accepted, without objection, to the record in their entirety.

As far as your oral statements are concerned, we ask that you limit them to five minutes. When the green light goes on, you should begin speaking. When the yellow light appears, that means you have one minute, and we would ask you to summarize your oral remarks. And when the red light goes on we would ask you to stop, so we can move on to the next person.

And with that, we will begin, Colonel, with you. And we welcome you to the subcommittee.

STATEMENT OF COL DIANE J. SCHROER, U.S. ARMY, RETIRED

Colonel SCHROER. Mr. Chairman and committee members, thank you for the opportunity to appear and testify here today.

My name is Diane Schroer, COL, U.S. Army, retired, and I am a transgender woman. I grew up in Chicago as David Schroer with two older brothers in the most normal of loving families. I entered the U.S. Army through ROTC as a second lieutenant immediately following graduation from Northern Illinois University in 1978. I completed Ranger and Airborne School, and in 1987, I was an honor graduate of the U.S. Army Special Forces Qualification Course.

I served 16 years in Special Forces, including tours as a detachment commander, company commander and battalion commander, accumulating 450 parachute jumps. I participated in combat operations in Panama and Haiti, as well as operational missions in the Middle East, Central America, Africa, and Europe. Additionally, I initiated humanitarian demining operations in most of southern Africa.

At U.S. Special Operations Command, I orchestrated the Program Objective Memorandum, or POM, reviewing 5,000 program lines, covering all aspects of Special Operations for four years. I knew every unit, piece of equipment, operation, exercise, development program and construction project, where every dollar was supposed to be spent, and where it actually was spent.

Following 9/11, I was selected to organize and direct a classified 120-person interagency organization responsible for all Department of Defense operations against the country's most significant terrorist threats and all long-term planning for the global war on terrorism.

After almost two years of successful operations, with 25 years in the Army, 12 of those in command positions, I retired in January 2004. Cumulatively, the U.S. Government had spent 30 years and several million dollars educating me and perfecting my experience in the fields of insurgency and counterterrorism.

I currently run a small independent consulting company that has done work for the Department of Homeland Security, the U.S. Coast Guard, the National Guard, and the Federal Bureau of Investigation, focused on homeland security and maritime high-risk counterterrorism operations. I possess a Top Secret Special Compartmented Information capable security clearance, which was updated without issue in July 2007.

I am here today, because in fall 2004, I applied and interviewed for the position of specialist in terrorism and international crime with the Congressional Research Service of the Library of Congress. In December, I was told I had been selected for the position, and after some rapid salary negotiations, I accepted the job.

At the time I applied for the position, I was in the process of my gender transition from Dave to Diane, although still legally David, and therefore applied as David. When I was offered the job at CRS in December 2004, I felt it would cause less confusion all around if I simply started work as Diane. So I invited my future supervisor to lunch so I could tell her about my plans and help her ensure everything went smoothly.

I met my future supervisor at her office, and she introduced me to several new colleagues. At lunch, she spoke at length on my new responsibilities involving preparing, publishing, and informing

Members about the critical issues surrounding terrorism and homeland security.

Midway through lunch, I mentioned a personal item that I wished to discuss. I asked her if she knew what it meant to be transgender. I explained that I had a female gender identity and was going to be living full time as a female. My intent was to start when I commenced work at CRS.

I knew that whether I was David or Diane, I would provide a wealth of background knowledge and superb research support to the Congress. I had truly felt that my future supervisor at CRS would feel the same way. Yet as we parted company following lunch, she mentioned that I had given her a lot to think about.

The following day, she called and said that, after a long and sleepless night, she decided I was not a good fit for the Library. In 24 hours, I had gone from a welcome addition to the staff to someone who was not a good fit. As we used to say, hero to zero in 24 hours.

I enlisted the assistance of the ACLU. And in June of 2005, they filed suit in Federal Circuit Court against the Library of Congress. In its legal papers, the Library has claimed it didn't hire me because I would lose my colleagues in the Special Operations community. Ironically, these are precisely the people who have been second only to my family as my staunchest supporters. The Library has claimed that it could not hire me because it was concerned I would lose my security clearance, yet it was recently renewed without issue. The Library has claimed that it could not hire me because I would have no credibility with Members, yet I testify in front of this committee here today.

In summary, I hope every day for the call to come from the Library saying, "we have made a tremendous mistake." I am ready and able to serve this country once again. And I look forward to doing so.

Thank you.

[The statement of Colonel Schroer follows:]

Statement on Discrimination Against Transgender Americans in the Workplace

Before the House Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions

Testimony of Diane J. Schroer, Colonel, U.S. Army (Ret.) June 26, 2008

Mr. Chairman and Committee Members, thank you for the opportunity to appear here and testify today.

My name is Diane Schroer, Colonel, U.S. Army, Retired and I am a transgender woman. I grew up in Chicago as David Schroer with two older brothers in the most normal of loving families. I entered the U.S. Army through ROTC as a 2nd Lieutenant immediately following graduation from Northern Illinois University. I completed Ranger and Airborne School and served four years on the East-West German Border, completing three company command tours along the way. In 1987, I was an honor graduate of the U.S. Army Special Forces Qualification Course.

I served sixteen years in Special Forces including tours as a detachment commander, company commander, and battalion commander, accumulating 450 parachute jumps. I participated in combat operations in Panama and Haiti as well as missions in the Middle East, Central America, Africa, and Europe. Additionally, I initiated humanitarian demining operations in Namibia, Rwanda, Mozambique, Botswana, Zambia, and Zimbabwe.

As the Senior Assessment Director, I orchestrated the Program Objective Memorandum or "POM" for US Special Operations Command, reviewing 5,000 programs covering all aspects of Special Operations for 4 years. I knew every unit, piece of equipment, operation, exercise,

development program, and construction project; I knew where every dollar was supposed to go and how it was spent.

Following the attacks on 9/11, I was selected to organize and direct a classified 120-person interagency organization responsible for all Department of Defense operations against the country's most significant terrorist threats and all long-term planning for the Global War on Terrorism. After almost two years of successful operations, with twenty five years in the U.S. Army, I retired in Jan 2004.

Since my retirement, I have been intimately involved in Homeland Security, Critical Infrastructure Protection, and Maritime High-Risk Counterterrorism Operations. I currently run a small, independent consulting company that has done work for the Department of Homeland Security, U.S. Coast Guard, the National Guard, and the Federal Bureau of Investigation, to name a few. I posses a current Top Secret, Special Compartmented Information capable security clearance, which was updated in a Periodic Review completed without issue in July 2007.

I am here today because, in Fall 2004, I applied and interviewed for the position of Specialist in Terrorism and International Crime with the Congressional Research Service of the Library of Congress. In December 2004, I was told I had been selected for the position and after some rapid salary negotiations, I accepted the job.

I knew that I was well-qualified for the position. The U.S. Government had spent thirty years and several million of dollars educating me and perfecting my experience in the fields of Insurgency and Counterterrorism. As an aside, I also have a personal library collection of approximately 18,000 volumes covering predominantly those subjects.

At the time I applied for the position, I was in the process of my gender transition from Dave to Diane. However, I was still legally David – meaning that all my documentation was still under the name David – and therefore, applied for the position as David. When I was offered the job by CRS in December 2004, I felt that it would cause less confusion all around if I simply started work as Diane, rather than starting as David and then transitioning to Diane. So, I invited my future supervisor at CRS to lunch so I could tell her about my plans, and help her ensure everything went smoothly.

On the day of our lunch meeting, I met my future supervisor at her office. She introduced me to several new "colleagues" as she put it, on our way out of the building. At lunch she spoke at length about my new responsibilities, which would involve preparing, publishing and informing Members about the critical issues surrounding terrorism and homeland security. During a break in her description of my new duties, I mentioned that I had a personal item I wanted to discuss with her. I asked her if she knew what it meant to be transgender, and explained that I had a female gender identity, and would be transitioning to living as a female on a full-time basis. My intent was to do this when I commenced work at CRS.

I knew that whether I was David, or Diane, I would provide excellent research support to the Congress. I had truly thought that my future supervisor at CRS would feel the same way. Yet, as we parted company following our lunch conversation, she said that "I had given her a lot to think about." And then, the following day, she called and said that "After a long and sleepless night, she decided I was not a good fit for the Library." I told her I was very disappointed to hear her say that. In twenty-four hours, I had gone from a welcome addition to the staff to someone who was "not a good fit" because I was a woman. Hero to zero in twenty-four hours.

I enlisted the assistance of the ACLU and, in June 2005, they filed suit in Federal Court on my behalf against the Library of Congress.

In its legal papers, the Library has claimed that it did not hire me because it was concerned that I would lose my colleagues in the Special Operations community as a result of my gender transition. The ironic thing is that these are precisely the people who have been only second to my family as my staunchest supporters in this fight.

The Library has claimed that it could not hire me because it was concerned I might lose my clearance, yet I hold a current TS/SCI capable clearance and continue to work on several highly classified initiatives.

The Library has claimed that it could not hire me because I would have no credibility with Members, given that a woman could not possibly know the things I know. And yet I testify in front of this committee here today.

In summary, as a Master Parachutist, honor graduate of Army Ranger School, the Special Forces Qualification Course, Command and General Staff College, and the National War College, with two Masters Degrees, having been awarded the Defense Superior Service Award, four Meritorious Service Medals, five foreign parachute qualifications, and two Expeditionary Medals for combat operations, I hope every day for the call to come from the Library saying, "We've made a tremendous mistake."

I am ready and able to serve this country once again, and look forward to the day when I am given the opportunity to do so.

Citation

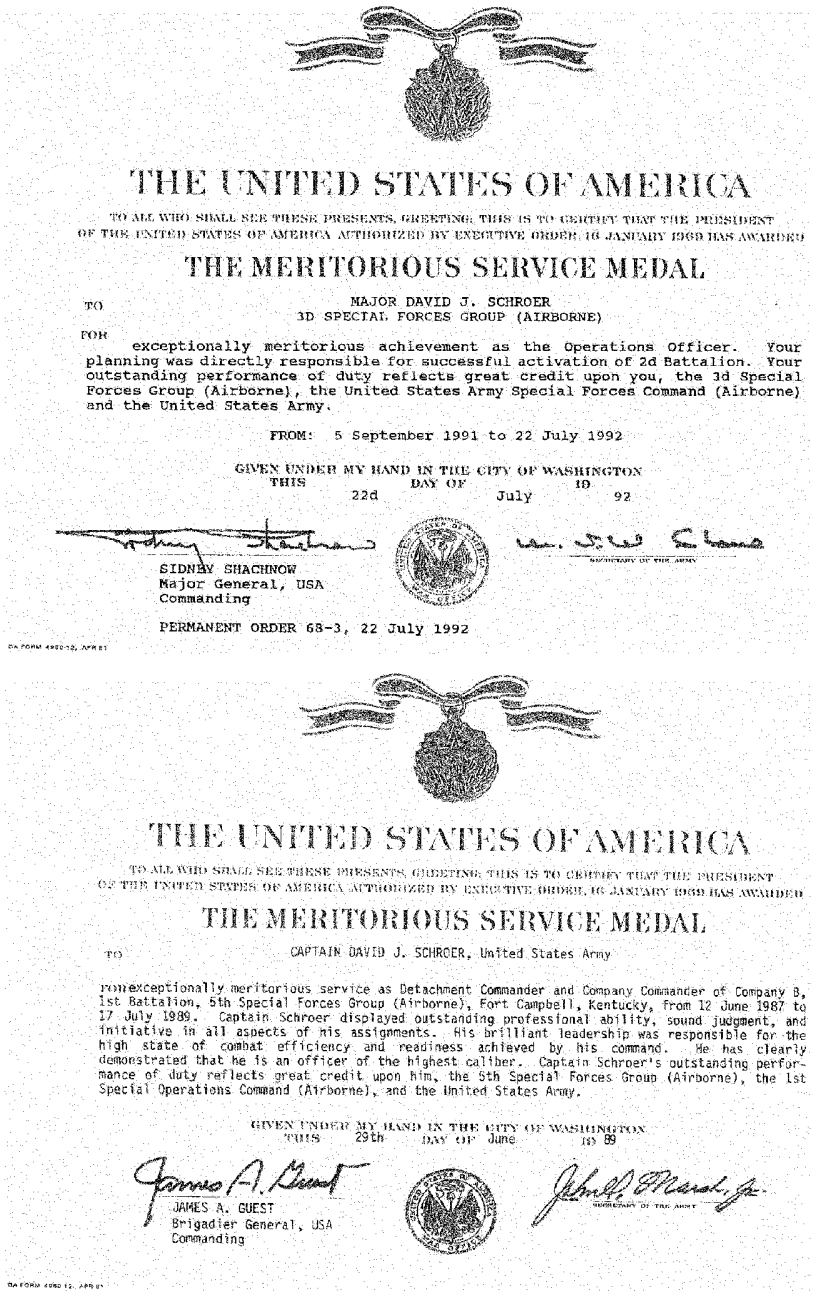
TO ACCOMPANY THE AWARD OF THE

Defense Superior Service Medal

TO

DAVID J. SCHROER

Colonel David J. Schroer, United States Army, distinguished himself by exceptionally superior service while serving as Chief, Wargaming Branch and Chief, Forces Assessment Division, Center for Force Structure, Resources, and Strategic Assessments, United States Special Operations Command, MacDill Air Force Base, Florida, from July 1997 to August 2002. As the senior of five assessment directors, Colonel Schroer brilliantly led the evaluation of the command's force structure, acquisition, modernization, and readiness programs to ensure the best possible balance of special operations forces (SOF) and equipment to meet mission requirements. Recognized as the command's top expert on SOF and related acquisition programs, Colonel Schroer ensured the Program Objective Memoranda for 1999 through 2004 were delivered to the Office of the Secretary of Defense with the appropriate forces and equipment to make SOF the most capable and relevant forces in existence well into the 21st Century. The singularly distinctive accomplishments of Colonel Schroer reflect great credit upon himself, the United States Army, and the Department of Defense.



THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING: THIS IS TO CERTIFY THAT THE PRESIDENT OF THE UNITED STATES OF AMERICA AUTHORIZED BY EXECUTIVE ORDER, 16 JANUARY 1969 HAS AWARDED

THE MERITORIOUS SERVICE MEDAL

TO MAJOR DAVID J. SCHROER
3D SPECIAL FORCES GROUP (AIRBORNE)

FOR exceptionally meritorious achievement as the Operations Officer. Your planning was directly responsible for successful activation of 2d Battalion. Your outstanding performance of duty reflects great credit upon you, the 3d Special Forces Group (Airborne), the United States Army Special Forces Command (Airborne) and the United States Army.

FROM: 5 September 1991 to 22 July 1992

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS 22d DAY OF July 19 92

SIDNEY SHACHNOW
Major General, USA
Commanding

SECRETARY OF THE ARMY

PERMANENT ORDER 68-3, 22 July 1992

DA FORM 4950-12, APR 81

THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING: THIS IS TO CERTIFY THAT THE PRESIDENT OF THE UNITED STATES OF AMERICA AUTHORIZED BY EXECUTIVE ORDER, 16 JANUARY 1969 HAS AWARDED

THE MERITORIOUS SERVICE MEDAL

TO CAPTAIN DAVID J. SCHROER, United States Army

FOR exceptionally meritorious service as Detachment Commander and Company Commander of Company B, 1st Battalion, 5th Special Forces Group (Airborne), Fort Campbell, Kentucky, from 12 June 1987 to 17 July 1989. Captain Schroer displayed outstanding professional ability, sound judgment, and initiative in all aspects of his assignments. His brilliant leadership was responsible for the high state of combat efficiency and readiness achieved by his command. He has clearly demonstrated that he is an officer of the highest caliber. Captain Schroer's outstanding performance of duty reflects great credit upon him, the 5th Special Forces Group (Airborne), the 1st Special Operations Command (Airborne), and the United States Army.

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON
THIS 29th DAY OF June 19 89

JAMES A. GUEST
Brigadier General, USA
Commanding

SECRETARY OF THE ARMY

DA FORM 4950-12, APR 81

Chairman ANDREWS. Colonel, thank you very much for your time.

Mr. Sanchez, welcome to the committee.

STATEMENT OF DIEGO MIGUEL SANCHEZ, DIRECTOR OF PUBLIC RELATIONS AND EXTERNAL AFFAIRS, AIDS ACTION COMMITTEE

Mr. SANCHEZ. Mr. Chairman and members of the subcommittee, thank you for adding my voice to those you hear today.

My name is Diego Miguel Sanchez, and I am a 51-year-old transsexual Latino man. I was born female and transitioned to male. I grew up as an Army brat and ended up in Augusta, Georgia, where my 80-year-old mother lives today. When I was five, I told my parents I was born wrong, that I felt like a boy inside.

My mother showed me a magazine with Christine Jorgensen on the cover. She has told me that she didn't know if there were other people like me, people who were born a girl and felt like a boy, but that this woman was born a boy, grew up to be a man, and became a woman later in life. And she said that by the time that I grew up, that it would be okay. From that time, my parents gently, privately, dually socialized me. My mother taught me to do the things that girls needed to do. And my father raised me to know the lessons that men would have to know.

It was difficult and painful. I have to be honest. I had as many tutus as Tonka trucks. But I could survive the former because of the latter. My parents always gave me hope, and my positive outlook on life is the fruit of that loving labor.

Mom was mostly right. It is usually pretty okay for me these days. I am grateful to be gainfully employed by the AIDS Action Committee of Massachusetts and AIDS Action Council here in Washington as the director of Public Relations. My degree is in journalism from the University of Georgia. I have a major in public relations. I am the only male Georgia letterman that I know of who earned that letter on the women's tennis team.

I was one of those straight-A perfect-attendance types. Dad always told me, "the harder you work, the luckier you get." I worked hard, and I am lucky.

Because sex reassignment procedures weren't as developed in 1980 as they are now, I focused on work, hoping to change things later. I spent nearly 20 award-winning years climbing the corporate ladder in global companies, names that you would know, like Coca-Cola, Burson-Marsteller, Holiday Inn Worldwide, ITT Sheraton, and Starwood Hotels.

I am a loyal worker, a passionate leader, and a man who had to wait for fear of being fired to be who I was always destined to be, Diego Miguel Sanchez, an honorable man.

My career entailed navigating the newly defined glass ceiling. It entailed probing limited opportunities for female professionals of color. And it entailed trying to find a way to be a man while I looked like a woman in the workplace. It was heartbreaking and painful. But it was necessary, and it was the only way that I knew to save money to have sex reassignment, which I did later from my own savings.

I struggled to find self-respect in a world that I never imagined would allow, let alone accept or embrace, someone like me, someone who seemingly was born wrong. I was an honest person who could be honest about everything, except myself. I negotiated with my corporate colleagues for things that would moderately affirm

me. Things that would mean nothing to anyone else meant so much to me. It meant everything to get a tie instead of a scarf as the company talisman. I asked people to use my first initial as my first name until I could change this medically and legally.

I have lived long enough to achieve these gains because I was able to do the one thing that military families are taught when there is a challenge: I sucked it up. But when my head hits the pillow every night, I close my eyes and think about my friends who are transgender whose lives aren't so easy. I miss my friend Alexander John Goodrum, who took his own life. I feel guilty about my brother, my friend, Ethan St. Pierre, who lost his job just because he began his transition from female to male. I still recognize that he lost his job because he was brave and honest.

And because I work in public health, I know countless transgender people who are homeless. These are good people who can't get work. I flash my ID every day. It is never questioned. But I have friends whose licenses and IDs don't match their gender identity. So they are disclosed as transgendered the minute that they have to show that ID, including when they try to get work. I see this burden when recruiting firms do their due diligence and check my Social Security number. It closes doors for me, and it limits the lives of my friends.

I grew up in the south where I wasn't allowed to be in public swimming pools because I am not white. This experience of employment discrimination against trans people feels like a flashback. Please treat us, including me, transgender people, as you treat others.

Thank you.

[The statement of Mr. Sanchez follows:]

Prepared Statement of Diego Miguel Sanchez

Mr. Chairman and Members of the Subcommittee: Thank you for adding my voice to those you hear today. My name is Diego Miguel Sanchez, and I am a 51-year old transsexual Latino man. I was born female and transitioned to male. I grew up as an Army brat around the world, ending up in Augusta, Georgia, where my 80-year-old mother lives today.

When I was five, I told my parents that I was born wrong, that I felt like a boy inside. My mother showed me a magazine with Christine Jorgensen on the cover. She told me that she didn't know if there were other people like me—girls who felt like boys—but that this woman was born a boy, felt like a girl and was able to become a woman later in life. Mom told me that by the time I grew up, it would be okay. From that time, my parents gently, privately, dually socialized me, but it was our secret, of sorts. My mom prepared me for life as girls are expected to be, and my dad taught me the lessons that boys needed to become men. It was rough—I had as many tutus as Tonka Trucks. But I could survive the former because of the latter. My parents always gave me hope, and my positive outlook on life, despite painful hardships, is the fruit of that loving labor. Mom was mostly right; it's almost okay for me these days.

I am grateful to be gainfully employed as the Director of Public Relations & External Affairs at AIDS Action Committee of Massachusetts and AIDS Action Council in Washington, D.C. My college degree is in Journalism with a major in Public Relations from the University of Georgia. I am the only male Georgia letterman I know of who earned it on the women's tennis team. I was one of those Straight A, perfect attendance students. Dad always told me, "The harder you work, the luckier you get." I worked hard. I am lucky.

Because sex reassignment procedures weren't as developed in 1980 as today, I focused on work, hoping to make changes in the future. I spent nearly 20 award-winning years climbing the corporate ladder at several global companies including Coca-Cola, Burson-Marsteller, Holiday Inn, ITT Sheraton and Starwood Hotels.

I'm a loyal worker, a passionate leader and a man who had to wait, for fear of being fired, to be who I was always destined to be: Diego Miguel Sanchez, an honorable man. My career entailed navigating the newly named Glass Ceiling, probing limited opportunities for female professionals of color and trying to find a way to be a man while I looked like a woman in the workplace. It was heart-breaking and painful. But it was necessary. I did it because it was the only way I knew to save money to pay for sex reassignment, which I did later from my own savings.

I struggled with finding self-respect in a world that I never imagined would allow—let alone accept or embrace—someone like me, someone born seemingly wrong. I was an honest person who could be honest about everything except about me. I negotiated with my corporate colleagues for things that would moderately affirm me. It's the little things that seem like 'nothing' to others, that meant so much. It warmed my heart to receive a tie rather than a scarf as a company talisman. I asked people to use my first initial as my first name until I could change things medically and legally.

I have lived long enough to achieve those gains because I was able to do the ONE thing that military families are ordered to do when there's a challenge: I sucked it up.

But when my head hits my pillow every night, I close my eyes and think about my friends who are transgender whose lives aren't easy. I miss my friend Alexander John Goodrum who took his own life. I feel guilty about my friend Ethan St. Pierre who lost his job just because he began his transition from female to male. I was the first transman he met, and he lost his job because he is brave and honest. It wasn't right. I still lose sleep over that injustice.

Because I work in public health, I know countless transgender people who are homeless, and I know these people by their names and character. These are good people who can't get work and whose lives are cast to the streets in large cities and small towns. It's a disgraceful injustice.

I flash my ID every day without concern. It's not questioned because I have had the luxury of personally paying to transition to male and aligning my IDs and myself. But I have friends whose licenses' and passports' gender don't match their identity, so they are disclosed as transgender the minute they show an ID, including when they try to get a job. I face these burdens when recruiting firms ask for my former names as part of their due diligence. It closes doors for me, and it limits the lives of my friends.

It's an injustice that we are ever evaluated for employment based on other people's comfort with our existence. I grew up in the South, where I wasn't allowed to swim in public pools because I'm not white. This experience today feels like a flashback.

I am before you today to affirm that transgender and transsexual people, including me, are equally human and deserve to be treated like other people. Thank you.

Chairman ANDREWS. Mr. Sanchez, thank you very much for your statement.

Ms. Miller, I look forward to hearing from you.

STATEMENT OF JC MILLER, PARTNER, THOMPSON HINE LLP

Ms. MILLER. Thank you, Chairman Andrews and Ranking Member Kline and members of the committee.

I have spent 19 years as a trial lawyer after graduating from what I still believe is the world's finest law school, the University Of Notre Dame.

Chairman ANDREWS. Your testimony is now concluded. Thank you very much.

Ms. MILLER. There are more fighting Irish than fans of Big Red, Chairman.

Chairman ANDREWS. I will point out—and I will not take this away from your time—was Dean Blakey the dean when you were at Notre Dame?

Ms. MILLER. Yes, sir, he was.

Chairman ANDREWS. That is right. He was merely a professor at Cornell.

Ms. MILLER. We saw his talent.

My purpose in speaking to you today is not to encourage or dissuade the committee from passing legislation on workplace discrimination against transgender persons.

Rather, my intent is to provide you with some insight into the potential unintended legal consequences of using certain language in any proposed legislation and the challenges that the American businesses may face in implementing that legislation.

Promoting a workplace free of discrimination is not only laudable; it is sound business practice. However, anytime new legislation is enacted impacting the workplace, there is a subsequent disruption in the workplace as managers, human resource professionals and employees all try to implement the new policies and adjust their working routine to comply with the new legal mandate. This disruption can be minor, or it can be significant.

At times well-intended legislation is enacted without regard to the practical implications it will have in everyday operations of the American business. Responsibility for ensuring that the new law is applied to the workplace rests with somebody in the company; often it is human resources staff. But very often, with smaller companies, with 15 or more employees, say 15 to 25, there is no dedicated human resources position. It is instead a task that falls to someone else in the company who is already juggling other duties, whether that is the owner or one of the managers.

Even in those companies that have sophisticated human resources staff, the implementation of new legislation can be difficult if the law is particularly complex, or too vague, or requires a drastic change in the work environment. As a trial attorney, I have seen numerous instances where confusion over what is required by a statute that is unclear has led to a lawsuit and that, nonetheless, an employer who has tried to comply in good faith with the law still gets sued.

And for these reasons I would ask the committee to carefully consider the implications of any legislation which might be enacted regarding transgender discrimination. I respectfully suggest that the committee consider three specific areas for any proposed legislation:

The first would be in the definition of gender identity or transgender. Some of the proposed language which has been brought to my attention would include the word "mannerism." That is disturbing. We do not classify protected classes under the law based on mannerisms. And I am concerned that if we use that word in any definition, we actually may be perpetuating stereotypes. For instance, 100 years ago, a firm handshake may have been a hallmark of masculinity. In today's world, I would hope that if a businesswoman has a firm handshake that is a sign of not masculinity, but of the fact that she is confident and she is very competent. And again, mannerisms are something that can be changed. Intrinsic characteristics are not. So please be careful in using the type of language that you would use if you decide to go forward with this bill and define what is transgender or gender identity.

The second purpose I would like—the second item I would like the committee to consider would be the carve-out exemption for an

area of certain "shared facilities." Some of the language I have seen has also indicated that the shared facilities would be places where there would be showers or dressing areas or an area where viewing someone unclothed would be unavoidable. To quote one of my dear mentors from the South, that seems to be that we went around the block the long way to get where we need to be. The word "restroom" really needs to be in the legislation if there is any legislation. Quite frankly, you don't want to have trial lawyers litigating over whether the ladies room is a place where seeing somebody unclothed is unavoidable or not unavoidable. The word "restroom" clearly needs to be inserted into any type of legislation.

And the carve-out is important, and I would encourage the committee to continue to use those carve-outs. Employees have a very high expectation of privacy in certain areas, such as dressing rooms, locker rooms and restrooms. I handled a case a few years ago up in my home State of Massachusetts where a female employee had brought a Title VII lawsuit, alleging hostile work environment under Title VII based on the fact that there was a hole in the ladies room which was about knee high that, that was not put there intentionally, but it still allowed, if someone bent down, the opportunity to view into the restroom. And she felt that that was significant enough to her to go ahead and rest part of her Federal lawsuit upon it. Again, you need to be aware of the fact that employees do find certain areas of privacy very important.

Finally, the issue of notification. There is some issue here about what to do with an individual who might be transitioning from one gender to another. And that is not easy. I understand that the committee will be challenged if it addresses that. We do need to have some sensitivity to the employer. At what point does the employer need to make modifications to their work room for individuals who might be transitioning? If the person gives notice on Monday, does the employer need to then allow them to use the restroom of the opposite sex on Tuesday?

Finally, I would encourage the committee to consider jurisdiction if there is any type of legislation that is passed. With all due respect to the State judiciary, Federal courts are far more equipped to handle discrimination suits. They are better funded. The judges see them more often, and they process through the court system much more rapidly than at the State level. And for that reason, I would encourage that this committee consider the jurisdiction of the Federal courts to be exclusive if there is any such type of legislation.

And finally, prevailing costs or costs and fees to a prevailing party is also important. Employers are getting hammered by legal fees and costs to fight frivolous lawsuits. And they need to have some sort of mechanism to be able to recoup some of those costs.

[The statement of Ms. Miller follows:]

Prepared Statement of JC Miller, Partner, Thompson Hine LLP

Chairman Andrews, Ranking Member Kline, members of the Committee, I am honored to have been invited to testify before you today on "An Examination of Discrimination Against Transgender Americans in the Workplace."

For the past 19 years I have represented both public and private clients in litigation of discrimination claims such as sexual harassment, equal pay, race, age, religion and disability. Prior to entering private practice, I was an Assistant Attorney

General for the State of Florida, the Chief of Litigation for the Florida Department of Labor and Employment Security, and Special Counsel to the Florida Department of Corrections, where I represented public agencies in litigation, torts and constitutional challenges and oversaw legislative analyses of proposed bills. I have extensive experience in addressing discrimination in the workplace, and I have been recognized in court as an expert witness in the fields of workplace investigations and sexual harassment.

My purpose in speaking to you today is not to encourage or dissuade the Committee from passing legislation on workplace discrimination against transgender persons, specifically H.R. 3685. Rather, my intent is to provide some insight into the potential unintended legal consequences of using certain language in any proposed legislation.

Promoting a workplace free of discrimination is not only laudable it is sound business practice. However, any time new legislation is enacted impacting the workplace, there is a subsequent disruption in the workplace as managers, human resource professionals and employees all try to implement new policies and adjust their working routine to comply with the legal mandate. This disruption can be minor or significant depending upon the nature of the new legislation.

At times, well intended legislation is enacted without regard to the practical implications it will have on the every day operations of the American business. Responsibility for ensuring that the new law is applied to the workplace rests with someone in the company, often the human resource staff. But at smaller companies, for instance many of those with less than 25 employees, there is no dedicated full time human resource position and the task to implement the new law falls to an owner, or manager who is already juggling other duties. Even in those companies that have a sophisticated human resources staff, the implementation of new legislation can be difficult if the law is particularly complex, too vague, or requires drastic change to the working environment.

Legislation that is vague, overbroad, or imposes radical change frequently leaves business managers frustrated and confused trying to conform to the new law. Vague or impractical legislation significantly increases the risk of litigation. When language in a statue is unclear the consequence can be radically different interpretations of rights and responsibilities by the employer and employee. These different interpretations of the law can result in an impasse in the workplace so severe it leads to litigation. As a trial attorney I have seen numerous instances where confusion over what is required or permitted under a statute has led to a lawsuit by an employee against an employer that nonetheless had made a good faith attempt to comply with the law. For these reasons I urge the Committee to carefully consider the implications of any legislation which might be enacted regarding transgender discrimination.

I respectfully suggest the Committee consider three specific areas when drafting any legislation on the issue: the definition of gender identity; the issues surrounding shared facilities; and jurisdiction over enforcement of rights.

While I recognize that the definition of gender beyond physiological or biological parameters is challenging, an overly broad definition will not provide the necessary guidance to a business manager to deal with the matter. Definitions which include a reference to "mannerisms" without more precise language is confusing and could inadvertently perpetuate sexual stereotypes. After all what is a gender related "mannerism"? For example, at one time a firm handshake was the hallmark of masculinity; however in our current society a business woman with a firm handshake is not perceived as 'masculine' as much as she is viewed as confident and professional. But legislation that suggests that any mannerism is still more frequently attributed to one gender more than the other inherently perpetuates the stereotype. Asking a business manager to first proscribe certain mannerisms to one gender rather than the other, then to refrain from discriminating against any employee with that mannerism because it maybe part of the employee's "gender identity", is counterproductive. Our goal should not be to label a mannerism as "masculine" or feminine", but rather to determine if certain conduct is acceptable or unacceptable in the work environment-regardless of which gender displays the mannerism.

Second, my understanding is that any legislation regarding gender identity would include a "carve out" exemption for shared facilities, where there may be showers or undressing. This exemption is crucial to ensuring that any legislation protecting one class of employee would not adversely impact the rights of another class. However, it is vital that the language of legislation be clear and uncomplicated when defining "shared facility". Some of the proposed language which I have seen exempts "shower or dressing facilities in which being seen unclothed is unavoidable". Remarkably absent from this language is the word "Restroom". Not all restrooms contain showers, nor is being seen unclothed in a restroom, particularly a ladies room

unavoidable. Yet employees do have expectations of privacy in restrooms and complaints regarding restrooms in the workplace are not uncommon to Human Resources staff. Thus restrooms ought to be included in the exemption.

Additionally, the language of the exemption must better address the process of providing adequate facilities to an employee in the process of transforming gender. Any requirement that the Employer provide comparable dressing room/restroom facilities to an employee after notification that the employee is undergoing a gender transformation needs to be examined pragmatically. At what point after "notification" must an employer act? If the employee notifies the Employer on Monday that he or she is undergoing gender transformation must the Employer permit the Employee access to the restroom or dressing room of the opposite gender on Tuesday? Or must the Employer find an alternative yet comparable facility within hours of the notification? Furthermore, if the Employer's facility is such that it is unable to provide an alternative comparable facility, at what point in the transformation process should the Employee be given access to the facility of the gender to which they are transitioning? If access is given early in the transition process the Employer risks violating the privacy of employees currently using the facility who might be offended that a co-worker currently manifesting all the physiological attributes of the opposite gender is using the same facility. Finally legislation should consider the implication of requiring a business that provides a single, same sex facility for both employees and customers to provide a facility for an employee "undergoing" a transition to the opposite gender, and what consequence the requirement may have on the customers unprepared to share a facility with an employee still with the physical attributes of the opposite gender.

Third, any legislation should carefully consider jurisdiction issues for the enforcement of rights. With all due respect to the institution of the court state systems and the many fine members of the state judiciaries, federal courts are better equipped to deal with litigation of federal rights. Making the enforcement of rights under ENDA or its progeny, the exclusive jurisdiction of the federal courts can promote more expedient resolution of litigation as well as the likelihood of more consistent outcomes. Unlike state courts which apply each state's rules of evidence and procedure to suits, federal courts uniformly apply the same federal rules of civil procedure and evidence. State courts are often caught in the uncomfortable position of trying to apply substantive federal case precedent to an action involving a federal claim that is constrained by state rules of procedure.

Finally, on a related note, any legislation should provide for fees and costs to a prevailing party in the litigation. Even if Congress determines that federal courts should not have exclusive jurisdiction of an action brought under the bill, the legislation should nonetheless provide for fees and costs to an Employer if the Employer prevails in the litigation. Litigation costs incurred by small to medium business defending themselves from frivolous litigation are exorbitant. These costs are generally unanticipated by the business and often the company is not budgeted to absorb the costs without sacrificing another business opportunity such as adding a new position, or expanding the business.

In closing, the work of the Committee in addressing discrimination in the workplace is laudable and critical. However it is important to recognize that most Employers promote diversity and recognize that discrimination in the workplace is both costly and counterproductive. As any legislation that mandates a change in the workplace is disruptive, that disruption should be kept to a minimum and the statutory language should provide the business manager with clear guide posts which acknowledge the practicalities of the workplace.

I am honored to have had this opportunity to address the Committee and I thank you for your time and consideration this morning.

Chairman ANDREWS. Ms. Miller, thank you very much. I appreciate it.

Dr. Hendrix, welcome to the subcommittee.

STATEMENT OF WILLIAM H. HENDRIX, III, PH.D., GLOBAL LEADER, GAYS, LESBIANS AND ALLIES, THE DOW CHEMICAL CO.

Dr. HENDRIX. Thank you very much.

Mr. Chairman and members of the subcommittee, my name is Bill Hendrix, and I am a product stewardship specialist for the Dow Chemical Company, and I have worked for them for 19 years.

In addition to my role as a product stewardship specialist, I also serve on the company's Gays, Lesbians and Allies at Dow, or the GLAD network. It is an affinity group advocating for gay, lesbian, bisexual, and transgender, and allied employees within the company. GLAD is one of the six employee networks at Dow all working towards promoting an increasingly diverse and inclusive workplace. Dow thanks the subcommittee for holding this committee to examine the discrimination that many transgender Americans face in their workplace.

First let me provide just a little bit of background on Dow. Dow was founded 110 years ago in Midland, Michigan. Our small-town, Midwestern roots have encouraged us to establish enduring core values of integrity and respect for people. It is these values that form the very heart of our approach to diversity and inclusion. At Dow, we serve customers in 160 countries, and we have about 43,000 employees.

Clearly diversity underpins our workforce, our culture, and indeed our very business model. We know that it is our human element that is key to our success. As a result, we know that creating a respectful inclusive working environment is not only a matter of fairness and equality, but it is one of critical economic and business importance. With a shrinking talent pool, particularly in the sciences and engineering, it is essential for us to actively include everyone to ensure that we attract and retain the very best talent that is available to us. As an industrial business-to-business supplier with virtually no consumer marketing, we must work even harder to have an identifiable employer brand.

When we discuss LGBT workplace policies, we do so knowing that these policies give us an advantage. Because we don't have major offices or facilities in the metropolitan areas of the U.S., our LGBT employees often have more protection from discrimination under Dow's policies than they do in the laws of their State or locality. Specifically, our LGBT policies have been good for our workplace for two main reasons: Number one, retention of our LGBT employees, because they know that they can perform their job without fear of repercussion and, therefore, have more reason to be committed to the company; and number two, better recruitment of allies and younger workers who often use things like employee benefits, such as our transgender policies, our flexible work hours, as a litmus test for prospective employers.

For Dow, like most companies, the offering of benefits to LGBT employees has been a result of a multistage journey. We first instituted sexual orientation in our employee nondiscrimination policies in 2000. We then added parity for domestic partner benefits in 2002. And we added protection based on gender identity in 2005. Of special note, we have implemented this globally for all 160 countries that we do business in.

When comparing our company to other Fortune 500s, Dow is one of the nearly 300 that currently offer protection for our employees based on gender identity. Loss of talent comes at a very significant

cost to employers, many of whom, like Dow, will suffer from shortages of qualified workers as Baby Boomers retire.

For our workplace transgender policy, we leveraged the policy developed by the Human Rights Campaign and then modified it slightly for our specific workplace conditions. This policy strongly emphasizes the mutual respect and good communication between the transitioning employee and his or her supervisor. Communication to the transitioning employee's work group is also critical. For example, working with the transitioning employee, training seminars can be created to prepare coworkers. Our policy also addresses questions such as transitioning name change, updating company databases, and offering support for other legal documents, such as passports, that are required for work.

As I have mentioned, it has been a journey for my company. On the whole, our program has gone remarkably well. We have had one employee transition in the workplace since 2005 and utilize these policies. As expected, coworkers have had a few questions and concerns. But our company has been able to address them and to ensure that the workplace remains very respectful and productive. In discussions with the transitioning employee, she felt that most of her coworkers were quite accepting and supporting.

Overall, we have achieved a positive reception of our transgender policy both internally and externally. Internally, because of our strong commitment to our human elements campaign policies, very little negative notice was taken of the inclusion on gender identity. This is just one more diversity factor within a comprehensive program that our company offers. Dow appreciates the chance to share our views and applauds the committee's work to gather more information on gender identity within the workplace, and we welcome any further questions you may have.

[The statement of Dr. Hendrix follows:]

Prepared Statement of William H. Hendrix, III, Ph.D., Global Leader, Gays, Lesbians and Allies at Dow

Mr. Chairman and members of the Subcommittee, my name is Dr. Bill Hendrix, and I am a product stewardship specialist for the Insecticides, Seed & Traits business within Dow AgroSciences LLC, a 100% wholly owned subsidiary of The Dow Chemical Company. I hold a Ph.D. in Entomology from Iowa State University and have worked for Dow for 19 years.

In addition to my role as a product stewardship specialist within Dow, I also serve as the chair of the Company's Gays, Lesbians and Allies at Dow (GLAD) Network, an affinity group advocating for gay, lesbian, bisexual, transgender and ally employees within the company. GLAD is one of six employee networks at Dow, all working toward promoting an increasingly diverse and inclusive workplace. GLAD was first established in 2000.

Dow thanks the Subcommittee for holding this hearing to examine the discrimination that many transgender Americans experience in their workplace.

First, I will provide some background on Dow. Dow was founded 110 years ago in Midland, Michigan, a small town of about 40,000 people just over 100 miles north of Detroit. Our small town Midwestern roots have encouraged us to establish our enduring Core Values of Integrity and Respect for People. It is these Values that form the very heart of our approach to Diversity and Inclusion.

Over the years, as we have grown and become a major player in the global economy, Diversity and Inclusion have truly become key elements of our corporate culture. Just consider our footprint: we serve customers in 160 countries, we have manufacturing sites in 35 different countries, and at last count, my 43,000 colleagues represent about 100 different nationalities.

Clearly, diversity underpins our workforce, our culture and, indeed, our business model. In a highly competitive world where innovation is the key to securing com-

petitive advantage, we know that it is our "Human Element" that is key to our success. As a result, we know that creating a respectful, inclusive working environment is not only a matter of fairness and equality, but also one of critical economic and business importance.

With a shrinking and ever more diverse talent pool—particularly in the sciences and engineering—it is essential for us to actively include everyone to ensure we attract, develop and advance the very best talent available in the marketplace. As an industrial, business-to-business supplier with virtually no consumer marketing, located largely in smaller rural areas, we must work even harder to have an identifiable employer brand to attract top talent. We see our proactive stance on diversity and inclusion as a key element of this brand.

Our open policy allows us to hire the best employees, with the greatest range of perspectives. When we discuss the LGBT policies in the workplace, we do so knowing that this policy gives us an advantage. Because we don't have major offices or facilities in the metropolitan areas in the US, our LGBT employees often have more protection from discrimination under Dow's policies than under the laws of their state or locality. In fact, according to the latest report from the Human Rights Campaign (HRC), only twelve states and the District of Columbia prevent employment discrimination based on gender identity; no federal law clearly prohibits employment discrimination against LGBT employees.

Specifically, our LGBT policies have been good for our workplace for two main reasons: a) retention of our LGBT employees has been enhanced, because they know that they can perform their jobs openly without fear of repercussion and therefore have more reason to be committed to the company in return, and b) better recruitment of allies and younger workers, who often use employee benefits, such as support for domestic partnerships and flexible work hours, as a litmus test for prospective employers.

For Dow, like most companies, the offering of benefits to LGBT employees has been the result of a multi-stage journey. We first instituted sexual orientation in our employment nondiscrimination policies in 2000. We then added parity for domestic partnerships in 2002. We added protections based on gender identity in 2005. A copy of our policy is attached as exhibit A. Of special note, we have implemented this globally for all the 160 countries in which we have employees!

When comparing our company to other peer Fortune 500 companies, Dow is one of the nearly 30 percent that currently offer protection for employees based on gender identity. While non-discrimination policies are just one component of inclusive workplaces, increasingly, U.S. employers are becoming like Dow and providing similar workplace protections. Surveys have shown that at least one of every five transgender people has experienced workplace discrimination and harassment. Such discrimination, and subsequent loss of talent, comes at a significant cost to employers, many of whom, like Dow, will suffer from shortages of qualified workers as baby boomers retire (Transgender Inclusion in the Workplace 2nd edition, April 2008, Human Rights Campaign Foundation Report, 64 pg).

For our workplace transgender policy, we leveraged the policy developed by HRC and then modified it slightly for our specific workplace conditions. A copy of this policy is attached as exhibit B. This policy strongly emphasizes mutual respect and good communication between the transitioning employee and his/her supervisor. However, if the employee doesn't feel comfortable talking directly with their supervisor, they may elect other options such as their HR representative or a leader from the GLAD network. Communication to the transitioning employee's workgroup is also critical. Working with the transitioning employee, training seminars or educational emails can be created to prepare co-workers. Our policy also addresses the questions of a transitioning employee's workplace dress, as well as changing that employee's name, including updating company databases and offering support for other legal documents such as passports, an important document for global company employees.

While already a welcoming workplace, Dow's commitment to transgender inclusion in our workplace continues to grow. Currently, Dow is looking at ways to expand our transgender health benefits to include coverage of hormone therapy and long-term counseling. We now provide counseling relating to gender transition through our Employee Assistance Program. While, many companies, like Dow, are exploring how to provide better health coverage for transgender workers, there are some companies that do offer these types of benefits. According to the HRC Foundation Report on Transgender Inclusion in the Workplace 2nd edition (April 2008), there are 78 companies that offer transgender health benefits without exclusion to their transgender employees. These include large employers such as IBM, General Motors, and Eastman Kodak.

As I have mentioned, it has been a journey for my company. On the whole, our program has gone remarkably well. We have already had one employee transition in the workplace and utilize the policies. As expected, co-workers have had a few questions and concerns, including about restroom use in the workplace, but, our company has been able to address them and ensure that the facility in question remains a respectful and productive environment. In discussions with the transitioning employee, she felt her transition was going well, and most of her co-workers were quite accepting and supportive. Of interest is that this employee is based in a rural, coastal Texas location.

Overall, we have achieved a positive reception of our transgender policy, both internally and externally. Externally, one of the key metrics for our company is the HRC Corporate Equality Index, where we have maintained a 100% rating since 2005. Transgender policies are currently a key component of the ranking criteria. Internally, because of our strong commitment to our Human Element campaign's policies, very little negative notice was taken of the inclusion on gender identity. This was just one more diversity factor within our comprehensive program.

Dow appreciates the chance to share our views and applauds the committee's work to gather more information on gender identity within the workplace. We strongly support protections against discrimination based on gender identity and sexual orientation in the workplace and welcome any further questions you may have.

Exhibit A.—Our Global Policies for Inclusion—Respect and Responsibility

http://www.dow.com/diversity/beliefs/inclusion.htm

We encourage a culture of mutual respect in which everyone understands and values the similarities and differences among our employee, customers, communities and other stakeholders. We work to provide an atmosphere that encourages positive interaction and creativity among all employees.

It is the policy of The Dow Chemical Company that employees be provided a work environment which is respectful and free from any form of inappropriate or unprofessional behavior, such as harassment including sexual harassment, pestering or bullying and any form of unlawful discrimination based on sex, gender, race, sexual orientation, gender identity, disability, age, ethnic origin, or other inherent personal characteristic protected by law.

Exhibit B.—Workplace Guidelines for Transgendered Employees

Overview

At Dow, we want our employees to be at their maximum productivity. Employees who can be honest about who they are can put their full energy into their job. As a result, we prohibit discrimination against or the harassment of employees based on their sexual orientation or gender identity or characteristics.

Scope

This document is intended to provide guidance to transgendered employees and their leader(s) to help both understand the workplace issues that transgendered employees may face as they undergo gender transition.

It in no way obligates The Dow Chemical Company to provide any employee benefit beyond what may be allowed in existing Summary Plan Descriptions (U.S.) or similar benefits programs' policy descriptions in other countries.

This document is also not a statement of policy of The Dow Chemical Company, but rather is intended to offer guidance to employees and their leaders within the provisions of policies and programs separate from this document.

Definitions

Gender Identity refers to those individuals who, with the documented support of medical or psychological professionals and in accordance with the recognized Informed Consent Model of Care or the Harry S. Benjamin Standards of Care, are changing or have changed their physical characteristics to facilitate personal and public redefinition of their sex as opposite that which there were assigned at birth.

Transitioning Employee refers to an individual who is in the process of modifying his/her physical characteristics and/or manner of expression to satisfy the standards for membership in a gender other than the one he/she was assigned at birth.

Transitioning Employee Guidance

If you are a transitioning employee, you should be comfortable being openly who you are. This means expressing your gender identity, characteristics or expression without fear of consequences. It is important, however, that you inform key personnel in your workplace who need to know about the change and the impact on

your work (the need to be away from work for treatment, for example). Your first point of contact may be your immediate supervisor, and/or your local human resources or Employee Assistance Program (EAP) representative. If you are not sure or perhaps uncomfortable contacting the above-mentioned individuals, you may wish to first contact a leader (steering team member or Site Implementation Leader) or other participant in the Gays, Lesbians and Allies at Dow (GLAD) employee network for support and guidance.

Explain to the person that you've selected to speak to your intentions, needs and concerns. Remember you are covered under Dow's equal opportunity policy. Your leader, HR and others may not be educated about transgender issues and may not understand clearly what your needs may be. You should be prepared to spend some time educating people. Providing them with a copy of these guidelines may help. As you prepare to make your situation more widely know to your co-workers, you need to expect them to be unfamiliar with your situation and your needs during this time. You and your leader will need to work together to develop a strategy to address this mutual education process.

Leader Guidance

If you have an employee who is transitioning, it is important that you demonstrate an understanding, sensitive approach to his/her needs and concerns. It may be frightening to an employee to make himself or herself vulnerable to a person upon whom their job depends. Our culture supports diversity and inclusion. If your employee informs you of his/her desire to transition or if an employee is currently in the transitioning process, your support is critical. Your actions may determine if the transition is successful or not. If you are not familiar with transgendered individuals, allow the impacted employee to educate you. Be open-minded and discuss with the employee his/her needs and concerns. Make it clear to the employee that your conversation will be held in the strictest of confidence and you will share the information only with those who have a business need to know the information, such as your HR partner. Explain any concerns you might have and ask the employee's opinion regarding the best method and time for informing co-workers about the transition process.

During the early stages of an employee's transition, few, if any, accommodations will be required on your part. However, at some point, issues dealing with an employee's physical appearance and usage of restroom facilities must be addressed. You should be prepared to address the questions and concerns of co-workers; however, the utmost care must de taken to assure the transitioning employee that his / her personal situation will continue to be held in confidence during these discussions. Along these lines, communications are best handled one-on-one versus group settings or mass communication methods like E-mail.

Restroom and Locker-Room Access Issues

Restroom and locker-room access issues need to be handled with sensitivity, not only to our obligation to provide transitioning employees with the same level of access available to non-transgendered employees, but also to the emotional responses to co-workers to the idea of sharing facilities with a transgendered co-worker.

An employee should use the facility based on his/her current gender. The transitioning employee and leader may want to explore the use of alternative facilities during the transitioning process. However, once transition is complete, a transgendered employee has the right to the same access as a non-transgendered employee of the same gender.

Attire and Appearance Guidance

Employees who are transitioning are required, prior to surgery, to assume the role for their reassigned gender. This process is known as the real life experience. Although professionals may recommend living in the desired gender as a step to surgery, the decision as to when and how to begin the real-life experience remains the employee's responsibility. Part of that experience is dressing and adopting other appearance characteristics in the reassigned gender role.

A transitioning employee's attire and appearance should remain appropriate to the office or work setting in which they work and the job they hold. The same dress expectations apply to transgendered as to other employees. If, as a leader, you are concerned about the appearance your transgendered employee will present when she or he starts coming to work in the other gender role, ask for a picture of her or him in work attire. If you still have concerns, these should be addressed with your employee. If she or he dresses or behaves inappropriately, this issue should be dealt with the same way it would with any other employee. Similarly, co-workers are expected to maintain a respectful work environment and any behavior to the contrary should also be dealt with by the leader.

Medical Requirements

Transitioning employees should provide regular medical updates to Dow Health Services (at least every six months during the transition process). This information should come from the employee's primary health care provider and should detail where the employees is in the transition process and what type, if any, restrictions apply to the employee's work activities. Time off from work as a result of surgery or other medical inability to work is generally paid and covered under Employee Illness Leave.

Additional Resources

Many additional resources are available through the Human Rights Campaign, a U.S.-based civil rights organization that advocates for equal rights for gay, lesbian, bisexual and transgender Americans. These are available on-line at *http://www.hrc.org* (follow links to Workplace issues).

Chairman ANDREWS. Thank you, Dr. Hendrix. We appreciate your perspective very much. Thank you for being here.

Mr. Lavy, welcome to the subcommittee.

STATEMENT OF GLEN LAVY, SENIOR COUNSEL AND SENIOR VICE PRESIDENT FOR MARRIAGE LITIGATION, ALLIANCE DEFENSE FUND

Mr. LAVY. Mr. Chairman and members of the committee, thank you for allowing me to testify today. You are hearing stories of painful experiences in the workplace.

Chairman ANDREWS. I am sorry, Mr. Lavy. Will you pull the microphone a little closer to you? I think it is on, but it is a little muffled.

Is it on? Is your light on?

Mr. LAVY. You are hearing stories of painful——

Chairman ANDREWS. We won't take this from your time either, even if you didn't go to Cornell.

Mr. LAVY. You are hearing stories of painful experiences in the workplace. You are being asked to make a moral judgment about the treatment of transgendered persons in the workplace. You are being asked to make the judgment that it is immoral for employers to refuse to accommodate a person's belief that he or she is a member of the sex that is opposite their anatomical sex.

What you have not heard is that some employers have deeply-held religious beliefs about these issues. Other employers do not have a ready ability to be able to accommodate a transgendered employee without violating the rights of other employees or members of the public when it comes to the use of restrooms. And unless an employee specifically requests an accommodation for his or her belief that he or she is a member of the opposite sex, an employer has no means of knowing the employee's views.

Most transgender anti-discrimination laws refer to actual or perceived gender identity or expression. This type of provision is highly problematic for employers. How is an employer to know what an employee's sense of themselves is without the employee expressly disclosing it? The subjective nature of gender identity makes it wholly unlike an objective and mutable characteristic like race. An employer seldom, if ever, needs to wonder what an employee's race is. That is something that the employer can simply tell by observation.

It is often, probably usually, impossible to tell simply by looking at a person what that person's concept of their gender identity is. Indeed, gender identity often is as unobservable as religious beliefs. And religion has never received protection under Title VII without the employee specifically requesting an accommodation of a religious belief. Even then, even when an employee does request an accommodation, employers are not generally required to provide the accommodation if it is too expensive or too inconvenient for them to be able to do so.

The problems raised today do not have a simple solution that can be solved by mandating accommodation by employers. In addition to religious objections, many people have genuine privacy concerns about the use of restrooms. I am sure you have been hearing about the debate in Montgomery County, Maryland, where Montgomery County passed legislation that does allow men to use a woman's restroom before having sexual reassignment surgery.

Some employers cannot accommodate the restroom issue for a transitioning employee, regardless of whether they want to. The Etsitty case from the 10th Circuit that I cited in my testimony is an example. A Utah Transit Authority bus driver dressed as a woman but had male anatomy. While driving his route, he had to use public restrooms. The employee could not necessarily find a restroom that was available for single use because every day the employee had a different bus route. This was a substitute bus driver. The employer had the choice of keeping the employee and risking claims of violation of privacy of other people in a public restroom or terminating the employee. If there were a Federal law creating protection for gender identity, the employer would have been forced to accept the risk of liability for violations of other people's privacy in public restrooms. That is a very real risk that a number of employers would face if this committee were to prepare legislation giving specific protection to gender identity.

I am not asking this committee to make a moral judgment about transgendered persons. What I am suggesting is that the Federal law should not make that moral judgment for all employers. Thank you.

[The statement of Mr. Lavy follows:]

Prepared Statement of Glen Lavy, Senior Counsel, the Alliance Defense Fund

Chairman Andrews, Ranking Member Kline, members of the Committee, thank you for inviting me to testify today on the issue of "An Examination of Discrimination Against Transgender Americans in the Workplace."

I am senior counsel at the Alliance Defense Fund. For more than 7 years my colleagues and I at ADF have been working to protect the unique status of marriage as being between one man and one woman. Three times I have argued in support of marriage in the California courts, most recently in the California Supreme Court, and have been involved in some capacity in every major marriage case in the country. But the radical efforts to eliminate the unique, opposite-sex nature of marriage are only a precursor to the opposition's most dangerous principle. That principle is simply stated: that biological sex and gender are utterly divorced from one another. If the proponents of the idea that individuals have the right to pick their own gender succeed, upholding the definition of marriage as a man and a woman will be meaningless.

Today I speak out of my experience because of the palpable danger to religious liberty and freedom of conscience if Congress were to define gender identity and expression as a protected class. Certainly there are individuals who suffer very real emotional strife from sexual confusion—it is a distinct psychological diagnosis in

some cases. Declining to accommodate an employee's belief that he or she is actually a member of the opposite sex, however, is not a form of invidious discrimination. This is not an issue that should be the subject of federal legislation.

Religious Liberty and Rights of Conscience in the Workplace

It is important to recognize that religious objections to the concept of "transgender" are based on theological beliefs rather than discomfort with or fear of the unfamiliar. The concepts of male and female being established at birth and the two sexes being joined in marriage are integrally related to theological beliefs about the relationship between God and the church. Forcing persons with such beliefs to treat "transgender" as a valid concept is like forcing an Orthodox Jew to eat pork. Regardless of one's views of the merits of such beliefs, it is undeniable that such good faith beliefs exist. Trampling those beliefs raise serious constitutional issues under the First Amendment.

The sincerity of religious beliefs about male and female is why creating federal protection for gender identity and expression would have an unavoidable negative impact on religious liberty and rights of conscience in the workplace (providing such legislation were not ultimately deemed unconstitutional as applied to religious persons or organizations). The legislation would infringe on religious liberty and rights of conscience of both religious employers and ordinary business owners. This would be true even if the legislation included the same religious exemptions provided under Title VII.

Section 702(a) of Title VII allows religious organizations to discriminate on the basis of religion for "work connected with the carrying on by such corporation, association, educational institution, or society of its activities."1 But we've already seen that these "exemptions" are not sufficient to protect the fundamental right to freely exercise religion. For example, when a person who professes the same religious beliefs as an employer engages in behavior the organization deems immoral, the employer may at least face costly litigation. In 2005 Professor John Nemecek began appearing on campus as a woman at Spring Arbor University, a Christian liberal arts school. When the university fired him for his behavior, he filed a claim with the Equal Employment Opportunity Commission.2 The professor asserted that he had not violated a tenet of the university's faith. Although the university should have prevailed if it had litigated the issue, it settled the claim rather than endure costly litigation.

Many Christians exercise their faith through religious ministries—often called "parachurch ministries"—that have even less protection than traditional churches have under these "exceptions." There is a great deal of debate over how closely such a ministry must be connected to a church to qualify for exemption. For example, one court held that a United Methodist children's home was not a "religious organization." It made this astonishing ruling despite the fact that the home was hiring a new minister specifically to protect its religions mission.3 Another court recently devised a nine-part, subjective "balancing" test to decide whether a Jewish community center was "religious" under Title VII. The court said that "not all factors will be relevant in all cases, and the weight given each factor may vary from case to case."4 Importantly, two of the nine "secularaizing" factors identified by the court are very common among parachurch ministries: few such ministries are directly controlled by a church; and many will provide "secular" products (such as food, shelter, counseling, or legal services that are not of themselves religious). That includes organizations like mine, ADF. In sum, many parachurch ministries may not be protected by the Title VII exemptions. That could result in the ministries being forced to hire employees who openly violate the ministries' standards.

Commercial business owners with strong religious views about transsexual issues would have no protection at all under Title VII exemptions. That would be especially problematic for small business owners who are closely associated with the business. In addition to violating the employer's conscience, employing a man who dresses as a woman and wants to use the women's restroom would have a negative impact not only on other employees and customers, but would reflect on the business owner's reputation in the community. It creates an implication that the owner approves of the behavior, or at least accepts the behavior as valid. That is an even bigger issue for owners of day-care centers and religious book stores, where customers have an expectation that their values will be respected.

The Ambiguity of "Gender Identity and Expression"

Gender identity and expression are extremely vague concepts. Gender Public Advocacy Coalition ("GenderPac"), an organization dedicated to eliminating gender norms, defines gender identity as "an individual's self-awareness or fundamental sense of themselves as being masculine or feminine, and male or female."

GenderLaw Guide to the Federal Courts and 50 States, p. 3 of 90 (available at *http://www.gpac.org/workplace/GenderLAW.pdf*; viewed June 24, 2008). It defines gender expression as "the expression through clothing and behavior that manifests a person's fundamental sense of themselves as masculine or feminine, and male or female. This can include dress, posture, vocal inflection, and so on." Ibid. In essence, the concept of gender expression is that the totality of the way a person looks, dresses, and acts is his or her gender—in other words, there are an infinite number of genders. Everyone really has their own gender.

Typical gender identity provisions prohibit discrimination based upon "actual or perceived" gender identity or expression. This type of provision is highly problematic for employers. How is an employer to know what an employee's actual gender identity is without asking? Could an employer ask without eventually being accused of discrimination? How is one to know how an employer perceives an employee's gender identity or expression? The ultimate subjectivity in gender identity and expression arises from the idea that a person can self-identify his or her gender identity, and this subjective self-identification can change an infinite number of times without notice to the employer. There is simply no objective criteria an employer can utilize to ascertain an employee's gender identity.

The subjective nature of gender identity makes it wholly unlike an objective, immutable characteristic like race. An employer seldom, if ever, needs to wonder whether an employee is African American, Asian, Latino, or Caucasian. He or she can tell by observation. That is impossible with the concept of gender identity. Indeed, gender identity is as unobservable as religion. And religion has never received protection under Title VII without the employee specifically requesting an accommodation of a religious belief. Even then, employers are not generally required to provide the accommodation if it is too inconvenient.

Gender expression is likewise a problematic criterion for employers. How could an employer ever adopt and enforce dress codes if gender expression is a protected category? How is an employer to know whether a person's attire, posture, vocal inflection, and so on really reflects that individual's "fundamental sense of themselves as masculine or feminine, and male or female"? If the totality of the way a person presents oneself is "gender," then gender is the ultimate reason that any employee is disliked. That concept is too subjective and elastic for an employer to know what is required.

Adding gender identity and expression to employment nondiscrimination laws could result in providing special protection for most employees. For example, according to GenderPac, "At some point in their lives, most people experience some form of discrimination or bias as a result of gender stereotyping."5 Under this view, any employment law prohibiting discrimination based on gender expression or identity may give rise to a significant number of discrimination claims, no matter what an employer does. If "most people" can claim gender identity or expression discrimination when they are terminated from employment, lose out on a promotion, fail to obtain a job, etc., "employment at will" will have lost all meaning.

Gender identity or expression laws have not existed long enough to allow a thorough analysis of how they will be applied. But there have already been lawsuits by transsexuals against employers claiming the right to use restrooms reserved for members of the opposite sex. In fact, eight years ago the Minnesota Court of Appeals ruled that an employer violated an employee's rights by designating restrooms and restroom use on the basis of biological sex. Goins v. West Group, 619 N.W.2d 424, 429 (Minn. App. 2000). Fortunately, the Minnesota Supreme Court reversed the decision (635 N.W. 2d 717, 723 (Minn. 2001)). The Court of Appeals opinion, however, shows how some courts are likely to construe employment laws creating a protected class for gender identity or expression.

Rights of Privacy

Many women in particular are concerned about the infringement on their right to privacy in restrooms if transsexuals with male anatomy are permitted to use women's restrooms. Parents also have a legitimate concern if persons who exercise authority over their children, such as teachers or day care workers, are permitted to use restrooms that are inconsistent with their physical anatomy. The extent of these concerns is evident from recent events in Montgomery County, Maryland, where citizens are attempting to challenge a new gender identity law in a referendum. One of the primary complaints of those challenging the law is that it allows men to use a women's restroom when women and girls are in it.6 The primary privacy concern is not what happens after a transsexual has surgical alteration, but what may happen if physical anatomy is not the criteria for restroom usage. With gender identity being totally subjective, who could challenge any male who says he

wants to use a women's restroom? Women and girls should not have to risk having their privacy violated by anatomical males using women's rest rooms.

Given the extent of concern about rights of privacy in restroom usage, employers have a legitimate concern about how to deal with employees who wish to use a restroom designated for members of the opposite sex. The concern is most obvious when a transsexual employee retains his or her original anatomy, but is dressing as a member of the opposite sex. That is the situation that arose in a recent case from Utah, Etsitty v. Utah Transit Authority.7 A man who had been diagnosed with Gender Identity Disorder and had been taking female hormones for nearly 4 years obtained employment as a substitute bus driver. As a bus driver, the employee had to use public restrooms along whatever route he drove. The employee dressed as a man when hired and during orientation, but notified his supervisor of his intent to present himself as a female soon after being hired. While presenting as a woman, the employee began using public restrooms designated for women. When the operations manager learned of the situation, she and a human resources generalist met with the man to inquire about his circumstances. The company ultimately terminated the employee because of concerns about his use of women's restrooms while retaining his male anatomy. The United States Court of Appeals for the Tenth Circuit upheld the termination as valid because gender identity is not covered by Title VII. If gender identity or expression were a protected category, however, the transportation company would have been forced to keep the man as a bus driver. It would have also been forced to face the risk of liability to the public for knowingly allowing a male employee to use public restrooms designated for women.

Conclusion

I strongly urge the committee to reject pressure to extend protected class status to gender identity and expression. The concepts are far too ambiguous to be susceptible to objective regulations that would protect the privacy rights of the public and other employees, or the religious liberty and rights of conscience of religious organizations, parachurch ministries, and commercial employers. "Transgender discrimination" is not an issue that should be the subject of federal legislation.

Thank you

ENDNOTES

[1] Section 703(e)(1) provides an exemption for discrimination on the basis of religion, sex, or national origin where they are "a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."

[2] "Christian College Fires Transgender Professor," Associated Press via Detroit Free Press (Feb. 4, 2007), *http://www.religionnewsblog.com/17388/transgender.*

[3] Fike v. United Methodist Children's Home of Virginia, Inc., 547 F. Supp. 286 (E.D. Va. 1982), aff'd, 709 F.2d 284 (4th Cir. 1983).

[4] LeBoon v. Lancaster Jewish Community Center Ass'n, 503 F.3d 217, 226-227 (3rd Cir. 2007).

[5] GenderPac says that "Gender Stereotyping can be considered the root cause of discrimination based on gender expression, identity, or characteristics, and—in an expanded reading—discrimination based on sex and sexual orientation." Ibid, p. 3 of 90.

[6] "Transgender Bill Facing New Round of Opposition," Courtney Mabeus, The Examiner (Jan. 17, 2008), available at *http://www.examiner.com/a-1163314?Transgender—bill—facing—new—round—of—opposition.html.*

[7] 502 F.3d 1215 (10th Cir. 2007).

Chairman ANDREWS. Mr. Lavy, thank you very much for your testimony.

Ms. Taraboletti, welcome to the subcommittee.

STATEMENT OF SABRINA MARCUS TARABOLETTI, AERONAUTICS ENGINEER

Ms. TARABOLETTI. Mr. Chairman and all members of the committee, thank you for inviting me here today.

My name is Sabrina Marcus Taraboletti. And I am the parent of two beautiful children who I love and who in turn love me. I am also a transgender woman.

I grew up in a very conservative traditional middle-class Italian Catholic family in Pelham, New York. We were a close loving family, much like you would see in the movie, "My Big Fat Greek Wedding." I attended SUNY Maritime College, one of the country's pre-

miere Merchant Maritime academies, and graduated with a degree in engineering and a Coast Guard license to be an officer in the Merchant Marine.

Shortly after college, I moved to Florida to work on the space shuttle at Kennedy Space Center. Most who know me will share that I am passionate about the space program and honored to be part of its history. After 20 years of service, my final employer was United Space Alliance, the prime contractor of the shuttle program.

So what happened to my dream job? In 2003, I was summarily fired six weeks after announcing that I would be changing my sex from male to female. After assigning security personnel to follow my every move, charges were drummed up. And I was suspended without pay, pending a board hearing for dismissal. I was escorted off the Space Center grounds and told not to return. I was told the actions were the result of an investigation initiated by an anonymous hotline call.

To my knowledge, I was the fourth person attempting transition at the Space Center while trying to keep their job. The first three before me also failed. The first woman was a union machinist who could no longer take the harassment of her fellow employees and left the Center to find work elsewhere. The second woman was isolated and given no work to do. She was fired after she made enough mistakes. The last woman was a launch pad technician who was jeered and scoffed at until she finally took her own life, an all too often occurrence.

We fail because there are no formal transgender policies or procedures at the Space Center. There are no policies because there are no laws at the State or Federal level requiring employees to have them. My future, therefore, was left up to the interpretation of people who have no education in transgender issues or needs. Worse yet, no one really cared or wanted to learn, even though I made a diligent effort to educate them. It was easier for them to find a way just to have me removed.

I cannot tell you how meaningless life feels when an event like this happens. I didn't know where to turn or what future I had. I was humiliated. I was fired. After 20 years of service, I received no severance pay, nor was I allowed to collect unemployment. I have had to tell future employees, or future potential employers, I was dismissed. It has made finding new employment almost impossible.

What is even more troubling is that I had anticipated the possibility of my job loss and worked furiously to avoid it. I reached out to my management, my coworkers, H.R. and even the associate administrator of EEO for NASA. But there was no help from any level.

Four years later after submitting what seems like hundreds of applications, I have not been able to find a new position in the space program, which is not only the field I love, but is one of the few industries in my area where an engineer like me can find a job.

There are those who believe that being transgender is a lifestyle or a choice. Personally, I have lost my wife, most of my assets and my home in divorce. I have been abandoned by half of my family and friends.

At the same time, I have had to find $79,000 of funding and endure the extreme pain of electrolysis and various other surgeries

required to complete the transition from male to female, all this while trying to stay employed.

Believe me, no one wakes up one morning and says, hey, I think I am going change my sex today. No one says, you know, living with that discrimination and hatred won't be all that bad after all. Being transgender is something you are born with and something you have to deal with just the best way you can.

There is more to my life than just my profession. During my time at the Space Center I married and, after 14 years, unfortunately, divorced. I have two children. I am their father; something I assured them would never change. My relationship with my children is very strong, and I am active in both their academic and personal lives. My daughter, 19, presently lives with me. She attends the University of Central Florida on a full chemistry scholarship. My son, 17, is still in high school but recently was accepted to attend at my alma mater.

But my family is not really separate from my job. My economic security impacts them as well. My feeling of worth also impacts them. So when I face discrimination, they face it, too. What happens to me because I am transgender also happens to them, not only because they love me but because I still provide for them. How I am treated is how they are treated as well.

I am a good engineer, I am a good parent, and I am a good person. I am still a practicing Catholic, and I honor my country. I do not deserve the job discrimination that I faced. People should be judged by the quality of their work, by the quality of their character. So many of us face what I have faced. More are preparing to face it in the future. It needs to stop.

Chairman ANDREWS. Ms. Taraboletti, thank you very much. We appreciate you being here. Thank you.

[The statement of Ms. Taraboletti follows:]

Written Statement of
Sabrina Marcus Taraboletti

To the Subcommittee on Health, Employment, Labor, and Pensions

Committee on Education and Labor

United States House of Representatives

Room 2175

Rayburn House Office Building

June 26, 2008

Mr. Chairman and Members of the Subcommittee, thank you for inviting me here today. My name is Sabrina Marcus Taraboletti. I am the parent of two beautiful children who I love, and who in turn, love me. And I am a transgender woman.

I grew up in a very conservative, traditional, middle class, Italian Catholic family in Pelham, New York. We were a close, loving family much like you'd see in the movie "My Big Fat Greek Wedding."

After high school, I attended SUNY Maritime College, one of the country's premier Merchant Marine Academies, and graduated with a degree in engineering and a Coast Guard license to be an officer in the Merchant Marine.

Shortly after college, I moved to Florida to work on the space shuttle, at the Kennedy Space Center. It was a dream come true. Most who know me will share that I am passionate about the space program and honored to be part of its history. After 20 years of service my final

employer was United Space Alliance, the prime contractor of the Shuttle program. So what happened to my dream job?

In 2003, I was summarily fired six weeks after announcing that I would be changing my sex from male to female. After assigning security personnel to follow my every move, charges were drummed up, and I was suspended without pay pending a board hearing for dismissal. I was escorted off the space center grounds and told not to return. I was told the actions were the result of an investigation initiated by an anonymous hotline call.

To my knowledge, I was the fourth person attempting transition at the space center while trying to keep their job. The first three before me also failed.

The first woman was a union machinist who worked in the Launch Equipment Shop. After leaving she informed me that during her transition she received no support and her work environment was purposefully made very uncomfortable. She was jeered at and made fun of. She could no longer take the harassment and left the center to find work elsewhere.

The second woman received similar pressure but was a bit more of a fighter. They decided to deal with her by moving her to second shift. She was left isolated without any other coworkers, given little work to do, and was ignored. They isolated her and waited for her to make mistakes. She did and she was fired.

The last woman was a Launch Pad technician who worked at the center for many years. All on her own, and without any education, she transitioned on the job and met with all the jeering and hardships we all face, but without any of the support. Without the education and support of her community, or an educated employer, she was alone. She fell into a deep depression and took her own life, an all too common occurrence.

The reason for our failure is that there were no formal transgender policies or procedures at the space center. They had no policies because no laws at the state or federal level required them to. My future, therefore, was left up to the interpretation of people who have no education in transgender issues or needs. Worse yet, no one really cared or wanted to learn, even though I made a diligent effort to educate them.

I cannot tell you how meaningless life feels when an event like this happens. I didn't know where to turn or what future I had. I was humiliated. I was fired. After 20 years of service, I received no severance pay nor was I allowed to collect unemployment. I have had to tell future potential employers I was dismissed; it has made finding new employment impossible, especially in the small space community of Brevard County.

What is even more troubling is that I anticipated the possibility of my job loss and worked furiously to avoid it. I reached out to my management, my coworkers, HR, and even the associate administrator of EEO for NASA. I even applied internally for jobs with my employer at different work locations, but there was no help from any level.

Four years later, after submitting what seems like hundreds of applications, I have not been able to find a new position in the space program, which is not only the field I love, but is one of the few industries in my area where an engineer like me could find a job.

There are those who believe that being transgender is a life style or a choice. Personally I have lost my wife, most of my assets, and my home in divorce. I have been abandoned by half of my family and friends. At the same time, I had to find the $70-90,000 of funding and endure the extreme pain of electrolysis, and the various other surgeries required to complete the transition from male to female. All this while trying to stay employed! Believe me, no one wakes up one morning and thinks, "Hey, I think I'm going to change my sex today." No one

says "You know, living with all that discrimination and hatred won't be that bad after all." Being transgender is something you are born with and simply have to deal with the best way you can.

There is more to my life than just my profession. During my time at the space center, I married and, after 14 years, divorced. I have 2 children. I am their Father; something I assured them would never change. My relationship with my children is very strong and I am active in both their academic and personal lives. My daughter, 19, presently lives with me. She attends the University of Central Florida on a full Chemistry Scholarship. My son, 17, is still in High School, but recently was accepted to attend as a cadet at my Alma Matter.

But my family is not really separate from my job. My economic security obviously impacts them. My feeling of worth also impacts them. So when I face discrimination, my family faces it too. What happens to me because I am transgender also happens to them not only because they love me, but because I still provide for them. How I am treated is how they are treated as well.

I am a good engineer. I am a good parent and I am a good person. I practice my faith and honor my country. I do not deserve the job discrimination that I faced. People should be judged by the quality of their work, by the quality of their character. So many of us face what I have faced. Many more are preparing to face it in the future. It needs to stop.

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Chairman ANDREWS. Mr. Minter, you are our final witness on this panel. Welcome.

STATEMENT OF SHANNON MINTER, LEGAL DIRECTOR, THE NATIONAL CENTER FOR LESBIAN RIGHTS

Mr. MINTER. Mr. Chairman, members of the subcommittee, thank you. Thank you very much for convening this hearing. This is the first time that members of the transgender community have had a chance to talk with Congress so directly about our lives, and we very much appreciate that, and it is an honor to be here today with Colonel Schroer and the other witnesses.

The focus of my testimony is on the urgent need for a Federal law to protect transgender workers. In addition to speaking to you today as an attorney who specializes in transgender legal issues, I am also pleased to be able to speak to you as a transgender man. I was born female and transitioned from female to male several years ago.

Some transgender people are fortunate to have support in the workplace. Very often, however, when a person discloses that they are transgender or when the employer otherwise discovers the person's transgender status, learns of that status, that employee is very likely to face termination, harassment or even violence.

Just last year, for example, Steve Stanton had served as the city manager of Largo, Florida, for 14 years. He was incredibly effective, he was very well respected in that position, he just received a glowing evaluation, but literally within days of discovering that Stanton was transgender, intended to transition from male to female, he was gone. The city commission of Largo abruptly fired him and acknowledged that it was doing so because of his transgender status.

Another case, a small town in Vermont hired an experienced law officer, a police officer. Everything was going fine until a town official discovered on a Web site that the officer was transgender and was born female, had undergone sex reassignment many years earlier. That information was communicated to that officer's superiors who then shamefully, deliberately embarked on a campaign to try and intimidate him into leaving his job and even went so far as to endanger his physical safety by issuing him faulty security equipment. And he was driven from his job, and this discrimination came to light only because a former police chief disclosed what had happened to the Vermont Attorney General.

Now, States and localities across the country are passing laws to address this type of discrimination. Twelve States and the District of Columbia now have laws that protect transgender workers. Over 100 localities have also enacted local anti-discrimination laws. Many employers, both large and small, have voluntarily adopted policies that prohibit discrimination against their transgender workers.

And those are very important advances, but we need more than a patchwork of State and local laws and employer policies. The brutal reality is, in most places in this country, a transgender worker who is fired or harassed for being transgender has no legal protection. As a direct result, there are many people in the transgender community who are forced into chronic, persistent unemployment, poverty and homelessness.

Existing Federal law does not prohibit workplace discrimination against transgender employees. That includes Title VII. As a logical matter, when a person is fired for changing his or her sex, a court should say that is sex discrimination, and it should be covered under Title VII. In practice, however, there is not a single Federal Court anywhere in the country that has held that Title VII prohibits discrimination against transgender workers because they are transgender. We need Congress to make clear the discrimination against transgender people because of their gender identity is against the law.

Thank you for your leadership on this issue. Growing up in a small town in Texas I literally could not have imagined this day. There are so many transgender people in our families all across the country waiting and hoping that you will take action to protect us.

Thank you.

Chairman ANDREWS. Mr. Minter, thank you very much for your testimony.

[The statement of Mr. Mintner follows:]

Prepared Statement of Shannon Price Minter, Esq., Legal Director, National Center for Lesbian Rights

Mr. Chairman and Members of the Subcommittee: This is truly a historic day, and one that is deeply meaningful not just to transgender people, but to all of our family members and loved ones as well. This is the first time that most transgender people have had the reality of our lives addressed by Congress. I am grateful to have this chance to speak to you today both as an attorney who specializes in transgender legal issues and as a transgender man.

I was born female and transitioned from female to male at the age of thirty-five, about twelve years ago. Growing up as a transgender young person in rural East Texas, I never would have dreamed of having this opportunity to address our nation's legislators. I am keenly aware, as I am sure my fellow witnesses are as well, that we speak to you on behalf of your transgender constituents across the country, whether it be others living in rural Texas, suburban New Jersey, or metropolitan Minneapolis.

I am going to touch on three issues: who transgender people are; the pervasiveness of workplace discrimination against transgender people; and the inadequacy of current federal law to address that discrimination.

Transgender people are individuals whose internal identification as male or female does not match their assigned sex at birth, including many who undertake the medical process of changing their physical gender. Transgender people have existed throughout history and have been part of almost every culture and community. In the United States, transgender people come from every racial and ethnic group and live in every part of our country. Transgender people also work in virtually every occupation.[1]

Like other Americans, transgender people fervently wish to be able support ourselves and our families and to have the dignity of being treated as equal members of society. As employees, we want to be judged based on our skills and our qualifications—on what we have to offer, not on whether we happen to be transgender.

Many transgender people are fortunate to have support in their workplace and are able to continue working in their chosen careers both during and after their transition from one gender to another; unfortunately, however, many others face some of the most blatant and severe workplace discrimination imaginable, to a degree that is often truly shocking. All too often, the mere disclosure that a person is transgender and intends to undergo, or has undergone, sex-reassignment results immediately in severe harassment or job loss. That is true even for highly skilled employees who may have served in their position for years.

For example, in a case that attracted national attention last year, Steve Stanton had served as the City Manager of Largo, Florida for 14 years, longer than any other City Manager in Largo's history. Throughout his tenure, Mr. Stanton always received excellent job evaluations and was widely respected as one of the most effective city managers in the country. During his last evaluation, in September, 2006, he was given a large raise in recognition of his long tenure and accomplishments. But just seven months later, the Largo City Commission abruptly fired Mr. Stanton after a local news article disclosed that he was transgender and intended to transition from a man to a woman. The Commission refused to reconsider its decision. As a result, the City of Largo lost a valuable employee, and Stanton, who has subsequently changed her first name to Susan and is now living as a woman, has been unable to find another job.[2]

Unfortunately, there are many similar stories, most of which receive little or no public attention. One such story concerns Kathleen Culhane, a veteran who also served in the Iowa National Guard. Prior to her transition from male to female, Ms. Culhane had worked for several years as a research assistant at a state university in Iowa. She informed her supervisor that she was transgender and would be transitioning from male to female. Within weeks of that disclosure, Ms. Culhane was told she would be fired. She applied for positions in other departments, but no

one was willing to hire a transgender person. Ms. Culhane lost her job and was forced to move to another state to find work, leaving behind her home of sixteen years.[3]

In another case, Anthony Barreto-Neto, an experienced and skilled police officer, was hired by a local police department in Hardwick, Vermont. Shortly thereafter, town officials found a website that described Mr. Barreto-Neto as "transsexual" and disclosed the fact that he had been born female and had undergone sex-reassignment several years earlier. The town officials communicated that information to senior police department personnel, who then subjected Mr. Barreto-Neto to severe harassment and dangerous workplace conditions, including issuing him faulty security equipment. In a subsequent investigation by the Vermont Attorney General, a former police chief testified that he was directed to make Mr. Barreto-Neto so uncomfortable that he would leave the force. Mr. Barreto-Neto was able to settle his case; however, the police department took the position that discrimination against a transgender person was not prohibited by law.[4] A few years later, the Vermont Legislature enacted a statewide law specifically prohibiting such discrimination.

As lawyers who specialize in this area are well aware, such stories of discrimination are painfully common. Employees who disclose their transgender status or who attempt to transition on the job risk being summarily dismissed, regardless of their qualifications or prior history.

State and local lawmakers throughout the country increasingly are addressing this type of discrimination. Currently 12 states and the District of Columbia have laws that specifically ban workplace discrimination based on gender identity: California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.[5] The first such statewide law was passed by Minnesota in 1993; however, most have been enacted in the past three to five years. Several other states are considering similar laws, and earlier this month, on June 3, 2008, the New York State Assembly passed the Gender Expression Non-Discrimination Act by a vote of 108 to 34.[6] More than 100 cities and counties have enacted local non-discrimination laws protecting transgender workers.[7] And many of the country's employers, both large and small, have adopted non-discrimination policies that prohibit gender identity discrimination.[8]

Despite these advances, the current patchwork of local and state laws is inadequate to remedy the pervasive gender identity discrimination taking place across the country. Most transgender employees do not live in a jurisdiction that provides them with legal protection. In most states, a transgender worker who is fired or harassed for being transgender has no legal recourse.

Existing federal law, including Title VII, does not adequately protect transgender employees. As a logical matter, discrimination against a person for changing his or her sex should be recognized as discrimination based on sex, just as discrimination against a person for changing his or her religion or nationality is recognized as discrimination based on religion or nationality. Many legal scholars, as well as women's rights and civil rights advocates, strongly support the view that the prohibition of sex discrimination in Title VII logically, and as a matter of principle, should prohibit transgender discrimination. In practice, however, most courts have rejected that view, creating a significant loophole in sex discrimination law. For decades, starting in the 1970s, courts summarily held that Title VII does not protect transgender people from discrimination.[9] Too often, those decisions not only denied protection, but spoke about transgender people in disparaging and demeaning terms. In recent years, some federal courts have begun to hold that, at least under some circumstances, Title VII may protect transgender people who are discriminated against because they do not conform to gender stereotypes.[10] The most notable example is the Sixth Circuit, which thus far is the only federal appellate court to issue such a decision.[11] This is a welcome development, and has provided a remedy for some transgender employees against some forms of gender identity discrimination. For the most part, however, courts have continued to apply Title VII narrowly to exclude transgender people.[12] Moreover, even the few courts, including the Sixth Circuit, that have held that Title VII may protect transgender people against discrimination based on gender stereotypes have stopped short of holding that Title VII prohibits discrimination simply because a person is transgender.

Thus, it is essential that Congress make clear that discrimination against transgender people because of their gender identity is against the law.

Thank you for your leadership in convening this historic forum and for the opportunity to testify. Growing up in my small Texas town, I could not have imagined a day like this. So many transgender people and their families around the country are waiting and watching, hoping that Congress will take action to address this

harmful discrimination and to help ensure that transgender people have an equal opportunity to work.

ENDNOTES

[1] The representation of transgender people in virtually all professions is evidenced by the broad range of occupations that have been the subject of transgender employment discrimination actions. See, e.g., Enriquez v. West Jersey Health Systems, 777 A.2d 365 (N.J. Ct. App. Div. 2001) (medicine); Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), cert. denied, 471 U.S. 1017 (1985) (airline industry); Broadus v. State Farm Ins. Co., 2000 WL 1585257 (W.D. Mo. Oct. 11, 2000) (insurance industry); Mitchell v. Axcan Scandipharm, Inc., 2006 WL 456173 (W.D. Pa. Feb. 17, 2006) (sales); Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004) (firefighting); Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005), cert. denied, 546 U.S. 1003 (2005) (law enforcement); Schroer v. Billington, 525 F.Supp.2d 58 (D.D.C. 2007) (terrorism research analysis).

[2] Deborah J. Vagins, "Working in the Shadows: Ending Employment Discrimination for LGBT Americans," at 17 (American Civil Liberties Union, Sept. 7, 2007).

[3] Id. at 19.

[4] Mr. Baretto-Neto was represented by Gay & Lesbian Advocates & Defenders. For a description of his case, see *http://www.glad.org/News—Room/press73-4-23-04.html.*

[5] California (Cal. Gov't Code §§ 12926(p), 12940, 12955, Cal. Penal Code § 422.76); Colorado (Colo. Rev. Stat. § 24-34-401(7.5)); Illinois (775 Ill. Comp. Stat. 5/1-102, 5/1-103(O-1)); Iowa (Iowa Code § 216.6); Maine (Me. Rev. Stat. Ann. tit. 5, § 4552, 4553(9-C)); Minnesota (Minn. Stat. § 363A.03(44)); New Jersey (N.J. Stat. Ann. §10:5-3 et seq.); New Mexico (N.M. Stat. Ann. § 28-1-2(Q)); Oregon (Or. Rev. Stat. §§ 175.100, 659A.030); Rhode Island (R.I. Gen. Laws § 28-5-6, R.I. Gen. Laws § 11-24-2.1(a)(8)); Vermont (Vt. Stat. Ann. tit. 1, § 144); Washington (Wash. Rev. Code § 49.60.040); and the District of Columbia (D.C. Code Ann. § 2-1402.11).

[6] A06584A, 231th Leg. (N.Y. 2008).

[7] National Gay and Lesbian Task Force, "Jurisdictions with Explicitly Transgender-Inclusive Non-Discrimination Laws" (April 2008), available at *http://www.thetaskforce.org/downloads/reports/fact—sheets/all—jurisdictions—w—pop—4—08.pdf.*

[8] Transgender Law & Policy Institute, "Employer and Union Policies Prohibiting Discrimination Against Transgender People," available at *http://www.transgenderlaw.org/employer/index.htm.*

[9] See, e.g., Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), cert. denied, 471 U.S. 1017 (1985) (pilot did not have a cause of action under Title VII because, based on the plain meaning of the word "sex" and the legislative history of Title VII, sex does not include a person's transsexual status); Sommers v. Budget Marketing, Inc., 667 F.2d 748 (8th Cir. 1982) (Title VII does not encompass discrimination against transgender persons); Holloway v. Arthur Andersen & Co., 566 F.2d 659 (9th Cir. 1977) (Congress did not intend for Title VII to protect transgender employees); James v. Ranch Mart Hardware, Inc., 881 F. Supp. 478 (D. Kan. 1995) (same); Powell v. Read's, Inc., 436 F. Supp. 369 (D. Md. 1977) (same); Voyles v. Ralph K. Davies Medical Center, 403 F. Supp. 456 (N.D. Cal. 1975) (same), aff'd, 570 F.2d 354 (9th Cir. 1978); Oiler v. Winn-Dixie Louisiana, 89 Fair Empl. Prac. Cas. (BNA) 1832, 2002 WL 31098541 (E.D. La. Sept. 16, 2002) (male grocery store clerk denied Title VII protection when fired for wearing female clothing off the job).

[10] Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004) (holding that transgender firefighter who was transitioning from male to female was discriminated under Title VII against based on failure to conform to masculine gender stereotypes); Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005) (holding that transgender police officer who was transitioning from male to female was discriminated against under Title VII based on failure to conform to masculine gender stereotypes), cert. denied, 546 U.S. 1003 (U.S. 2005); Lopez v. River Oaks Imaging & Diagnostic Group, Inc., 542 F.Supp.2d 653 (S.D. Tex. 2008) (denying employer's motion for summary judgment and holding that transgender plaintiff was entitled to prove her gender stereotyping claim).

[11] See Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004); and Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005), cert. denied, 546 U.S. 1003 (U.S. 2005).

[12] See, e.g., Sweet v. Mulberry Lutheran Home, 2003 WL 21525058 (S.D. Ind. June 17, 2003) (holding that termination because of employee's intent to change sex was not actionable as sex discrimination under Title VII); James v. Ranch Mart Hardware, Inc., 881 F. Supp. 478 (D. Kan. 1995) (holding that Title VII does not prohibit discrimination against transgender people).

Chairman ANDREWS. I would like to thank each of the witnesses for very provocative, thoughtful testimony.

We are going to try to have questions back and forth so we can draw out some of the points that have been made.

First, I do want to introduce two things for the record. One is a letter—without objection that will be entered—from the Business Coalition for Workplace Fairness dealing with these issues.

[The information follows:]

Prepared Statement of Kathleen Marvel, Senior Vice President and Chief Diversity Officer, the Chubb Corp.

On behalf of The Chubb Corporation, one of America's leading diversified-financial corporations, I would like to express our strong support for extending basic job protections to transgender Americans. We applaud the Committee for holding this hearing and appreciate the opportunity to provide this statement for the Congressional Record.

In 1993, Chubb added sexual orientation to its non-discrimination policy to strengthen our workplace values of fairness for our 10,000+ employees. That policy stated, "It is our policy to provide equal employment opportunities to employees and applicants based on job-related qualifications and ability to perform a job, without regard to race, sex, color, religion, age, national origin, sexual orientation or disability." Gender identity, however, was not part of the policy. A truly all-inclusive workplace remained an elusive goal.

In 2002, Chubb employees in our Gay & Lesbian Employee Network (GLEN) began to educate themselves at the annual "Out & Equal" workplace summits about the issues and challenges faced by the transgender community at work. Once educated, GLEN members presented the case to senior management for broadening Chubb's nondiscrimination policy to specifically include gender identity. The process was challenging since there were no employees known to the organization to be in need of such protection, but in 2004 the Corporation agreed to make the necessary policy changes to be fully inclusive of transgender employees.

These changes enable us to now state—unequivocally—that at Chubb, we are totally committed to providing equal employment opportunities to all employees and applicants based on job-related qualifications and ability to perform a job without regard to race, sex, color, religion, age, national origin, sexual orientation, gender identity or disability.

In the years since its implementation, our policy of non-discrimination has been embraced broadly throughout the organization, and we believe this acceptance has had a positive impact on our corporation's bottom line: we employ the best-qualified insurance professionals in the financial services industry, bar none. Their collective work ethic helped make Chubb the 180th largest diversified-financial corporation in the U.S. for 2007. Our gay, lesbian, bisexual and transgender employees feel that they are equally protected and valued by the company. And it has further reinforced, for ALL of our employees, that fairness and non-discrimination remain fundamental tenets in our workplace.

Interestingly, although since broadening our non-discrimination policy to include gender identity we have not had any employees transition on the job, we have been able to provide direction to one of our insurance customers who knew of our policy and needed advice in order to help a transitioning employee of their own. After consulting with our customer, we were able to connect them with several expert transgender issues resources to provide specific best practices. Our outreach efforts on behalf of a valued customer helped them support an employee with dignity, fairness and respect, and in turn helped us strengthen our relationship with the customer.

This story underscores the reason why we take particular pride in being recognized by such organizations as Catalyst and the Human Rights Campaign Foundation as a company that consistently treats its employees, customers and investors alike with dignity, fairness and respect. We are very proud to have received a 100% rating on the Human Rights Campaign's Corporate Equality Index since 2004. Additionally we were recognized in 2007 by DiversityInc as one of the Top 10 Companies for Gay, Lesbian, Bisexual & Transgender Employees. We are also proud to be an active member of the Business Coalition for Workplace Fairness, an ever-growing group of FORTUNE 500 corporations that have added their collective voice in support this legislation.

Enhancing our work environment to prohibit discrimination on the basis of gender identity has not been a financial burden to Chubb. On the contrary, we believe that our philosophy and practice of valuing and celebrating the diversity of our workforce actually strengthens our financial underpinnings, by encouraging the full and open participation by all employees at every level of the organization.

Businesses that drive away talented and capable employees are certain to lose their competitive edge, an outcome that we simply cannot afford to accept in today's competitive global marketplace. We believe that including gender identity protection in workplace non-discrimination legislation will have a positive impact on our country's ability to compete on the world stage, by extending this protection in the majority of states where employees can still be turned down for a job, or fired from a job, simply because they happen to be gay, lesbian, bisexual or transgender.

It has long been the law of the land that employment discrimination is unacceptable based on race, gender, religion, ethnic origin or other non-performance-related considerations. At a time when we are considering adding sexual orientation to the list, it is also time to include gender identity.

Diversity is about recognizing, respecting and valuing differences. We realize the challenges involved in integrating and valuing diversity in its many shapes, and are committed to fostering an environment in which all employees can realize their fullest potential. We believe that Chubb benefits from the competitive advantage such diversity provides. We pride ourselves on being a great place to work, as evidenced by the many workplace awards we have received. That great place to work includes our gay, lesbian, bisexual and transgender employees, and is why Chubb strongly supports the inclusion of gender identity in any workplace fairness legislation being considered by the Committee. Such legislation would be consistent with our corporate principles of treating all employees with fairness and respect.

I thank Representative Andrews, a fellow New Jerseyan, and the Committee for its leadership on this critical workplace issue, and am pleased to submit this Statement for the Record.

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Written Testimony Submitted by Levi Strauss & Co.
Helga Ying, Director, Worldwide Government Affairs and Public Policy
Before the House Education and Labor, Health, Employment, Labor and Pensions Subcommittee

Regarding Non-Discrimination Based on Gender Identity

June 26, 2008

Thank you Mr. Chairman and members of the subcommittee for the opportunity to provide this written testimony today. Levi Strauss & Co. (LS&CO.) strongly supports legislation to ensure that employees are not discriminated against based solely on their gender identity. We urge you to work with your colleagues in the House of Representatives to ensure that a ban on discrimination based on gender identity is codified in U.S. law as soon as possible.

Based in San Francisco, California, LS&CO. is a global corporation with roughly 11,000 employees, more than 3,000 of whom are employed in the United States. LS&CO. is one of the world's leading branded apparel companies. We design apparel and related accessories for men, women, and children under the Levi's®, Dockers®, and Signature by Levi Strauss & Co.™ brands, and we market our products in more than 100 countries.

Non-discrimination based on gender identity is consistent with LS&CO.'s commitment to workplace diversity, our long-standing nondiscrimination policy and our strong corporate values. Our company values -- empathy, originality, integrity and courage -- play an important role in shaping LS&CO.'s business strategies, corporate policies and community-outreach activities.

Guided by our values, we became the first Fortune 500 company to offer healthcare benefits to the unmarried partners of our employees. In 2003, LS&CO. added gender identity as a protected criteria in our broader non-discrimination policy. We also implement policies that provide equal opportunities for all our employees without regard to race, color, gender, sexual orientation, religion, national origin, age, Vietnam era/disabled status, disability, or other bases prohibited by law in the jurisdictions where we do business.

Adopting and enforcing strict antidiscrimination policies in our hiring has not had any adverse effect on our global business interests. To the contrary, we believe that our values and commitment to diversity have improved our company's ability to compete by attracting the "best and the brightest" employees and allowing all employees to participate freely and openly in their respective occupations.

LS&CO. is not calling for special treatment for particular employees, nor do we promote hiring quotas or other preferences. We simply believe that the basic right to fair and equal treatment in the workplace should apply to all workers, including those who might face discrimination due to their gender identity.

LS&CO. is not alone in the belief that sexual orientation and gender identity should not be used as an excuse for discrimination. Eighty-six percent of all Fortune 500 companies currently ban discrimination based on sexual orientation and 98 percent of Fortune 100 companies maintain similar policies.

It has been federally mandated that employment discrimination is unacceptable when based on race, sex, religion, ethnic or other criteria not related to job performance, and we are heartened that the House of Representatives has passed legislation that would protect employees from discrimination based on sexual orientation. We believe that it is time to prohibit discrimination based on gender identity as well. In fact, we believe that this protection is long over due. We, therefore, urge members of the Committee to work judiciously to develop legislation that would prohibit workplace discrimination based on gender identity as soon as possible.

Thank you again for the opportunity to present this testimony.

[The statement of Ms. Lunaris follows:]

Prepared Statement of Alynna E. Lunaris

Mr. Chairman Andrews, and members of the Subcommittee, thank you for the opportunity to submit written testimony as a part of this hearing. I am Alynna Lunaris.

For the past two years, I have been living full-time as a female, after thirty six years of life as a male. For the last 20 years, I have looked forward to transitioning from the male body to which I was born into the female that I always knew I really was. While I am very happy with my decision to transition, the process has been full of challenges. These challenges do not entail just the physical, psychological and financial cost that one would anticipate incurring; they also include the particularly difficult obstacles relating to employment. In fact, after being terminated from a terrific position as a Humane Law Enforcement Officer with the Washington Humane Society (WHS) I have found it impossible to find employment. I have been searching for over a year and despite many interviews, and follow-up interviews, I have not yet been able to find a position.

My employment with the Washington Humane Society (a private not-for-profit law enforcement agency that was charted in 1870 by Congress to enforce the District of Columbia's anti-cruelty to animal laws) ended on June 28, 2007. In addition to their private law enforcement activities, WHS also holds a multi-million dollar comprehensive animal care, control, and disease prevention contract with the District of Columbia Department of Health. During my time with WHS, I worked in both their private and contracted functions to make the District of Columbia a safer and more hospitable place for animals and people.

I was hired by WHS in January of 2005, as a front desk assistant at the District of Columbia Animal Shelter. At the time, WHS human resources, their executive director, and upper management were all aware of my transgender status, and of the possibility that I would begin my transition while employed under their contract with the District. At the time, management was open and even seemed to be supportive of my anticipated transition.

After approximately six months with WHS, I was promoted from front desk assistant to a field position as an Animal Control Officer (ACO). In that position, I was responsible for enforcing the District's Animal Control Laws and zoonotic disease regulations, as well as assisting local and federal law enforcement agencies with animal related issues and responding to animal related emergencies such as animals hit by cars and animal bite cases. I held this position for a year as a male and five months as a female. My excellent performance as a male in this position is well documented by letters of commendation from District residents, an award from the Metropolitan Washington Council of Governments (MWCOG), and an out-

standing performance evaluation. While working as a male in this position, management and my colleagues were aware of my initial steps to become a female (not very easy to hide the changes, as you might imagine), and many were accepting. Some, however, made it clear that they had strong negative feelings about transgender people through their comments and actions.

In June of 2006, I began hormone therapy, facial hair removal and voice therapy. In September of 2006, I took vacation from my post as ACO. I informed WHS Human Resources and management that when I returned, I would be returning as a female. When I returned, I submitted a court order changing my name. I also submitted a copy of my new driver's license, which now held a female designation.

Within two weeks of my return I started experiencing discrimination from WHS management. The first incident of discrimination was the loss of an anticipated promotion to Field Services Supervisor. Initially I was asked by the former Field Services Supervisor, who was taking a different position in the company, to apply for the position. I began work on my resume and application for submission for the position only to be told by the same supervisor that an application from me would not be accepted.

Over the next five months I was given multiple disciplinary write-ups. In some cases the incidents in question involved other officers; yet, I was the only one cited for the incident. In other instances, I was written up for policies that were not in existence at the time of the incident and WHS refused to provide to me or other officers with written evidence of the change in policy that resulted in my write-up. In every incident, the write-up was unfounded, poorly investigated, and initiated by the same two managers.

The situation became so intolerable that WHS Human Resources made the decision to transfer me to a position in the private law enforcement department as a Humane Law Enforcement Officer (HLEO). This position took me out of the chain of command of the two managers who initiated the disciplinary actions.

Interestingly, while I was told that this was a lateral move, not a promotion, the new position did come with a pay raise and five months of back pay for the time between my outstanding performance review while presenting as a male, and the months of disciplinary write-ups for my performance as a female.

I worked as a HLEO for approximately six months, from mid-January of 2007 to the end of June, 2007. There were no further incidents until the Executive Director resigned and one of the managers who had been supervising me during my transition and while I was an Animal Control Officer was promoted to Interim Executive Director. Upon her promotion to this position, the harassment, discrimination, and fabricated write-ups began once again. Within three months of her promotion I was fired from my position for gross negligence. The final incident was again unfounded and poorly investigated.

The District of Columbia Office of Human Rights is currently investigating this case for wrongful termination based on transgender discrimination. I would like to commend the District of Columbia for amending their non-discrimination statement to include gender identity or expression through the issuance of Mayor's Order 2006-151. While the discrimination and resulting termination that I experienced was devastating, I am truly grateful that I was employed in a jurisdiction that takes these matters seriously.

Although this order does not prevent discrimination from occurring, I take great comfort in the fact that the District is fully committed to investigating claims of transgender discrimination and is working to ensure that the transgender men and women who work and reside in the District of Columbia are fully protected and have the same opportunities available to them as other men and women. It is my hope that the Federal Government will follow the good example set forth by the District of Columbia and many other jurisdictions by including transgender people in the national non-discrimination language.

Since I have been terminated from WHS, I have had many promising interviews. None of which have resulted in a job offer. I have applied with and been turned down for Animal Control positions throughout the National Capitol Region. I have applied for work in veterinary clinics, animal boarding facilities, and various types of office and retail positions. Every potential employer I talk to seems excited about my qualifications and the unique set of skills and abilities I bring to the table. I'm sure you can imagine how frustrating and financially devastating it is to be unemployed for so long. While I do not know the reasons for being turned down for these jobs, there's always the voice in the back of my head that tells me it is because of my experiences with my previous employer and because of my status as a transgender woman.

As an illustration for the problems facing a transgendered individual—I have recently applied for a position with the Federal government. There is a question on

the Declaration for Federal Employment form (OMB No. 3206-0182) that has caused me great difficulty in answering. As most of you distinguished members know, not answering or answering incorrectly any question on a Federal application is cause for either not being hired or worse being terminated after employment for cause.

Imagine yourselves in the position I find myself in and think how you might correctly answer this question.

It reads, "Are you a male born after December 31, 1959?"

I know that this question is intended to determine selective service registration. It does however, unintentionally force me to "out myself" to a potential employer. Additionally, I am in a quandary as to the correct way to answer the question.

According to my birth certificate, I am a male born after December 31, 1959, and I am registered for the Selective Service; however, my name and my state issued driver's license identify me as a female.

Trying to answer this question truthfully, but in a way that will protect myself from the possibility of further discrimination has been difficult. In the end, I believe that my only option is to be fully honest and submit an explanation of why, while was I'm a male born after December 31, 1959, I am one of only a few women in the country who are registered for the Selective Service.

I respectfully ask that this subcommittee consider the following:

- Review the federal employment forms and investigate the possibility of rewriting them with gender neutral language, and
- Explore the possibility of including gender identity in the national non-discrimination language.

Thank you for convening this hearing to discuss the important issue of transgender equality in the workplace. I greatly appreciate the opportunity to submit testimony on this issue.

[Article from the Los Angeles Times, dated November 19, 2000, follows:]

[From the Los Angeles Times, Sunday November 19, 2000]

Through the Gender Labyrinth

How a bright boy with a penchant for tinkering grew up to be one of the top women in her high-tech field

By MICHAEL A. HILTZIK

Late in 1998, a young researcher delving into the secret history of a 30-year-old supercomputer project at IBM published an appeal for help. As Mark Smotherman explained in an Internet posting, he knew that the project had pioneered several supercomputing technologies. But beyond that, the trail was cold. IBM itself appeared to have lost all record of the work, as if having experienced a corporate lobotomy. Published details were sketchy and its chronology full of holes. He had been unable to find anyone with full knowledge of what had once been called "Project Y."

Within a few days, a cryptic e-mail arrived at Smotherman's Clemson University office in South Carolina. The sender was Lynn Conway, one of the most distinguished American women in computer science. She seemed not only to know the entire history of Project Y, but to possess reams of material about it.

Over the next few weeks, Conway helped Smotherman fill in many of the gaps, but her knowledge presented him with another mystery: How did she know? There was no mention of her name in any of the team rosters. Nor was any association with IBM mentioned in her published resume or in the numerous articles about her in technical journals. When he probed, she would reply only that she had worked at the company under a different name—and her tone made it clear there was no point in asking further.

What Smotherman could not know was that his appeal for strictly technical information had presented Lynn Conway with a deeply personal dilemma. She was eager for the story of IBM's project to emerge and for her own role in the work to be celebrated, not suppressed. But she knew that could not happen without opening a door on her past she had kept locked for more than 30 years.

Only after agonizing for weeks did Conway telephone Smotherman and unburden herself of an extraordinary story.

"You see," she began, "when I was at IBM, I was a boy."

Nature directs living things into a vast maze of sexual diversity from which our culture provides only two acceptable exits: male and female. Gender is the most fundamental component of our self-image, the foundation of the personality we present to everyone around us. Think of the very first question one asks about a newborn: "Is it a boy or a girl?"

Today the intricacies of gender have worked their way into cultural, scientific, even political debate. Why shouldn't girls compete against boys in math, or on the playground? Would little boys be less beastly if society discouraged rough play? Where, in fact, does our gender identity reside: In our physique? Our brain? Or somewhere deeper, in our soul?

That society has begun to grapple openly with these issues suggests how profoundly absorbing the subject is. "There's a little bit of each gender in each person, so there's something intriguing about what exists on the other side," says George Brown, a psychiatrist at the Veterans Administration Medical Center in Johnson City, Tenn. "But there's also a threat that in exploring the subject I might find out something I feel is very dangerous." This implicit threat may explain why, over the past 30 years, science has learned less about the mysteries of gender than about the origins of the universe.

Transsexualism, the most extreme expression of gender discordance, may be our last taboo. At least 40,000 Americans have undertaken the surgery and therapy to make the transition from male to female and as many as 20,000 more may have gone from female to male. But so strong is the stigma, so blatant the discrimination, that most keep the change a secret by shedding their old lives, jobs and friends along with their old gender. Lynn Conway, among the first Americans to undergo a sex change, came to give the secret life into which it forced her a name: "stealth."

Today Conway lives in a home outside Ann Arbor, where she is professor of computer science emerita at the University of Michigan. Slim and tall, with light brown hair, long, slender fingers and an engineer's unsentimental directness, she says she knew that the operation that changed her gender would consign her to a life of hardship. And she knew it would be worth it. Peering out over the 24 acres of meadow, marsh and woodland she shares with her boyfriend of 13 years in a rural district of lower Michigan, she recalls the risks she confronted three decades ago. "The prediction by everyone then was that what was happening to me would be a disaster," she says. "But sometimes in your gut, you know something is right."

A child, whom for reasons of family privacy we shall call Robert Sanders, was born in Mt. Vernon, N.Y., to a schoolteacher and a chemical engineer who divorced when he was 7. A round-faced little boy with direct blue eyes, Robert by the age of 4 was giving off signals—faint to outsiders but alarming to his parents—that he was not a normal male child. He shunned the other boys and preferred the sedate play of girls in groups. One day, walking through a clothing store in Scarsdale with his mother, he stopped, transfixed by a girl's cotton print dress, one with puffy sleeves like his little friend Janet wore.

"Can I have one like that?"

He had just gotten out the words when he felt as though every eye in the store was fixed on him. "No, you may not have that dress," his mother snapped. "You are not a girl!" It was obvious even to his 4-year-old ears that he had committed some terrible blunder, but he did not know what.

From that point on his parents watched carefully for any signs of effeminacy, which they mercilessly exterminated. They cut his hair back almost to the scalp, leaving just enough in the front to be combed back. His mother stopped cuddling him, barely touched him anymore, as though fearing that her previous expressions of maternal love had somehow softened him. He ended up feeling that he was being watched all the time.

The vigilance ebbed slightly after his parents' divorce. Robert's mother was so busy teaching that he and his younger brother, Blair, were left to their own devices after school. The brothers shared an unquenchable interest in nature and science. The house was full of the flotsam and jetsam of their mother's schoolroom assignments—scrap lumber, galvanized tin, all kinds of junk that became the raw material for countless backyard projects. Whatever was not on hand they scrounged during weekend forays to the public dump.

When school ended for the summer, the projects started, fueled by Robert's precocious talent for design and construction.

He hand-built a hi-fi system, and then a wood-framed enlarger for the brothers' hobby of photography. In high school he resolved to build a radio-telescope. It was 1952, and searching the skies for radio waves emitted by cosmic bodies—now an indispensable tool of modern astronomy—barely ranked as an authentic scientific application. Nevertheless, Robert studied nonstop, drafted a design, acquired the necessary lumber and aluminum sheeting and, with Blair's help, erected in the backyard a working contraption, 12 feet in diameter. "Robert had this very strong personality trait of studying things well, coming up with a plan and carrying the plan through to completion," Blair says. "There's no stopping a person who continually does that."

What Blair did not comprehend was that his older brother's determination shrouded—or perhaps counterbalanced—deep inner turmoil. With puberty Robert's unremitting feelings of girlishness boiled over, setting up a violent conflict with the inexorable masculinization of his body. He did everything he could to forestall what was happening—surreptitiously shaving his legs, shaping his eyebrows, pilfering women's clothes from relatives' homes. But these pitiable cosmetic measures only sharpened his internal conflict.

In 1950s Westchester County, sex remained firmly outside the bounds of polite discussion, even within families. There was no one he could talk to for support, encouragement or explanation. His mother glared at any signs of incipient effeminacy but never raised the issue in conversation. The denial within Robert's family was fully reflected in society at large.

The prevailing view of transsexualism as a psychological disturbance is both the cause and the result of the poverty of scientific research into the foundation of gender identification. What is known is that there are four broad and somewhat related elements. These can be categorized as genetic, hormonal, physical and neurological. In most cases all four are in sync. A female child inherits one X chromosome from each parent and develops, under the influence of the "female" hormone estrogen, secondary sex characteristics such as breasts and the ability to ovulate. This child has a vagina, uterus and ovaries, and considers herself psychologically a girl. A male child inherits one X and one Y chromosome and develops facial hair and greater muscle mass under the influence of testosterone. This child has a penis and testes and psychologically considers himself a boy. But it sometimes happens that nature, usually so efficient at managing the cascade of biological events that produces a newborn, leaves one or more of these elements out of sync. The Y chromosome might lack a gene allowing the body to respond to the male hormone, in which case the result is an XY female—outwardly indistinguishable from a normal female. The reproductive system is susceptible to a wide range of defects that come under the category of "intersex"—the presence of biological elements of both genders. In a surprisingly high number of births—as many as one in 500, according to pediatric surgeons—a child is born with anomalous genitalia that in the most severe cases leave its gender hard to determine.

In the rarest cases the sole element out of sync is the neurological. The cause and, therefore, the remedy for the mental conviction that one is a whole being trapped in a perfect, but profoundly inappropriate, body is a mystery buried deep in the labyrinth of the mind.

Robert could do little to explore this maze until he left home at 17 to study physics at MIT. University life was liberating. He thrived in the rarefied competition of 900 of the country's brightest high school graduates, finishing his freshman year in the top 2% of his class. For the first couple of years he kept one foot planted uneasily in the "normal" life of a young heterosexual, going out occasionally with groups of male and female friends. On these dates, "he was as normal as any innocent kid," recalls Dorothy Hahn, who married Robert's closest MIT friend, Karl. "He was awkward with girls, but not excessively so."

But release from his mother's repressive scrutiny also gave him the space to air what he sensed was his truer self. He gave his increasingly assertive female persona the name Lynn—a derivative of his middle name—and clandestinely purchased women's clothing from the Sears catalog. When he learned that a group of acquaintances was burgling pharmacies for narcotics, he did a characteristically thorough survey of the endocrinological literature and presented them with an order, crafted with a physician's precision, for injectable estrogen. The hormones did their job. Robert's skin and features softened, his body hair thinned, he began to develop breasts. Gingerly, he began coming out to a few close friends, then wearing women's clothing in public, where his androgynous femininity attracted male attention. A photographic self-portrait from this period shows a waif-like "Lynn" in a modest black dress, hair tucked behind one ear, bare legs shod in simple pumps. Some of his new male friends became lovers, yet Robert never saw these as homosexual relationships, for although his partners knew he was male, they regarded him not as a boy but as a girl, as "Lynn."

This lonely experimentation anticipated what has since become the professional standard in the treatment of transsexuals—the "real life experience," in which the medical and legal systems require patients to live for a year in their "psychological gender" before being judged ready for sex-change surgery. Without professional support, however, Robert's double life—he still attended class as a man—only intensified his profound psychic confusion. By his senior year the strain was starting to tell. His female identity and his black-market hormones were increasingly at war with his body's determination to create the brow ridge and other features that telegraph masculinity to others on a subconscious level.

He started drinking heavily, self-medicating his psyche with buck-a-bottle fortified wine the way he self-medicated his body with estrogen. He expressed abhorrence of his physique and talked about castrating himself to arrest his body's relentless output of testosterone, going so far as to investigate how to create a germfree environment to undertake the surgery. Karl Hahn, who had transferred to a premedical program at Boston University, was sufficiently alarmed that he found Robert a psychologist.

The man Karl had in mind was a professor at the medical school who reputedly knew something about transsexuality and the available options. (News of Christine Jorgensen's Danish sex-change operation had broken not long before.) At the very least, Karl reasoned, this would provide Robert with a professional shoulder to lean on, someone to assure him that he wasn't going insane, that he need not grapple with his bewildering condition in hopeless isolation.

The consultation began auspiciously. Robert described his feelings of sexual disjunction as the doctor listened tolerantly. Then, abruptly, with a serene detachment that gave his words a horrible finality, he punctured Robert's hopes.

"Unfortunately, there isn't anything you can do to become a woman," he said. Crisply he outlined the stark choices. Robert could cease the hormone-taking and resolve to end this phase of sexual experimentation on his own, or the state of Massachusetts would do it for him, by institutionalizing him as a sexual deviant.

"But I've heard about these operations," Robert protested. "I thought you would tell me where to go to get them."

"Those operations don't make you into a woman," came the reply. "They just make you into a freak."

Robert hit bottom. He flunked out of MIT. On what was to have been his graduation day he was in San Francisco, living on the fringes of the gay community, still desperately searching for where he fit. But he found no answers there, because he did not see himself as a gay man attracted to other men, but rather as a woman attracted to men—if only he could rectify nature's dirty trick.

After his hormone supply ran out the following winter, he ended up back home, working days as a repair technician at a hearing-aid company. With Blair away at college, Robert and his mother occupied the house alone, coexisting uneasily in mutual avoidance, rarely speaking, rarely even passing through the same room, lest the slightest physical encounter remind them of the unaddressed issues between them. Having failed to find a community that would have him, Robert felt degraded and humiliated. The silence of the house settled on him like a reproach.

Again, it was intellectual restlessness that stirred him from his torpor. The deadening busywork of hearing-aid repair could not keep him for long, so in 1961 he enrolled at Columbia University. There he once again excelled, earning bachelor's and master's degrees in electrical engineering after only two years. More important, his sterling work landed him a job offer from Herb Schorr, a Columbia instructor who was also a research executive at IBM.

Schorr's secret "Project Y" team was engaged in designing the world's fastest supercomputer. Soon to be renamed ACS, for "Advanced Computing System," the project had the special status of being a pet of IBM's chairman, the imperious Thomas J. Watson Jr., who was irked that his company had fallen behind its rivals in its efforts to reach and hold this prestigious beachhead.

As elite and insular as the Manhattan Project, ACS was shortly relocated to Menlo Park, Calif., where the team of 200 engineers occupied its own building on Sand Hill Road—a stretch of highway famous today as the center of Silicon Valley's venture capital community. For Robert the sheer cerebral bravado of the group was a revelation. Energized by the pioneering work taking place around him, one day he experienced a flash of insight that at a stroke solved one of the team's hardest problems.

The issue, vastly simplified, was how to allow the machine to execute more than one instruction—say, adding, multiplying, or comparing two numbers—at a time. A computer can handle several instructions at once if they are independent—say, if two instructions involve adding two unrelated pairs of numbers. But often one instruction cannot be executed until another is completed—for example the addition of two numbers, one of which is the sum of two others summed by a prior instruction. The trick is to figure out which instructions can be jumped ahead in line.

Robert's insight, which became known as "dynamic instruction scheduling," or DIS, was a way of constantly analyzing a string of instructions and ordering them efficiently while keeping the number of transistors performing these logical tests—still, in the mid-1960s, extremely expensive—to a minimum. Within days the team had incorporated DIS into the ACS architecture. Over the years it would filter into generations of high-performance, so-called "superscalar," computers.

Yet as he reached this pinnacle of professional achievement Robert's personal life was coming apart. For he had not moved to California alone.

During the summer between Columbia terms Robert had befriended a co-worker at the hearing-aid company named Sue. (Her name has been changed.) She was a pretty brunet from a Catholic family working to raise tuition for nursing school. When school resumed that fall they continued meeting socially in the city. They took walks in the park and enjoyed casual lunches, forging a relationship that the inexperienced Robert, oblivious to Sue's real feelings, considered platonic. One night after one of their non-date "dates," Sue got affectionate and Robert, despite himself, got aroused. The next thing they knew, Sue was pregnant. For months Robert fended off Sue's insistence that they marry, but finally gave in. "I felt like it was a trap," Lynn says. "But the fact there was going to be a baby seemed like a miracle. I really looked forward to it. It was, like, 'Robert's getting trapped, but Lynn gets to have a baby.' I didn't realize the implications."

To friends aware of Robert's psychological struggle, his marriage suggested that he had decided to surrender to living with a permanent dichotomy in his sexual being. For a while that might have been true, as Robert immersed himself in the mundane demands of married life. Their daughter Kelly was born in February 1964. (The daughters' names have been changed.) Amid the excitement of his new work and the daily routine of raising a family on his $15,000 salary, the conflicts of gender seemed to recede.

Any personality quirks he did display melted into the eccentricities of a team of gifted engineers engaged in teaching a room-sized contrivance of transistors and wiring how to cogitate. Robert "was always somewhat strange, but all these guys were strange," recalls Herb Schorr, chuckling. "My nickname was 'The Zookeeper.' "Erudition in this group ran deep rather than wide; they could debug the circuits of a digital machine from deep within its logic structure, but of the outside world they were as innocent as monks. "When these guys went out for beers in the evening, they would sit and talk about technical things, not sexual things," Schorr says. No one seemed to notice even a hint of effeminacy in Robert's manner; if anything he had a reputation of being "macho," an aficionado of high-speed motorcycle riding, fit enough to easily handle hikes on social outings to Mt. Whitney or Yosemite National Park that left his colleagues winded.

Meanwhile, the medical establishment was finally starting to acknowledge gender identity issues. In his 1966 book "The Transsexual Phenomenon," Harry Benjamin, a prominent New York endocrinologist, not only gave the syndrome a name but also chided his peers for their ignorance: "Even at present, any attempt to treat these patients * * * in the direction of their wishes—that is to say 'change of sex'—is often met * * * with arrogant rejection and/or condemnation." Benjamin wrote of patients he had treated with hormones and steered toward surgery. Robert, however, reacted to this glimmer of professional understanding not with relief but despondency.

As physical masculinization was catching up to him, his marriage to Sue was faltering under the pressure of mutual frustration. Their sexual relations had been rare and unsatisfying, although not nonexistent: A second girl, Tracy, was born in 1966.

He was 28, already raising a family, manacled so firmly into the role of father, husband and man that he felt it would take a Houdini's skills to extricate himself.

The motorcycle rides became more breakneck, the rock climbing more adventurous. At first the fear was distracting. But implicit in the danger-seeking was self-destructiveness, a subconscious hope that an accident might bring his inner guilt and turmoil to an end. Deliverance never came.

On a drive home from a dinner party one evening, he pulled to the side of the road, overcome by feelings of alienation. Breaking down in tears he blurted: "I need to be a woman." It was the first time Sue had heard her husband put his feelings of disaffection into words. But that did not make them easier to talk about. The isolation only seemed to increase. Brooding alone one night in 1967 as Sue and the children slept, he broke down again. Weeping uncontrollably, he dug out a Colt .45 automatic pistol he had used for target practice and placed it to his head. He was holding it when Sue, awakened by the wailing and sobbing coming from the next room, appeared at the door, frozen in shock. The next thing Robert knew, the gun was on the table and Sue was assuring him that they would do anything they could to relieve his torment.

With Sue's consent, Robert contacted Benjamin, then in his 80s and on the eve of retirement. Benjamin agreed to accept him as one of his last patients. Under Benjamin's care, Robert resumed estrogen therapy and prepared for an operation that would remove the physical signs of his maleness and give him female genitalia, the

"change of sex" he so ardently desired. The operation would prove to be the easy part.

Robert had visualized a nearly seamless transition from male to female. At IBM he would have his supervisors change his records so that he was no longer Robert, but Lynn, and he would transfer to another lab to start afresh. At home, following the separation and divorce he knew were unavoidable, he would simply visit as "Aunt Lynn"; at 2 and 4 the children should be young enough to barely register the change. But problems surfaced immediately. At work, his supervisor, an engineer named Don Rozenberg, recognized instinctively that IBM possessed exactly the wrong culture to indulge Robert's unprecedented proposal. "It was still white shirts, blue serge suits and wingtip shoes," Rozenberg says. "This simply wasn't the IBM image."

Indeed, IBM corporate management, unable to see how Robert could keep his past secret from his co-workers, feared disruption. "The decision was made," Rozenberg recalls, "to quietly move him out of the company." For Robert the loss of his job could not have come at a worse time. His sex reassignment surgery, as it was formally known, was scheduled to take place in a few months. It would cost about $4,000—an enormous sum in 1968—not including several thousand dollars in ancillary costs: electrolysis, counseling, hormone therapy. Beyond the financial implications, the stigma of banishment from one of the world's most respected corporations fell upon him like an excommunication.

The few friends and colleagues Robert told of his medical situation identified with Sue, berating him for misleading her and exposing his young family to shame and disgrace. Nevertheless, Robert felt he had to go through with the surgery; it was change or die. In November 1968 he boarded a PSA plane for San Diego, then a bus to the Mexican border and a taxi through Tijuana to the medical clinic of Dr. Jose Jesus Barbosa, a plastic surgeon with an elite practice among affluent Americans. Barbosa also had experience performing the so-called penile inversion procedure, in which the sensitive skin of the penis is used to construct a vaginal canal. In a 4 1/2-hour operation Barbosa transformed Robert's genitalia into those of a woman, fully sensitive and even capable of orgasm.

But the surgery failed to address another issue. Under pressure from family and friends who saw Robert's choice as something depraved, Sue wavered about letting "Aunt Lynn" stay in the girls' lives. Her doubts grew when, after Robert left IBM, the family spent three months on welfare. The troupe of county social workers thus introduced into their lives were openly appalled at Robert's decision. Sue, worried that the children might be taken from her, finally barred the girls' father from their lives on threat of obtaining a court order.

Lynn, now living as a woman, did not underestimate the threat. An encounter with the law would mean public exposure and the undoing of all her efforts to start life over. So she capitulated. Sue granted her a final visit with the children in late January 1969. Dressed as a man for the last time in her life, Lynn spent a few hours watching her towheaded toddlers chase their shadows across the playground of a Palo Alto park and tried to stifle the flood of family memories that washed over her, such as the camping trips on which Robert would hike Yosemite's trails with little Kelly strapped into a carrier on his back.

When the setting sun signaled that the afternoon was drawing to an end, Lynn called to them, enveloped each girl in hugs, and tried casually to deflect their questions about why Daddy had to leave so soon and where he was going. Finally, her heart breaking, she walked away. She would not see either of them again for 14 years.

As the '60s wound down, the peninsula stretching from San Jose to San Francisco was undergoing a transformation. The orchards blanketing its rolling ridges were falling under the bulldozer, peach trees making way for low-slung industrial complexes. Although it would be several years before a local newspaperman coined the term "Silicon Valley," the region's growing electronics industry already evinced an unflagging demand for electrical engineers.

After the operation, Lynn had moved "Robert" out forever. She had her surname legally changed to Conway, after the dynamic heroine of a favorite Helen MacInnes adventure novel, and began life anew.

It was not easy. For one thing her medical history proved a formidable obstacle to employment. Firm after firm made tentative job offers, only to change their minds as soon as she disclosed her condition on medical questionnaires. A local RCA research lab, intrigued by her skills but nervous about her history, offered her a position on condition she pass a psychiatric examination. Years later Lynn produced a copy of the psychiatrist's report from her meticulous files: two stapled pages, with the faded, grainy quality that bespeaks repeated photocopying: "Lynn Conway is a 31-year old transsexual * * * articulate, composed, attractive, and neatly attired

* * * comfortable and optimistic about her life * * * no indication of any abnormal mental trends * * * very superior intellectual capacity * * * [nothing] that would preclude her appropriateness for employment."

RCA withdrew the offer.

Eventually she hooked up with a small company desperate for experienced programmers. That job led to one at Memorex, the recording equipment company, which had decided to plunge into the computer manufacturing business and needed an experienced designer. Her reputation grew, and in 1972 she found herself weighing the most intriguing offer of her career.

The offer had come from a new electronics lab established by Xerox Corp. in an industrial park adjacent to Stanford University. Xerox, anxious that the emerging technology of digital computing might render obsolete its monopoly in office copying, had hired a few score of the smartest young engineers and scientists it could find, placed them in a California glade as far from its Connecticut headquarters as geography allowed and instructed them to follow their imaginations. The Palo Alto Research Center, or PARC, would eventually oblige by inventing the personal computer, the laser printer, Windows-style computer displays and much more in a legendary burst of innovation.

When Lynn joined PARC in 1973, much of this work was underway. The lab's revolutionary personal computer, the Alto, was already established as an indispensable office tool, each one linked to scores of others via the lab's ingenious data network known as Ethernet. But her own work would follow a slightly different path.

One of PARC's outside consultants, Caltech engineering professor Carver Mead, had proclaimed a revolutionary technical advance in computing. By imprinting ever more miniature circuits on silicon wafers, scientists had turned the traditional axioms of computer design on their heads. Computers were made of devices (transistors) and wires (their connections). Historically the transistors were expensive and the wires cheap, which dictated not only the architecture of the computer but the uses to which it was put—largely sequential, arithmetical computation. But silicon reversed the costs. Transistors, printed on layers of silicon, became cheap, while the infinitesimal connections became the cost bottlenecks. Mead foresaw that the difference would require a new kind of design but would open the possibility of nonarithmetic computation. Computers, Mead wrote, would no longer be big machines, useful only for crunching numbers, but tiny ones "deep down inside our telephone, or our washing machine, or our car."

Lynn was among the few engineers at PARC to buy into Mead's dramatic rethinking of computing's potential. To his crystalline intuition she contributed the hands-on engineering experience and deep understanding of computer architecture she had gained at IBM and Memorex. ("I had never designed a computer," Mead says. "She had.")

She also contributed the concept of design rules for the new technology of "very large-scale integrated circuits" (or, in computer shorthand, VLSI). These were principles that could be applied to almost any particular VLSI design, the way one can use the same-sized bricks to build an infinite variety of walls. Lynn and Carver Mead codified their work in a textbook that was issued in 1979 as "Introduction to VLSI Systems" or, as it became known to a generation of engineering students, "Mead-Conway."

Mead was already a national figure in engineering, but the book cemented Lynn's reputation. Even before its formal publication she had begun proselytizing about VLSI at universities across the country, including a semester spent teaching at none other than MIT (where she kept her previous matriculation a secret). "It really did change the view the technical world had of the potential of silicon," Mead says. This set the stage for a genuine computer revolution and the ultimate realization of VLSI principles: the Pentium chip, which today powers millions of desktop computers.

In the broadest sense, the intellectual energy of Silicon Valley mirrored Lynn's own flowering, which had begun with her operation. Her mind and body finally synchronized, she felt as though she had been reborn as a new emotional being. "I was experiencing a complete and profound new internal and external reality," she says, "going through what amounted to a second puberty."

Her social life blossomed. She frequented singles bars, sampled the novel technology of computer dating, stayed out dancing and socializing into the small hours. A photograph from the period shows her nestled in the driver's seat of her new red Datsun Z-car in a miniskirt and purple blouse, the prototypical single professional. She carried on an active sex life and, like any woman in her 30s, contemplated love and marriage.

But she was not like any other woman, and her expectations gradually faded. She got close enough to a number of boyfriends to share her past with them. At that point the relationships typically stalled out. "I backed off, thinking I would never

find anybody," she says. "I felt good about myself, but I was also thinking that someone might not want to marry someone like me."

Such episodes reminded her of the ever-present danger of exposure. For the most part she kept the truth behind a shroud. At PARC, a place where your academic credentials were as much a part of your identity as the music you listened to or the books you read, she managed never to let on that she had attended MIT and worked on a pioneering supercomputer at IBM. No one ever probed too deeply: It was as if she emitted some imperceptible signal telling colleagues that there were places in her past where one did not go.

Paul Losleben, a computer engineer who worked with her in a 1980s government program, recalls hiking with her one afternoon in the Palo Alto foothills. "I came away just brimming with new ideas without being really sure where they came from," he says. "I was just overwhelmed by her intelligence, her creativity, her grasp of topic." Only later did he reflect on how little she had given up of herself. "It was as though she was a totally professional person," Losleben recalls, "without any personal side."

For all that, through the '70s and '80s Lynn detected hints that social attitudes toward transsexuality were changing. In 1983, when Lynn was recruited to head a supercomputer program at the Defense Department's Advanced Research Projects Agency, or DARPA, she sailed through her FBI background check so easily that she became convinced that the Pentagon must have already encountered a transsexual or two in its work force.

Transsexualism may not have achieved mainstream acceptance, but at least it was no longer universally viewed as a transgression against nature. For one thing, there was more public awareness of the condition. Eugene Biber, an American plastic surgeon, had performed his first sex-change operation at his clinic in Trinidad, Colo., in 1969. ("Then the grapevine started," says Biber, who has since performed more than 4,500 operations.) Meanwhile, Harry Benjamin's teachings on transsexualism had spread. Stanford University established a program studying the condition, lending transsexuals valuable credibility. From time to time a prominent transsexual was "outed"—in 1976 it was the tennis player Renee Richards—and to the extent she managed to come through the attendant derision with her dignity intact, transsexualism shed a bit more of its eccentricity. By the late 1970s an estimated 1,000 Americans were undergoing the surgery every year.

Lynn had to forge this path herself. Her mother and father died in the 1970s, still refusing to accept Robert's transition. But by then she had already reconnected with her brother Blair, visiting him while he was in San Francisco for an academic conference.

Blair had been aware of her transition, but they had never had a conversation about it. Now they sat in his hotel room, facing the mutual challenge of brother and brother recalibrating their lifelong relationship—this time as brother and sister. For years Blair, now an astronomer at the University of Wisconsin, would struggle to reconcile the male role model of his formative years with this accomplished woman who was part stranger. Over time he found the answer that allowed them to come together again as family. "I think of them now as two different people," he says.

And then, in 1983, Lynn arrived at the most disquieting stretch of uncharted familial territory.

For Kelly and Tracy, their father's absence was a mystery that reasserted itself at regular intervals. At Christmastime, Lynn paid for presents that would appear under the tree marked "Love, Dad"—apparently so designated by Sue without Lynn's knowledge. Kelly recalled blurting to a teacher in kindergarten or nursery school that she had once glimpsed her father wearing women's clothes (the teacher summoned Sue to warn her against such loose talk). And there were the monthly checks of child support, signed by a "Lynn Conway," whom the girls imagined to be a lawyer or agent of some sort.

"I had no memory of my father," Tracy recalls, "although I had the image in my mind of someone really fabulous." Of the two children, it was she who showed the greater interest in their father. When she turned 15 she began peppering her mother with questions. "I was a teenager watching all my friends be Daddy's little girls, and I wanted to know who my dad was."

But her mother, who had spent more than a decade carefully dodging the painful issue of the phantom Robert, was not about to confront it head-on. Instead she chose to deal with the questions at a safe remove. One day while traveling on business, Sue set down the broad details of Robert's transformation in a letter and mailed it home, addressed to Tracy.

Tracy opened the envelope and moments later burst into her older sister's room. "You're not going to believe this!" They read the letter together. There was something about how their father was "no longer a he, but a she," and how their mother

knew something was not right with Robert but not exactly what. The letter could not help but raise more questions than it answered, but Sue remained loath to fill in the gaps. The girls struggled with wrenching questions, including the bedrock riddle of why their father, whatever his condition, had stayed out of their lives.

Finally, when Kelly turned 18 in 1983, Lynn made contact. She reintroduced herself via a series of short notes, then called to invite her daughter to their first face-to-face meeting since that desolate day at the playground. The bafflement and denial that had swept over Kelly upon reading her mother's letter two years earlier had given way to a wary curiosity. They met at a French restaurant in Palo Alto, where Kelly, who had never been to such a place, marveled at how every dish seemed slathered in rich sauce. As they ate, neither knew quite what to say. "It was almost like two strangers meeting, because we really were strangers," Kelly recalls.

Guardedly she brought Lynn up to date on her own life—she was already married and had a baby boy at home. But the strained formality of the setting prevented her from raising the most painful issues between them, including the girls' profound feelings of abandonment. Throughout the dinner she stole glances at the unfamiliar woman across the table, as though searching for signs of herself. "I was trying to come to terms with what our relationship was supposed to be," Kelly recalls. "Was she a friend? My dad? An aunt?" The encounter left Kelly impressed by Lynn's humor and intelligence, but also left too many ancient hurts unhealed. "I didn't know after that night if I'd ever see her again," Kelly says. "She'd been away forever, and I didn't know if she'd really be around."

They met a few more times in California. Then in 1985, after Lynn moved to the University of Michigan as a professor and associate dean, she invited Kelly and Tracy to her new home in Ann Arbor, treating them to a shopping trip, lunch at the university, a day of canoeing, a hint of what she had become during all those years offstage.

Epilogue

The rewards and professional accolades of a distinguished career kept coming in. Lynn received appointments to the board of trustees of MIT's Draper Laboratory and the board of visitors of the U.S. Air Force Academy (commemorated on her kitchen wall by a group photograph of the trustees, all in flight suits, lined up against the redmountained landscape of Colorado Springs). A figure of undisputed authority in some of the most abstruse corners of computing, Lynn won election to the National Academy of Engineering in 1989.

There was, however, a lingering resentment. DIS, the logic system she had invented at IBM, had become a standard of computer design. Yet others were now claiming credit for the process, years after her brainstorm. Reflecting on her life's tortuous path and wondering if her achievements and those of her IBM colleagues had ever surfaced, she typed the word "superscalar" into an Internet search engine and came up with Mark Smotherman's Web page. It was headed: "ACS—The first superscalar computer?"

Lynn was not surprised that Smotherman had problems unearthing ACS' history. Shortly after Robert Sanders' firing, the project had landed on the wrong side of an internal power struggle at IBM and been shut down. The team members dispersed and IBM's own institutional memory faded. The one place where that memory resided, as it happened, was in Lynn's files. The corporation had been so intent on ushering Robert Sanders out the door that it had neglected to ask him to return any of the project documents in his possession. Lynn still had them: reams of minutes, memos, diagrams—the complete history of a forgotten breakthrough in computer science.

Lynn wrestled with the infinite complications that would be raised should she make the cache public, thereby "outing" herself. Was she entirely comfortable in her role as a woman? Was there perhaps some hint still of shame? Was she a transsexual who happened to be a woman? A woman who happened to be transsexual? Or simply, at last, a woman?

There were many reasons to remain quiet, but threaded through her own life experience, Lynn also glimpsed a reason to step forward. Tens of thousands of transsexuals, whether they had had their operation, were contemplating one, or had chosen to live as the opposite sex without undergoing surgery still were forced to make their way alone, as she had. Who could know how many suffered in solitude, unaware of their options and opportunities, of what their predecessors had learned about living with their condition? Only when homosexuality had come out of the closet did enlightenment start to ease the burden of gays and lesbians. Maybe it was time for transsexuals to benefit from the same process. Almost before knowing it, she had decided. Lynn copied the most important papers. After carefully eradicating

her old name and inserting the new on every title page, she sent them to Smotherman and a few old colleagues. She was emerging from stealth.

With the same determination she once devoted to designing and building backyard radio-telescopes and room-sized computers she made contact with old friends, revealed her past and challenged them to see her whole. She directed some to her Web site, www.lynnconway.com, where she posted a candid "retrospective" of her life. Many were surprised at the information, but no one shunned her. "I reassured her that I had known about it and it was OK then and it was OK now," Carver Mead says.

For Lynn herself, the process meant reexamining a lifetime of decisions and choices. Recently, on a drive home from her office in Ann Arbor, Lynn reflected on the path onto which nature had steered her. "I sometimes think that all this stuff"—the achievements of a hard-fought career—"is overcompensation. If I'd been born 20 years later and transitioned at the age of 20, I probably would have found a husband and adopted kids. But I was just too early, and the transition came just too late." She stopped for a few moments. The tears passed. "But I've got to the point where that's just a fact of life."

Besides, she will tell you, she has too much to cherish now to dwell on regrets.

One day in 1987, at a canoe shop in Ann Arbor, she fell into conversation with a fellow enthusiast of nature. She ran into him again a few weeks later at a canoeing party. He was a professional engineer named Charlie, a hunter and outdoorsman who would shortly introduce her to his other passion, amateur motocross racing.

A new possibility, long renounced, reappeared. Within a few months they were living together and by 1994 they were looking for a house to buy. In a rural township about a half hour from Ann Arbor there was a trim little cottage on a few acres of marsh, meadow and wild woodland. Tentatively, as though testing a stove top that had burned before, Lynn sat Charlie down one night and broached a subject she knew she had left too long unaired.

"I think there's something you need to know about me," she said.

"She began filling me in on things I'd never begun to suspect," Charlie recalls. "I've got to say it was a little bit stunning. I was in a fog for a while, absorbing it. But I knew it was probably as hard for her to get into as it was for me to hear it."

He was a single man, never married, distant from his family. Like her, a soul looking for companionship and more. Despite his confusion, he offered reassurance. "On the Huron when we met," he said later, "we were both at a point in our lives where we needed someone like the person we saw the other to be."

That's all Lynn ever wanted. To be seen by others as she had always seen herself. And that's the person her friends and family members have now accepted. Tracy and Kelly have welcomed her into their lives. To their children she is, at last, their beloved "Aunt Lynn." Says Kelly, "I love her and love for her to be in our lives. We're very close and very similar. To us what happened in the past doesn't matter anymore."

Chairman ANDREWS. I also want to take a moment and thank some constituents and friends from New Jersey that are present today from Garden State Equality: the Vice Chair of that group, Barbra Casbar Siperstein. Barbra, welcome—Babs, I should say. Lilly McBeth and Angela Rain. They are constituents and friends. We are very glad that you are with us, as all of our guests, today.

I want to thank each of the witnesses for very thoughtful testimony; and, Mr. Lavy, I wanted to explore with you the concept of religious liberty and rights of conscience in the workplace and how it would interact with attempts to protect members of the transgender community. When you use an example that is saying forcing persons with beliefs, certain religious beliefs, to treat transgender as a valid concept is like forcing an Orthodox Jew to eat pork, it is the law though today, isn't it, that if an Orthodox Jew runs a law firm that he or she cannot refuse to employ a person because they are Catholic, is that correct, if the law firm is larger than a certain size?

Mr. LAVY. That would be correct.

Chairman ANDREWS. Is that a violation of the Orthodox Jew's religious principles?

Mr. LAVY. Not that I am aware of.

Chairman ANDREWS. Well, what if the person says, look, my principles are that I want people who read the scripture the way I do, who understand and worships the way I do. So if someone believes that there is a human being who is supreme overall in the name of the Pope, I don't want someone who believes in papal supremacy working for me because it violates my understanding of the scripture. Does that orthodox Jewish law firm have the right to deny work to the Catholic applicant?

Mr. LAVY. Under Federal law?

Chairman ANDREWS. Right.

Mr. LAVY. No, he does not.

Chairman ANDREWS. In your opinion, should they be able to?

Mr. LAVY. I am unaware of someone having a religious belief that employing someone with a different religious belief violates their conscience.

Chairman ANDREWS. Well, of course, this is not a matter of someone having a different religious belief. What we are arguing about here is, if someone believes that sexual identity at birth is a matter of religious belief and someone who takes a different view applies for a job, I think your position is that to compel the employer to disregard that fact would be a violation of the employer's religious belief, is that your position?

Mr. LAVY. Not hiring someone with a different view. But I am saying that there are people who have a deeply held religious view that employing someone in that circumstance would violate their religious beliefs.

Chairman ANDREWS. What about this one? What about if someone is a member of a religion is pacifist that believes that taking up arms is a violation of their religious principles and the center of her religious belief is pacifism. And the job applicant is a Marine Corps combat veteran. Do you think the pacifist should have the right to deny employment to the Marine Corps combat veteran because pacifism is a central tenet of their religious beliefs?

Mr. LAVY. I don't see how that violates the religious beliefs of the pacifist.

Chairman ANDREWS. So if someone believes that taking up arms and making war is central to their—there are religious faiths that believe that pacifism is a very central principle. And if someone doesn't follow that principle are you saying that doesn't violate that central tenet or belief?

Mr. LAVY. I would say that it would be very different if the person is actively engaging in war at the time the person——

Chairman ANDREWS. What if the person is a Marine Corps reservist and they are going to be called up to active duty in all likelihood in a couple of months. That they would be actively engaging in combat. How about that?

Mr. LAVY. In that case, it may be a violation of the religious beliefs but not one that would be accommodated under Title VII.

Chairman ANDREWS. No, but I didn't ask you about Title VII. I asked you what your opinion was. So is it your opinion that the

pacifist employer should not be permitted to deny a job opportunity to the Marine reservist?

Mr. LAVY. It is my opinion that the pacifist employer should probably have the right to do that.

Chairman ANDREWS. Should?

Mr. LAVY. Yes.

Chairman ANDREWS. Okay. What about the member of a religion that is white supremacist, that simply believes that whites are a superior race. In your belief, should that employer have the right to deprive a job to an African American applicant?

Mr. LAVY. I am not aware of that as a religious belief, but no.

Chairman ANDREWS. You think they should not have the right to?

Mr. LAVY. Right.

Chairman ANDREWS. So a faith that has racial supremacy as its core tenet is not a valid faith?

Mr. LAVY. I guess I am thinking in terms of the concept of religious liberty in our Constitution and the fourteenth amendment. That was a judgment by Americans that using race as criteria is not valid regardless of any——

Chairman ANDREWS. But you seem to say if we make a judgment that using gender identity is a valid criteria and that is somehow morally invalid, if we have the power to make the judgment about race, why don't we have an equally valid power to make the decision about gender identity?

Mr. LAVY. I am saying that I think it is not a good idea to do that. I am not saying that you don't have the power to do it, although there may be a religious——

Chairman ANDREWS. My time is up. I think you were saying something a little different. Because it is not how we define the classifications. I am asking you about the scope of this religious conscience immunity that people have, and it seems to me that the scope has to be what the scope has to be. That there can't be one scope of immunity in the case of a pacifist employer and another scope of immunity in the case of a racist employer and another scope of immunity in the case of someone who is somehow discomforted by transgender people. Shouldn't the scope be uniform across the board?

Mr. LAVY. I think that the issue is not as simple as being discomforted by a transgendered employee as much as it is a deeply held religious belief. I think that under the Constitution the race issue is a matter that has been determined.

Chairman ANDREWS. My final point—and I don't want to hog the time—but don't you have an establishment clause problem with that? Because it seems to me that it says that acceptable religions as we define them will have the zone of immunity so that deeply held religious beliefs will exempt people from employment discrimination laws, but other kinds of religions, be they white-supremacist-based, pacifist-based, don't. Doesn't that put us in the position of defining what is an acceptable religion for this exemption and which isn't?

Mr. LAVY. Not when the white supremacist group cannot exercise that belief because of the fourteenth amendment.

Chairman ANDREWS. Sure they can. They can publish books that say that white people are supreme. They can do that. The fourteenth amendment doesn't preclude that.

Mr. LAVY. Certainly they can publish a book.

Chairman ANDREWS. They can hold worship services that say that, can't they?

Mr. LAVY. I am sure they can.

Chairman ANDREWS. Okay. We may come back and explore this in the second round.

Mr. KLINE.

Mr. KLINE. Thank you, Mr. Chairman. Thank all the witnesses for your testimony, very enlightening as always.

I want to particularly thank the lawyers who are here because it gives Mr. Andrews particular pleasure in the great battle of what is the best law school. I guess I would have to admit that I, frankly, don't care, but he does, so thank you, thank you for that.

Ms. MILLER—AN. I don't know if we resolved the issue about the law school here, but you had very interesting testimony that I think is extremely important to us as we consider the possibility of statute. I believe very firmly that the language that we use matters. Indeed, when we write a law, when we pass a law, regulatory agencies often come in and write regulations that may change things somewhat, but fundamentally the language in the statute is very, very important, and we need to be clear about that.

You mentioned in your testimony, for example, that the use of the word "mannerism" could be problematic. I want to—there is some discussion—we have had some discussion in this committee, in fact, recently, about some language issues that came up when we were discussing the earlier bill, the ENDA bill, using the word "perceived" in that legislation which many people thought was problematic. So I am going to look down my notes here to make sure I get this right.

But the Americans—not just being a lawyer, you understand—the Americans with Disabilities Act protects not only qualified individuals with disabilities but also those who are, in quotes, regarded as having a disability. Some of the discussion surrounding new protection is based on gender identity involving providing protection based on an employee's sexual orientation or gender identity, whether actual or, in quotes, perceived.

Can you tell us, in your view, is there a difference between the regarded as test under the ADA and the perceived test set forth in the earlier ENDA bill and in this bill? I think we have a standalone bill, 3686.

Excuse me. Do you know, Mr. Chairman? Are we taking that up?

Chairman ANDREWS. The committee has not made a decision on that.

Mr. KLINE. I see. Go ahead.

Ms. MILLER. Yes, sir, I think there is a distinction between regarded as and perceived; and I would define it this way.

Regarded as, particularly when we are talking about in the context of the ADA, would imply that there is some sort of overt act or conduct by the employer or the manager in treating this individual and they are regarding them as disabled in their treatment.

Perception is something totally different. Perception can become reality. We all know that. But perceived as may be something that is vague language that is really not actionable when it comes time to enforcement of rights, because perceived can be something that is totally internal. It is not necessarily an expression by the employer or the co-worker.

Regarded as, however, is language that suggests that there is some sort of an overt action taken.

Mr. KLINE. So your testimony then is that there would be ambiguities which would require court interpretations if the term perceived is included.

Ms. MILLER. Yes, sir, it is.

And it would not just involve court interpretation. It also would involve a great deal of confusion by the managers and the human resources people in the field, and we would end up litigating over the table as to whether somebody's conduct, whether somebody's personal belief constituted a perception or not.

We cannot legislate people being nice to each other. It would be nice to do that, but we cannot. We all know that. And we cannot legislate people's internal thoughts and processes. That is part of the part about being in America. We allow people to have freedom of thought and freedom of expression internally.

Regarded as is much better language because it implies that there has been some sort of an action taken in the workplace and then that can become the subject of any type of debate or litigation.

Mr. KLINE. Okay. So as I understand this then, if we were to continue to use the word "perceived," for example, litigation would surely follow, which means that you need lawyers on both sides and these respective law schools can grow.

All right. I yield back, Mr. Chairman.

Chairman ANDREWS. Full employment. Thank you, Mr. Kline.

Next, Ms. Sánchez is recognized for five minutes.

Ms. SÁNCHEZ. I am just going to start.

Mr. HOLT. Mr. Chairman, may I speak out of order for an unanimous consent request?

Chairman ANDREWS. Sure.

By the way, the reason for this is that we, following the rule, are recognizing in order of appearance.

Mr. HOLT. Just for a unanimous consent request to submit a statement in the record——

Chairman ANDREWS. Without objection.

Mr. HOLT [continuing]. And to excuse myself.

Chairman ANDREWS. Without objection.

Ms. Sánchez.

Ms. SÁNCHEZ. Thank you.

I am going to start with a quote from Martin Luther King, Jr. He said that laws cannot change people's hearts, but they can restrain the heartless. And I think that it would do well for all of us to remember that.

No, we can't legislate what people's thoughts are, but we can legislate their actions. And where we find discrimination we can say that that is something that is unlawful. And the last time I checked, every time the Congress passes a new law it is subject to interpretation. And, yes, sometimes the courts have to decide what

the statute actually means. So the idea that, oh, there is going to be all this litigation, every time we act in this body there is that potential. But that doesn't restrain us from doing the job before us and trying to tackle the challenges that we see before us and trying to hopefully make society a better place in all different respects.

I want to begin my questions with Mr. Minter. In California and in 11 other States and in the District of Columbia and more than 100 local governments, they have enacted explicit employment discrimination protections for transgender individuals, is that correct?

Mr. MINTER. Yes.

Ms. SÁNCHEZ. And yet in the background materials that I have reviewed to prepare for this hearing I have learned that the Transgender Law Center in San Francisco seems to keep pretty busy in trying to protect Californians from improper terminations, as well as on-the-job abuse and harassment.

One of the examples that was given was that a 13-year-old employee of a—or pardon me, a 13-year old—a 13-year employee of a San Francisco night club was verbally harassed, demoted and even subjected to physical assault all because he informed his employers that he would be transitioning to male. If this kind of thing is happening where there are legal protections in place, it makes me wonder just how much worse it is for folks whose legal recourse for such abuse of incidents is less clear.

And my question to you is, can you please explain for us why clarifying Federal law would be helpful, given the treatment that many transgender individuals receive on the job both in States with explicit protections and those without.

Mr. MINTER. Yes, thank you. Well, as you point out, Congresswoman, merely passing a law does not automatically change people's hearts or eliminate all discrimination; and we certainly know that from race discrimination, sex discrimination, religious discrimination laws. We still have to deal with those realities in our society.

But what those laws do, the critical, essential thing accomplished by those laws, is to make it perfectly clear to everyone, including employers and employees, that we as a society condemn discrimination on those bases because they are completely unrelated to a person's ability to perform as an employee.

Unfortunately, when it comes to gender identity discrimination, we don't have that clear message; and so what you see as a result is the kind of blatant, shocking, overt, unembarrassed discrimination that has been described on the panel today and that devastates people's lives and literally leaves people with no way to earn a living and leads to incredibly high rates of homelessness and poverty in the transgender community.

This, for our community, is a crisis. Having a Federal law that makes clear that employers cannot discriminate on the basis of gender identity without running the risk of liability would have a transformative effect on our country. There is no doubt about that. And we have seen that in the States and localities that have those laws.

True, we still have problems, but it provides a platform for education, and it provides legal recourse which in the long run tremen-

dously reduces the level of discrimination. And that is what our community so desperately needs.

Ms. SÁNCHEZ. Thank you, Mr. Minter.

Colonel—and I am not sure how to pronounce your last name, and I don't want to mispronounce it—I just want to thank you for your service to our Nation. I think that anyone who wishes to serve should be able to do so.

I think that oftentimes, you know, certain workplaces are the richer and the better for the diversity that people bring to the table, and I think the first panel of witnesses for today shows how much better Congress is because of that diversity.

I am wondering, what does our country lose out when they don't allow people like you to work at the Library of Congress and brief Members on an area of expertise that you have so much leadership and ability in?

Colonel SCHROER. Congresswoman, I think, without having numbers, but the issue is very much akin to gay service in the military. Why should this country deny itself that pool of very qualified people and that expertise and experience that is there just because they are transgender? It almost defies belief.

Ms. SÁNCHEZ. And just briefly, if the chairman will indulge me, have you heard of other incidences similar to yours that have gone on or is this a very rare occurrence?

Colonel SCHROER. No, unfortunately, it is all too common an occurrence; and, as Shannon's comments bear out, it is, unfortunately, all too common that the discrimination is blatant. But there are also legends, scores of cases where the employer was up to similar methods of removing an employee; and so, again, I think Shannon's comments are spot on that the leadership is key.

In my experience, the work that I have been able to do in this town is key to the relationships that I have built up in 25 years in military service. Those people are the ones who hire me and push work my way. People that don't know me almost seem to have an implied sense that there should be discrimination because I am somehow abnormal or abhorrent. What we critically need, as Shannon mentioned, is leadership here to send a clear message that this is not abnormal or abhorrent.

Ms. SÁNCHEZ. Thank you. And I want to thank all the panelists and yield back the balance.

Chairman ANDREWS. Thank you, Ms. Sánchez.

By unanimous consent, Mr. Payne is here as a member of the full committee. He is recognized for five minutes.

Mr. PAYNE. Thank you very much, and thank you for allowing me to sit in your subcommittee, although I am not a member of the subcommittee, but this is an issue that I have a tremendous amount of interest in.

I think discrimination in general is just wrong. You can see why I think that. There have been a lot of changes, of course, in the course of the years. I was born in the 1930s, and so I certainly, growing up, found much discrimination being a black person in a city that was known for a lot of racial discrimination even though it was in the north, Newark, New Jersey.

And it is good to see you again. He harasses me in my office.

Let me just ask the question regarding restrooms that was brought up. I saw someone in the audience shaking their head, and so I just wonder if anybody would like to just discuss that issue. It is certainly going to be an issue, I would imagine; and so if you could just have a dialogue on that issue.

Colonel SCHROER. Congressman, if I might, I would only say that from my personal experience it has never been an issue. I am recognized as a woman wherever I go, and people in all walks of my employment and personal life have no issues where I go to the bathroom.

Mr. MINTER. And I will just jump in there. You know, we actually have a lot of experience with this issue now because there are a number of State and local laws and there are so many employers now that have adopted nondiscrimination policies. There is a very standard, tried-and-true approach to bathrooms. It is the only one that is workable and human and respectful.

That is for a transgender person to use the restroom that corresponds to their gender identity when they take that step of living full time in their true gender. That is consistent with the medical protocols and with common sense. And what we have seen time and time again is that any discomfort that co-workers may feel very quickly dissipates; and that is because a transgender man really is a man, a transgender woman really is a woman. Co-workers very quickly come to recognize that.

We have such a great track record on that all across the country. I mean, there are thousands of transgender people who every day use the appropriate restroom without any incident or problem. So that is one issue that is very straightforward and really, in a practical sense, a nonissue.

Ms. MILLER. My suggestion, sir, would be if there is guidelines already out there and that have been successful that the committee look to that and use that and put that in any legislation that this committee may support, propose and that is passed so that employers are not left trying to wade through this.

Because, again, we have very sophisticated companies such as Dow who are here, and they have a very comprehensive policy. But this proposed legislation may apply to smaller companies. Again, as I testified to, 15, 16, 17 person employee companies are not going to have that level of sophistication, and they are going to take their guidance from whatever Congress passes.

Ms. TARABOLETTI. The only thing I would like to add to this is that when I was transitioning—and I think I speak for most of the community—is that the transgender community was always very willing to work with our employers to do this in the most—what is the word I am looking for—we want to work with our employers to make this as convenient as possible for everyone. We are not just looking to ourselves. We want to make our transition as easy as possible for just ourselves and for the people who work around us. So we want to be considerate as employees.

Mr. PAYNE. Thank you very much.

Just, finally, this issue, I imagine, is going to start to, especially now that we have finally—and, I mean, I commend the chairman for calling this hearing. As Chairman Frank said earlier, we could have found one million reasons not to have the hearing. As a mat-

ter of fact, I wasn't even supposed to be here, so that would have been a good reason not to be here. I didn't really know the hearing was going on until—I was late picking up my papers from the last hearing. And we apologize. You probably all thought, there they go again, they are discriminating against us, keeping us waiting for this and all that stuff, right? But, no, it was holdover from yesterday.

In defense of Mr. Andrews, as you know, we had these votes that were supposed to be done yesterday, so we had to do them today. So all those conspiracy theories I heard probably mumbling out there, sorry, they weren't true. There was a real legitimate reason for the delay.

Now, what was my question at the beginning? I think I was going to get to the question of how do we—how do—oh, yeah, I remember now.

The fact that this hearing is held and so, therefore, a dialogue has begun, a formal dialogue, what suggestions do you in the transgender community have as it relates to the attempt to educate Americans? I mean, this is something relatively new. Coming out into the open is overdue, but it is here. And I think, one, we should pass laws and have people respect the law. However, is there any suggestion about how a dialogue in a broader sense could begin so that education about the subject could be discussed? Do you think it should be in the workplace? Do you think it should be like a NAACP-type thing? Or do you think—how do we start to get a dialogue going?

Chairman ANDREWS. If I could just ask the witnesses to very briefly respond, because it is Mr. Hare's turn. Thank you.

Mr. MINTER. Well, can we just say how much we recognize very keenly the demands on you all's time and what it means to have made time to discuss this topic today to kind of tell you how important that is. This hearing in itself is a quantum leap forward on the public education front, and we appreciate that enormously.

The other thing I would just say is how indebted we are to the corporate sector. It is wonderful to have Dr. Hendrix here today. The corporate world has really been such a leader on this issue. So many businesses have adopted proactively, voluntarily, wonderful nondiscrimination policies; and they are our best spokespeople in any venues we can find to have more dialogues like the one here today with representatives from the business world and a chance for the public to hear from people like Colonel Schroer and the other witnesses here today with their remarkable records of accomplishment and skills and to see what we are missing out on, what our country is missing out on by not protecting those valuable workers.

Mr. SANCHEZ. Absolutely. And as we are here experiencing this with you—and thank you so much for this—we go back to our towns and we know that you are leaders in your towns.

So one of the ways—your question, I think I understand it pretty clearly. It is like for those of us of color how did they ever think that we were human after all? Met more of us. And how they met more of us was through the people who were more like them than like us.

Translating that to this scenario, let us work together with organizations and you and your offices to get to know us in different towns. You have access to things and media people and community forums and town halls that we would be willing to participate with you in. So consider us a partner, I would say, and let us use both our people across the country.

Because there actually are a lot of us, and some of us have been around for a long time. It is just not always safe. So making it safe for us to be with you in your communities would be very helpful. And we have organizations that you already work with as well that we can make this even richer.

Chairman ANDREWS. Ms. Taraboletti, did you want to add something?

Ms. TARABOLETTI. Just very quickly. The National Center for Transgender Education and a task force are ready, willing and able to supply the people you need to talk to and organize those people to supply the expertise you need to have those meetings and get those dialogues started.

Chairman ANDREWS. Thank you very much.

Mr. SANCHEZ. As is the Human Rights Campaign.

Chairman ANDREWS. Thank you, Mr. Payne.

Mr. Hare is recognized for five minutes.

Mr. HARE. Let me, first of all—you have thanked us. Let me thank you for being here. This is long overdue. I appreciate you being here, and I appreciate the chairman having the hearing.

Mr. LAVY. I just want to take issue with a couple of things that you said and just give you my perspective, and then I do have a couple of questions for the witnesses. You talked about this being a moral judgment and religious beliefs. Let me submit to you that a person that I have read a lot about a few thousand years ago, the people that this person hung around with that he was closest to, were people that nobody else wanted to associate themselves with. And I think we should remember that.

I also think you said this is a moral judgment. From my perspective, and being very candid, this legislation, it is a moral obligation that not only this Congress has but this Nation has. Because if this were a case from my perspective of a person being African American and they were fired simply because of that, all heck would break loose. You can't do that. But somebody like the Colonel and the other witnesses that have testified here that have given so much to this Nation, that seems to be okay to do. It is not okay to do.

And when you said there are no simple solutions, sir, let me suggest to you that I could not disagree with you more. There are. It is called this Congress passing a legislation that bars this. That makes it simple, and the courts can figure it out. And one witness says, well, you can't legislate how people feel or how they think. That might be. This is America. But I believe we can legislate what is right and what is just and what is fair and that is the purpose I believe of this hearing and of this legislation. So, with all due respect, I could not be more at odds with you in terms of how this is.

And, you know, I think the restroom thing and some of the other things that have been brought up, those are all situations that—

you know, we put people in space. We could figure this out. You don't have to have—I am not a lawyer, Mr. Chairman, with all due respect, either. But you don't have to have a law degree.

Chairman ANDREWS. Be careful now.

Mr. HARE. Sorry. I don't want to anger my chairman or I am in trouble.

But I just want to say to the people here, my sister lost her eye when she was growing up; and I know what it is like when people make fun of you. She is different. She ended up working for 30 years, 35 years for one of the best surgeons in my area, and she did quite well. So, you know, I am sensitive when it comes to—and I cringe when I hear about, well, we just can't do this, no simple solutions, privacy issues.

And, again, I go back, sir, to say to you this is a moral obligation we have. The last time I saw the Constitution, it read that every person was supposed to be created equal. It didn't cherry-pick.

I do want to ask the people who are here that have testified that have lost their jobs, and Colonel and Ms. Taraboletti——

Ms. TARABOLETTI. Yes.

Mr. HARE. I got that right. That is not bad for a guy without a law degree—and Mr. Sanchez, as victims of discrimination.

Mr. KLINE. Quit bragging, quit bragging.

Mr. HARE. And he is a Marine. I can't even top that.

Well, you have been victims of discrimination. And I don't know and I will never know what that is like, I hope. How did you support yourselves and your dependants when you lost your jobs? How have you been getting by and what do you do when everything you have ever had is gone simply because of something as mean-spirited as this?

Colonel SCHROER. Congressman, I guess I will start.

And, once again, the people who came to my rescue were the people that everyone else thought would desert me; and so my colleagues in the Special Operations community recognized what I was capable of doing and work that I had done in the past and worked diligently to find work for me so that I could continue to support myself and make a meaningful contribution. Without them, I am afraid I wouldn't be here today.

So, again, it is thanks to them that they went out of their way and, in many cases, put themselves and their reputations and their firms' reputations at risk to deliberately provide me an opportunity to continue to work.

Mr. HARE. Anybody else care to comment on that?

Ms. TARABOLETTI. Yes, I would.

I started in the privileged class. I was, you know, a white male. And that is very interesting, because I didn't know discrimination, also. And one of the things I am really thankful for is that God gave this to me.

At first, I wasn't. At first, I was horrified as a teenager that God gave me this, and now I look at it as a gift because I have gotten to see so much of the world.

Mr. PAYNE. you were discriminated, and you have known that for your life. And I am a big fan of Martin Luther King, also, and I think he is a hero in this country, and I honor him because now I understand discrimination.

Ms. MILLER. I am surprised at you, because you have forgotten that only your great-grandmother couldn't even vote or great-great-grandmother couldn't even vote a century ago, and you have forgotten that women were discriminated against. I know that pain, and I remember it now.

But you asked me how I survived. Well, I had accumulated about $300,000 in 401(k). That is just about gone now after five years.

I also took jobs at a much lower level than my education allowed. My last job, as you know, I was working for the Department of Transportation. I was making $10 an hour, and I was filling potholes with asphalt and pouring concrete into sidewalks. My dad gave me a work ethic, and I refused to go on unemployment, and I refused to go on the dole. And so that is what I was doing.

But even there I had a fellow employee draw a picture of me in a compromising way. I filed an EEO suit for sexual harassment. And rather than get rid of the employee who did that to me, they found a way to get rid of me.

So even though you said that I was employed, I am now once again unemployed by the State of Florida. So there is a second time I am unemployed. So there you have it. I am almost out of my original 401(k), I am unemployed, and I am about ready to sell my house.

Mr. HARE. Thank you, Mr. Chairman.

Chairman ANDREWS. Ms. Miller, did you want to comment, since your name was invoked?

Ms. MILLER. Thank you, Mr. Chairman.

I am very much aware of the struggle of women in this country to be treated fairly. I am a graduate of a woman's college. I worked my way through law school. The most egregious example of sexual harassment I have ever encountered happened to me while I was an employee of the Federal Government, and no one did anything to address it.

But I also sit here today as a representative of millions of women who are business owners and small business owners. And I also sit here today as the product of somebody who has been given a leg up, mentored and helped by men through my career. So I am very painfully aware that discrimination still exists in this country 43 years after the passage of Title VII, but that doesn't mean that we shouldn't have open dialogue and respect each other's backgrounds.

Chairman ANDREWS. I appreciate that. I appreciate the comments of all the witnesses.

Mr. KLINE. do you have anything to say in closing today's proceedings.

Mr. KLINE. I do not, Mr. Chairman.

Chairman ANDREWS. I would like to thank Mr. Kline and my Democratic and Republican colleagues for their participation today and each of the witnesses for their meticulous preparation and for the work that they have done in making this hearing possible.

Yesterday, almost every Member of the House of Representatives voted in favor of revisions to the Americans with Disabilities Act. It is anticipated the President may sign this into law this summer, and I hope that he does.

I think the issue that 400-plus House Members voted for yesterday is the same issue we are talking about here. The principle that

drew the House together yesterday was the notion that if you apply for a job or apply for a promotion or are considered for a promotion, whether or not you get the job or the promotion should be a function of your ability and your worth ethic, not any extraneous or irrelevant factor.

Now, we are going to have a vigorous debate in this committee over the extent to which transgender status is an irrelevant or extraneous factor. We are going to have the discussions we have here today as the best way to accommodate reasonable concerns of employers in the workplace. We are going to have a vigorous debate as to the scope of freedom of conscience and freedom of religion for those who may feel a different set of moral beliefs than we ourselves do.

But I don't think the principle here is that ambiguous or that complicated. I really do think that when someone is up for a promotion or a position at CRS, if that person is the best one for the job, they should get the job. And I certainly don't think that someone should be dismissed from his or her job because of one's transgender status. And we are going to have vigorous debate over the extent of which that principle should be written into our law. The members of the panels today have given us significant contributions toward resolving that debate.

Progress in this country is glacial; and if you are the person who needs the progress, it is slower than that. But one of the comments that was just made I think do give us some reason for optimism. My mother was born in 1919. The day that she was born voting was a very new idea for women. Mr. Payne, when he was born and raised, the idea of serving in the United States Congress would have seemed like a preposterous idea, given the circumstances under which he was raised in a city that was supposed to be removed from the Jim Crow South.

I remember I went to school with at least two individuals who committed suicide before their 35th birthday because they were gay men and they couldn't deal with the circumstances of the rejection and repudiation in their own communities and, in some cases, in their own families, because of asserting who they were and how they felt comfortable. There has been progress in that field as well.

I view today as an important step in the road to progress for all people, all people. And I don't think this hearing simply has significance for those who are members of the transgender community. I think it has significance for anyone who is a member of any unpopular or forgotten minority who doesn't have a lot of votes, a lot of money, a lot of power but has a lot of passion behind their cause. So we appreciate everyone's participation.

I would note that, as previously ordered, members will have 14 days to submit additional materials for the hearing record; and if any member wishes to submit follow-up questions in writing to the witnesses they should coordinate with the majority staff within 14 days.

Without objection, we thank you; and the hearing is adjourned.

[Additional submissions from Mr. Holt follow:]

Prepared Statement of Pride at Work, AFL-CIO

Chairman and Members of the Committee: Pride at Work, the lesbian, gay, bisexual and transgender (LGBT) constituency group of the AFL-CIO, thanks the House Subcommittee on Health, Employment, Labor, and Pensions for its historic hearing on gender identity discrimination in the workplace and for allowing us to submit testimony. We believe that now is the time to take effective action to protect transgender workers, as well as other workers whose gender identity or expression do not conform to traditional expectations, against discrimination in employment and employment-related benefits.

Transgender and other gender-different people suffer severe and pervasive discrimination in employment. Indeed, such discrimination is a major factor in the serious disadvantage, material and otherwise, that is experienced by this community. Testimony submitted to this committee by the National Gay and Lesbian Task Force Action Fund provides ample documentation of work-related discrimination against transgender people. While state and local laws and executive orders, labor contracts and employer policies are increasingly recognizing this problem and attempting to remedy it, such protections remain insufficient. Many transgender and gender-different people continue to suffer from chronic unemployment or underemployment, and many others who retain their jobs have seen the door closed to further career development.

In addition, transgender employees who retain their jobs are often denied access to appropriate health benefits, subjecting them to heavy out-of-pocket expenses as well as to debilitating stress and despair.

Transgender and gender different people who are unable to secure stable employment that fully utilizes their skills and talents are often forced into the underground economy, in the sex trade or into under-the-table "cash businesses" in which they can be badly exploited. Transgender sex workers face very serious risks of violence from customers as well as police brutality.

While twelve states—California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington—the District of Columbia, and 106 local jurisdictions at present broadly prohibit employment discrimination based on gender identity or expression, and a few other states and localities have prohibited such discrimination in public employment by law or executive order, transgender people still must rely on only a patchwork of protection.

When transgender workers call the Pride at Work office in Washington to report job discrimination and ask what legal recourse they have, the first question that we must ask is in what jurisdiction their workplace is located. (For example, we might ask a caller from Baltimore, "Do you work in Baltimore City [which has a transgender inclusive anti-discrimination ordinance] or in Baltimore County [which does not]?"

The labor movement has long stood in the forefront of efforts to prohibit discrimination against the most vulnerable parts of the workforce. The AFL-CIO Executive Council has been on record for over five years as supporting the right of transgender workers to be free of discrimination in employment.

American unions are increasingly negotiating anti-discrimination protections for transgender and gender-different workers in labor contracts in many industries. To name only a few examples, contracts negotiated by The Newspaper Guild/Communications Workers of America with The New York Times and The Boston Globe have prohibited discrimination based on gender identity/expression since 2003 and 2004 respectively, and the Graduate Employees Organization, Local 3550, American Federation of Teachers, conducted a contract campaign in 2004-2005 at the University of Michigan, Ann Arbor, that won not only contractual anti-discrimination protection but also opened the way for transgender workers to gain insurance coverage of their healthcare needs.

American labor has also been a powerful force in support of anti-discrimination legislation at the local, state and federal levels. For example, the New York City Central Labor Council endorsed an anti-discrimination bill covering gender identity/expression that was enacted by the New York City Council and signed into law in 2002; unions in New York state representing more than 250,000 employees are supporting the Gender Expression Non-Discrimination Act, a bill pending in the New York state legislature, and about two dozen labor organizations endorsed the fully inclusive version of the federal Employment Non-Discrimination Act (ENDA) when it was introduced as H.R. 2015 in the spring of 2007.

In accordance with the proudest traditions of the labor movement, we believe that an injury to one is an injury to all. We urge Congress to act promptly to help remedy workplace discrimination against transgender and gender-different Americans.

Prepared Statement of the National Gay and Lesbian Task Force Action Fund

Chairman and Members of the Committee: We would like to thank the House Subcommittee on Health, Employment, Labor, and Pensions for holding a legislative hearing on gender identity discrimination in the workplace and allowing us to submit testimony today. It is historic when Congress holds a hearing like today's, when the issues that transgender people face everyday are given consideration by the lawmaking body of our nation. On behalf of the National Gay and Lesbian Task Force—the oldest national organization advocating for the rights of lesbian, gay, bisexual and transgender (LGBT) people—we urge you to consider the necessity and urgency of including gender identity in future federal employment protections. There is evidence of pervasive discrimination against transgender people in the workplace and current laws and employer policies are insufficient to protect their rights.

Transgender employees have historically faced considerable discrimination in the workplace, including failure to hire or promote, demotions, terminations, restrictions on a person's gender expression, and hostile workplace environments. Employment discrimination may be the largest barrier transgender people must overcome to live secure lives. A national study conducted by Lombardi between 1996 and 1997 reported that 37% of transgender people surveyed have experienced employment discrimination. (Lombardi, E.L., Gender Violence: Transgender Experiences with Violence and Discrimination, 2001). Survey results are similar across cities and regions on both coasts and the Midwest. For example, a study conducted between 1995 and 2001 in Illinois found that 37-42% of transgender individuals experienced employment discrimination. (Plotner, B. Discrimination 2002: 6th Report on Discrimination and Hate Crimes Against Gender Variant People. Chicago: It's Time Illinois!). In 2002, a study conducted in San Francisco found that 49% of transgender people had experienced employment discrimination. (Minter, S. Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Communities, 2003). In Washington State, a 2008 study found that 41.5% of transgender people were denied employment, fired, or otherwise discriminated against in the workplace because of their gender identity. (Perspectives Northwest Survey Report: Transgender and Gender Variant Community Needs Assessment Survey, 2008). Lastly, in Virginia, a 2007 study of transgender individuals reported 20% were denied employment, and 13% were fired based on their gender identity. (Xavier, J.M. The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians, 2007). Attached is Appendix A, which provides more statistics on transgender employment discrimination.

As a result of employment discrimination, large percentages of the transgender population are unemployed and have incomes far below the national average. Although there is no national study on the topic, findings of studies conducted in various local and state jurisdictions are alarming, confirming that the economic hardship transgender people face is consistent across the nation. For example, a study conducted in Minnesota between 1997 and 2002 reported 22% of transgender people lived below the poverty line. (Bockting, W. 2005. Are Transgender Persons at Higher Risk for HIV Than Other Sexual Minorities?). In Philadelphia, a study conducted in 1997 reported 59% of transgender people were unemployed and 56% made less than $15,000 annually. (Kenagy, G.P. 2005. The Health and Social Service Needs of Transgender People in Philadelphia). In Chicago, a study conducted between 2000 and 2001 found 34% of transgender people were unemployed and 40% made less than $20,000 annually, with a median income of just $16,900 a year, less than half the national median income. (Kenagy, G.P. 2005. The Health and Social Service Needs of Transgender People in Chicago). In Virginia, a studying conducted between 2005 and 2006 reported that 39% of transgender individuals made less than $17,000 annually. (Xavier, J.M. 2007. The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians) Finally, in Washington, D.C., a study conducted in 1999 found that only 58% of transgender respondents were employed, 29% had no annual source of income, and 31% had an annual source of income under $10,000. (Xavier, J.M. 2000. The Washington, DC. Transgender Needs Assessment Survey Final Report for Phase Two). Attached is Appendix A, which provides more statistics on the economic hardship transgender people face.

Due to high levels of unemployment and underemployment many transgender people, and those in their families, are left in difficult and sometimes unlivable situations. Lack of employment means that transgender people are unable to afford housing and pay for other basic services. Lack of employment often means having no or inadequate health insurance and being unable to afford basic health services. They cannot support their spouse and families. The economic hardship created by employment discrimination not only affects transgender people, it directly impacts

their families who fall into poverty along with them. Transgender individuals who are people of color, HIV-positive, and youth are particularly affected. Far too many transgender people are forced to engage in sex work in order to survive. Ultimately, high levels of transgender unemployment further burden the welfare system of each state and our nation.

In most states, transgender employees have no legal protections and employers often terminate them when it is discovered the employee is transitioning, or has previously transitioned, genders. Currently, twelve states—California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington—the District of Columbia, and 106 local jurisdictions have passed laws prohibiting discrimination against transgender people in employment. Five other states and sixteen local jurisdictions have laws, executive orders, or other rules prohibiting discrimination against transgender people that are employees of that jurisdiction (state, county, or city). States from coast to coast are adding transgender-inclusive workplace protections at an unprecedented pace. Today, 39% of the United States population lives in a city, county, or state with a transgender-inclusive workplace anti-discrimination law. Seven years ago only 5% of the United States population lived in a jurisdiction with a transgender-inclusive anti-discrimination law. While the expansion of transgender nondiscrimination laws at the state and local level demonstrates progress and creates a foundation for protections at the federal level, modest penalties and inconsistent enforcement limit the laws' effectiveness. We need a strong federal law in order to provide uniformity of coverage and close gaps in state and local law. As shown, the pervasive discrimination transgender individuals face in the workplace warrants strong and urgent Congressional action.

Despite legal mandates to have policies prohibiting discrimination against transgender people, corporate America acted on its own to enact such policies because it is good for business. In fact, 153 of the FORTUNE 500 companies have implemented nondiscrimination policies that include gender identity. Corporate America has voluntarily endorsed policies to judge employees solely on the quality of their work because it is efficient to retain experienced employees and hire the best qualified applicants. Nondiscrimination policies make for a better work environment, demonstrate respect for diversity, alleviate wasteful and counter-productive stress, and set clear standards for workplace behavior. In order to bring the rest of America's businesses and companies up to corporate America's standard, Congress should prohibit discrimination in employment based on gender identity. Due to economic necessity, this country cannot afford to leave talented people out of the workforce. Competition in the global economy is increasingly acute in almost every industry and field; we cannot afford to leave our best and brightest out of our economy.

Previously proposed federal legislation had prohibited an employer from using an individual's sexual orientation or gender identity as the basis for adverse or different treatment in employment or employment opportunities. The legislation would have also protected individuals who are perceived to be of a certain sexual orientation or gender identity, but who are not actually of that sexual orientation or gender identity. Furthermore, similar to Title VII of the Civil Rights Act of 1964, the legislation would have exempted small businesses and employers with fewer than 15 employees. In addition, every previous version of the legislation has included some form of religious exemption that prevents discrimination without inhibiting on the religious freedom of religious organizations.

Lambda Legal's assessment of non-discrimination laws found that a gender identity-inclusive law is vital in order to fully protect lesbian, gay, bisexual and even heterosexual people who may not fit traditional gender norms. In addition, the National Center for Lesbian Rights reported that for many individuals in the LGBT community gender identity and sexual orientation are inextricably intertwined. Any piece of legislation that does not include gender identity protections leaves gender non-conforming LGB people vulnerable to strict court interpretations that define sexual orientation narrowly.

To move forward with a federal law that only includes sexual orientation is an unacceptable compromise. Furthermore, movement of legislation that singles out a part of the LGBT community to be exempt from protections would impose a classification structure upon the community that would divide us. We are a united community and do not support a law which leaves a part of our community behind; omitting transgender people would be unprincipled and unfair.

The LGBT community has one chance to pass an employment discrimination law that will effectively and adequately protect the entire community. Strategically, as shown at the state level, it is easier to include "gender identity" in civil rights legislation the first time it passes than have to go back and add it in later. The trend in state legislatures the past five years has been to keep "gender identity" in civil

rights bills and, in fact, the last seven states to pass employment protections included both sexual orientation and gender identity: Colorado, Oregon, Iowa, Washington, Maine, Illinois, and New Mexico. If Congress passed federal employment protections which excluded gender identity it could halt such progress and send a powerful and negative signal to future state legislatures. Federal legislation should reflect the progress at the state level, not impede it.

The inclusion of "gender identity" into future federal employment protections is essential. We cannot and will not support federal employment protections which exclude people who are among the most discriminated against individuals in this country. Transgender individuals are an integral part of our Nation's diversity and should not be denied a job on the basis of personal characteristics that have no relationship to job performance. As a community we are more unified than we have ever been and we will continue to advocate for fully inclusive federal employment protections to ensure that all Americans are protected from discrimination in employment because of their sexual orientation and gender identity.

APPENDIX A

National Gay and Lesbian Task Force Action Fund Testimony: Data on Employment Discrimination Against Transgender People

Employment discrimination may be the largest barrier transgender people must overcome to live secure lives. Many transgender individuals are passed over for promotions and raises, simply not hired, and/or terminated when their employer discovers they are transitioning or have previously transitioned genders. As a result, large percentages of the transgender population are unemployed and have incomes far below the national average.

Although few studies have been conducted on the national level, the findings of the following studies conducted in various local and state jurisdictions are alarming, confirming that transgender workplace discrimination and economic hardship are consistent across the nation.

Employment Discrimination Against Transgender People is Widespread

• Nationally, a study conducted between 1996 and 1997 found that 37% of transgender individuals had experienced employment discrimination.[1] The 2007 Williams Institute review, of six studies conducted between 1996 and 2006 in cities and regions on both coasts and the Midwest, found between 13%-56% of transgender respondents were fired, between 13%-47% were denied employment, between 22%-31% were harassed, either verbally or physically, in the workplace, and 19% were denied a promotion based on their gender identity.[2]

• In Illinois, a study conducted between 1995 and 2001 found that 37-42% of gender variant individuals surveyed experienced some type of employment discrimination. Of the 44 reported cases of workplace discrimination, more than half involved firings, nearly a third involved workplace harassment, and the remainder involved refusals to hire. The study documented 38 cases of employment discrimination based on gender identity or expression in Cook County alone.[3]

• In San Francisco, a study conducted in 2002 reported that almost half of 155 transgender survey respondents had been discriminated against in employment.[4] A study conducted in 1999 in San Francisco found that among 392 male-to-female (MTF) participants 46% reported job discrimination and among 123 female-to-male (FTM) participants 57% reported job discrimination.[5]

• In a 2006 report of the San Francisco transgender community, 40% of respondents believed they were discriminated against when applying for work, over 24% of people reported that they were sexually harassed at work, almost 23% felt that coworkers intentionally used the wrong name or pronoun or failed to comply with repeated requests to stop doing so, 21% heard comments that made it difficult for them to feel safe and supported at work, 19% experienced trouble in advancing in their company or department, 18% were fired from a job due to gender identity discrimination, over 14% reported discrimination in the conditions of their employment, and over 12% reported that questions about whether they had surgery, what kind of surgery they had, or if they plan to have surgery, have created uncomfortable or hostile work environments.[6]

• In Los Angeles, a study conducted between 1998 and 1999 of 244 MTF transsexual individuals found that 29% were fired based on their gender identity. Forty-seven percent of the respondents had difficulty in finding employment.[7]

• In Washington, D.C., a study conducted between 1999 and 2000 of 248 transgender people of color in Washington, D.C. reported that 15% of respondents lost a job because of their transgender status.[8]

• In Virginia, a study conducted between 2005 and 2006 reported that 20% of transgender respondents were denied employment and 13% were fired based on their gender identity.[9]

• In Washington State, a study conducted between 2006 and 2007 of 258 transgender people found that 41.5% had been denied employment, fired or otherwise discriminated against on the job because of their gender identity and/or expression.[10]

• In Idaho, a 2003 survey study of over 2000 LGBT people reported that 16.3% of transgender participants said their employer actually stated that they had been denied a job, a raise, promotion or other compensation expressly because of their sexual orientation or gender identity. In describing their work environment, transgender participants described it more negatively than lesbian, gay, and bisexual participants.[11]

Employment Discrimination Contributes to Economic Hardship for Transgender People

• In 2007, the Williams Institute review of eleven studies found that large percentages of the transgender population are unemployed and have incomes far below the national average. Between 6% and 60% of transgender people reported unemployment and between 22% and 64% reported incomes of less than $25,000 per year.[12]

• In Minnesota, a study conducted between 1997 and 2002 found that 22% of transgender people lived below the poverty line.[13]

• In San Francisco, a study conducted in 1997 found that of 515 transgender people, 19% of FTM individuals and 60% of MTF individuals were unemployed.[14] In 2006, a report conducted in the San Francisco Bay Area of 194 transgender individuals found a 35% unemployment rate, with 59% earning less than $15,300 annually.[15]

• A survey of African-American transgender people in San Francisco showed that 44% depended on government assistance. Many lived below the federal poverty level, with two-thirds of respondents reporting an annual income under $14,400.[16]

• A 2006 report on the transgender community in San Francisco found that 15% of those surveyed earned income sporadically (kindness of family or friends, day labor, sex work, freelance work, and various business ventures). Furthermore, 20% of respondents reported receiving some income from the street economy (defined to include sex work and narcotic sales).[17]

• In Philadelphia, a study conducted in 1997 found that of 81 transgender people, 59% were unemployed and 56% made less than $15,000 annually.[18]

• In Chicago, a study conducted between 2000 and 2001 found that of 111 transgender individuals, 34% were unemployed and an additional 40% made less than $20,000 annually, with a median income of just $16,900 a year, less than half the national median income.[19]

• In Los Angeles, a study conducted between 1998 and 1999 of MTF transgender individuals found that 50% reported incomes of less than $12,000 per year, and 23% depended on government assistance.[20]

• In Washington, D.C., a study conducted between 1998 and 2000 found that only 58% of transgender respondents were employed, 29% had no annual source of income, 31% had annual incomes under $10,000, and 15% had lost a job due to employment discrimination.[21]

• In a study conducted between 1999 and 2000 of 248 transgender people of color in Washington, D.C., 35% reported they were unemployed and 64% made less than $15,000 annually.[22]

• In Virginia, a study conducted between 2005 and 2006 of 350 transgender people found between 9-24% were unemployed and 39% made $17,000 or less annually.[23]

• In Washington State, a study conducted between 2006 and 2007 of 258 transgender people found that 39% of those surveyed made less that $20,000 annually.[24]

ENDNOTES

[1] Lombardi, E. L., Wilkins, R. A., Priesing, D. & Malouf, D. (2001). Gender violence: Transgender experiences with violence and discrimination. Journal of Homosexuality, 42.

[2] Badgett, M. V. L., Lau, H., Sears, B. & Ho, D. (2007). Bias in the workplace: Consistent evidence of sexual orientation and gender identity discrimination. Los Angeles: The Williams Institute.

[3] Plotner, B., Stevens-Miller, M. & Wood-Sievers, T. (2002). Discrimination 2002: 6th report on discrimination and hate crimes against gender variant people. Chicago: It's Time Illinois!

[4] Minter, S. & Daley, C. (2003). Trans realities: A legal needs assessment of San Francisco's transgender communities. San Francisco: National Center for Lesbian Rights and Transgender Law Center.

[5] Clements, K., Katz, M. & Marx, R. (1999). The transgender community health project: Prevalence of HIV infection in transgender individuals in San Francisco. San Francisco: San Francisco Department of Health.

[6] San Francisco Bay Guardian and Transgender Law Center. (2006). Good jobs now! A snapshot of the economic health of San Francisco's transgender communities. San Francisco: The San Francisco Bay Guardian and Transgender Law Center.

[7] Reback, C. J., Simon, P.A., Bemis, C.C. & Gaston, B. (2001). The Los Angeles transgender health study: Community report. Los Angeles: University of California at Los Angeles.

[8] Xavier, J. M. & Simmons, R. (2005). A needs assessment of transgender people of color living in Washington, DC. International Journal of Transgenderism, 8(2/3).

[9] Xavier, J. M., Hannold, J.A., Bradford, J. & Simmons, R. (2007). The health, health-related needs, and lifecourse experiences of transgender Virginians. Richmond: Division of Disease Prevention through the Centers for Disease Control and Prevention, Virginia Department of Health.

[10] Ingersoll Gender Center. (2008, January 9). Perspectives Northwest survey report: Transgender and gender variant community needs assessment survey. Ingersoll Gender Center.

[11] Pollard, J. (2003). Report on the 2003 Idaho lesbian, gay, bisexual and transgender survey. www.idaholgbtsurvey.com. Retrieved June 25, 2008, from *http://www.safeschoolscoalition.org/Nicole-SURVEYREPORT-%20final.pdf*

[12] Badgett, M. V. L. et al. (2007).

[13] Bockting, W., Huang, C., Ding, H., Robinson, B. & Rosser, S. (2005). Are transgender persons at higher risk for HIV than other sexual minorities? A comparison of HIV prevalence and risks. International Journal of Transgenderism, 8(2/3).

[14] Clements, K. et al. (1999).

[15] San Francisco Bay Guardian and Transgender Law Center. (2006).

[16] Rose, V. et. al. (2002). Investigation of the high HIV prevalence in the transgender African American community in San Francisco. San Francisco: University of California San Francisco AIDS Research Institute.

[17] San Francisco Bay Guardian and Transgender Law Center. (2006).

[18] Kenagy, G. P. (2005). The health and social service needs of transgender people in Philadelphia. International Journal of Transgenderism, 8(2/3).

[19] Kenagy, G. P. & Bostwick, W. B. (2005). Health and social service needs of transgender people in Chicago. International Journal of Transgenderism, 8(2/3).

[20] Reback, C. J. et al. (2001).

[21] Xavier, J. M. (2000). The Washington, DC transgender needs assessment survey final report for phase two. Washington, DC: Administration for HIV/AIDS of the District of Columbia.

[22] Xavier, J. M. & Simmons, R. (2005).

[23] Xavier, J. M. et al. (2007).

[24] Ingersoll Gender Center. (2008, January 9).

Prepared Statement of Rebecca E. Fox, National Director, National Coalition for LGBT Health

Thank you for this opportunity to submit testimony on the harm employment discrimination causes transgender people. The National Coalition for LGBT Health is composed of sixty organizations from across the country, including health departments, community health centers and mental health service organizations. Based on their extensive experience in public health and with the transgender community, our members identify access to stable, safe employment that includes health insurance as a key factor to improve health outcomes and alleviate health disparities.

Being transgender is neither pathological nor a barrier to employment, although transgender people experience significant, pervasive, and interlinked barriers to both health care and employment. In fact, transgender people exhibit mental health problems that are comparable to those seen in other persons who experience major life changes, relationship difficulties, chronic medical conditions, or significant discrimination on the basis of minority status.[i]

Transgender people are significantly more likely to be unemployed than the general population. Because employment is tied to health insurance in the U.S., transgender Americans likewise face a high rate of being uninsured. Studies in major metropolitan areas, including New York City, San Francisco and Washington, DC, have found fully half of the transgender community is uninsured compared to around 12% among non-transgender people. These rates become even higher for transgender people of color.

The Centers for Disease Control and Prevention (CDC) and the Substance Abuse and Mental Health Service Administration (SAMHSA) agree with the Coalition's position that employment protection is linked to better health outcomes. Both government agencies state that the lack of access to employment and the social

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[i] Dean, Lauren et al. "Lesbian, Gay, Bisexual, and Transgender Health: Findings and Concerns." Journal of the Gay and Lesbian Medical Association 4.3 (2000).

marginalization created through denial of employment can lead to higher rates of physical and mental illnesses for transgender people.

In a fact sheet, the CDC posits that the lack of employment protections lead to an increased risk of HIV infection for transgender people. According to the CDC, the social marginalization of transgender people can result in the denial of employment, and "transgender people face stigma and discrimination, which exacerbates their HIV risk. The stigma of transgender status is associated with lower self-esteem, increased likelihood for substance abuse and survival sex work in [male to female] MTFs, and lessened likelihood of safer sex practices."[ii] The HIV rate among transgender people, especially transgender women, is between 14 and 69 percent.[iii]

According to SAMHSA, a lack of civil rights protections—including employment nondiscrimination statutes—leads to an increase in mental illness and substance abuse in the transgender community.[iv] In A Provider's Introduction to Substance Abuse Treatment for Lesbian, Gay, Bisexual, and Transgender Individuals, the agency makes the direct link between drug and alcohol usage by the transgender community and lack of employment protections. SAMHSA also states, "additional relapse triggers or significant clinical issues for transgender clients might include the inability to find, engage in, or maintain meaningful or gainful employment simply because they are transgender."[v]

Lack of insurance results from lack of employment, which results from stigma and discrimination bolstered by a gap in the laws for protecting civil rights. Being chronically uninsured or underinsured means transgender people do not access preventative care, such as screenings for heart disease, high blood pressure and cancers. In turn, this lack of preventative care increases the morbidity rates and shortens the lifespan of many transgender people resulting in the disparities we see in health outcomes for this community compared to the general public. This is especially true for transgender people of color.

The Committee has undertaken an important step towards eliminating health disparities by holding today's hearings. While employment protections are not a cure all, they are certainly an important step in improving the health and well-being of transgender people. The Coalition asks that Congress continue this work by enacting legislation that helps transgender people achieve employment free from the fear of discrimination.

Prepared Statement of the Transgender Law Center

Mr. Chairman and Members of the Subcommittee: The Transgender Law Center (TLC) is a California state-wide, non-profit civil rights organization advocating for transgender communities. Created in response to the overwhelming discrimination that transgender people and our families face in nearly every institution in California, we utilize direct legal services, education, community organizing, and policy and media advocacy to overcome this discrimination and help the state become one where every person's gender identity is respected and supported. TLC is honored to submit this statement regarding pervasive discrimination against transgender Americans in the workplace, and we thank you for your consideration of this important issue.

Our statement draws on the daily contact we have with transgender community members, as well as our advocacy work and research. Every year we assist nearly 1,000 transgender individuals with legal issues. Approximately 10% of our clients contact us regarding discrimination or harassment in the workplace. Countless others contact us with issues that directly affect their ability to secure and maintain employment, such as access to health care, identity documents, and housing.

While limited research exists on transgender people in the workplace, all available studies and anecdotal evidence point to extremely disproportionate unemployment and underemployment among transgender people. This bleak employment picture is largely a consequence of the discrimination that too many transgender people experience in employment, education, and other areas that affect transgender people's ability to secure and maintain employment.

The attached "Good Jobs NOW!" report, supported by the Women's Foundation of California and conducted by TLC and the San Francisco Bay Guardian, provides

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[ii] "HIV/AIDS and Transgender Persons" Centers for Disease Control and Prevention. Accessed online at *http://www.cdc.gov/lgbthealth/pdf/FS-Transgender-06192007.pdf.*

[iii] Ibid.

[iv] Leslie, Dominique Rosa et al. "Clinical Issues With Transgender Individuals." A Provider's Introduction to Substance Abuse Treatment for Lesbian, Gay, Bisexual, and Transgender Individuals, Substance Abuse and Mental Health Services Administration, 2007.

[v] Ibid.

sorely needed data on the economic reality experienced by transgender people and their families. In early 2006, 194 self-identified transgender people living, working, or looking for work in San Francisco were surveyed. The outcomes are stark.

Among "Good Jobs NOW!" respondents, nearly 60% earned under $15,300 annually and only 8% earned over $45,900. Forty percent did not have a bank account of any kind. Only 25% were working full-time, with 16% working part-time, and nearly 9% reporting no source of income. Over 57% percent reported experiencing employment discrimination, but as few as 12% took any kind of action and only 3% filed an administrative or civil complaint.

These findings are made even more compelling by the fact that the survey was conducted exclusively in San Francisco. Both San Francisco and California have strong employment non-discrimination laws and regulations that support safer and more effective integration of transgender people into the workplace. However, a lack of Federal protections has a tremendous effect on the transgender community nation-wide. Every week transgender people living in states without protective legislation call TLC. These hard working Americans have little to no recourse in their home states.

Allowing employers to make decisions about hiring, firing, promotions, and discipline based on a worker's identity goes against America's core value of equal opportunity. All too often, we see transgender Americans forced out of successful careers when they express their gender identity. Many transgender people fear and experience discrimination and therefore must either hide who they are, to the detriment of their health; leave jobs they love in order to transition without risking termination; or face rampant harassment and discrimination in their current workplace. Federal protection from discrimination and harassment based on gender identity would liberate the transgender community from this stark reality. Such legislation would allow transgender Americans to continue contributing to our country's workforce without fear of being terminated simply because of who we are.

We urge the Subcommittee to recognize this issue of basic fairness. Transgender Americans deserve to be ourselves in a workplace where we are judged exclusively on our ability to do our jobs. Work is an integral part of our lives, of who we are, just like our gender. No American should have to choose between their gender, and making a living.

[Additional submission from Ms. Sánchez follows:]

Prepared Statement of the Gay, Lesbian and Straight Education Network

Chairman Andrews, Ranking Member Kline, members of the Subcommittee and members of the full Committee; thank you for the opportunity to submit testimony for this important hearing on "An Examination of Discrimination Against Transgender Americans in the Workplace". We appreciate your examination of this important issue and the role that Congress can play in addressing discrimination against transgender Americans.

The Gay, Lesbian and Straight Education Network (GLSEN) is the leading national education organization focused on ensuring safe schools for all students. Established nationally in 1995, GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity and expression. We strive to ensure that each member of every school community is valued and respected regardless of sexual orientation or gender identity and expression.

While research on the scope of discrimination against transgender employees is limited, experience tells us that the effects of such discrimination are dramatic. Transgender Americans are community members, educators and parents. When an employee is forced from their job because of their gender identity, everyone in their community, workplace and family feels the effects.

When a transgender individual loses their job, their children may suffer the economic adversity and educational impact that any student experiences when their parents lose a job. However the unique employment challenges faced by transgender individuals pose additional threats to the continuing education of their children.

Like all Americans, educators and other school staff deserve to be protected fully from job discrimination. Experience has shown us that, like all workers, educators who express their true gender identity remain as competent and able to serve as before they do so. Time and again, educators who have expressed their gender identity have returned to the classroom and continued to serve their community.

This past school year, Genna Suraci, a veteran principal from Port Ewen, NY, began expressing her true gender identity after working with her Superintendent

and School Board to ensure a smooth transition. Genna stated that "with the right parameters in place, we were able to set a pace that allowed us to move forward as if there were no real changes. While the school community had questions, we addressed them and continued to focus on educating our kids."

Consistent with our nation's renewed focus on the academic success of all students, we must continue to ensure that all students have opportunities to learn from experienced and qualified educators. By enacting federal employment protections based on gender identity, Congress will take a tangible step to retain skilled, experienced and qualified educators who happen to be transgender.

Ensuring that everyone feels safe and is treated fairly, be it at school or work, is at the very foundation of a society that values and respects all of its people. All Americans deserve the chance to have a job and support themselves and their families, and to contribute to their community. We urge Congress to do the right thing and show it believes in basic rights for all of the people it represents.

GLSEN urges you to recognize the dramatic impact that workplace discrimination against transgender individuals has on transgender employees, their families and communities; and to include gender identity in future expansions of federal employment protections.

We urge the Subcommittee to continue to explore and seek out opportunities to address this important issue. One concrete way to do so is to ensure that any legislation to expand federal employment protections includes actual or perceived gender identity and expression.

Again, GLSEN thanks you for your attention to this important issue and for the opportunity to provide this testimony for the record. We are available to address any questions that you may have.

[Whereupon, at 1:50 p.m., the subcommittee was adjourned.]