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Equality Act Testimony: LGBT Employment Discrimination

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March 17, 2021

The Honorable Richard Durbin
Chair, Committee on the Judiciary
U.S. Senate

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
U.S. Senate

Dear Chair Durbin, Ranking Member Grassley, and Members:

I am a professor of economics and a faculty member in the School of Public Policy at the University of Massachusetts Amherst. I am also a senior scholar at the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA. I have studied employment discrimination based on sexual orientation, gender identity, race, and gender for more than twenty-five years and have published four books and numerous studies on this topic.

I am writing to you about S. 393/H.R. 5, the Equality Act. As you know, this bill would expand protections against discrimination based on sexual orientation and gender identity in employment and other important areas of life. Decades of research in economics and other fields demonstrate that employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) employees is common in both the public and private sectors in the United States.

I base this opinion on my own research and my review of many existing studies. Other reviews of the research by economists come to similar conclusions, including a 2017 review by Dr. Marie-Anne Valfort for the OECD. The evidence in these studies comes from reports of discrimination by LGBT people, wage gaps for gay and bisexual men, experiments that show differential treatment of LGBT job applicants, and charges of sexual orientation and gender identity discrimination filed against employers.

First, many LGBT people report experiences of discrimination when asked. Recent surveys by the Pew Research Center (2013) and by NPR, the Robert Wood Johnson Foundation, and the Harvard School of Public Health (2017) show that about one in five LGBT Americans have experienced discrimination at some point in their lives when applying for jobs, seeking promotions, or in their wages.

Second, many studies show a significant pay gap for gay and bisexual men when compared to heterosexual men who have the same productive characteristics. Looking across those studies, Prof. Marieka Klawitter of the University of Washington found that gay and bisexual men earn from 11% to 16% less than similarly qualified heterosexual men. Lesbians generally earn the same as or more than heterosexual women, but lesbians earn less than either heterosexual or gay men and research discussed later shows lesbians face discrimination. These sexual orientation and gender wage gaps are likely responsible for the fact that recent

studies have found greater vulnerability to poverty for some groups of LGBT people than for similar heterosexual people, particularly for transgender and bisexual people and for people in same-sex couples.

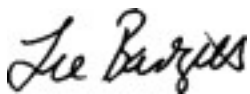
Third, several scholars have conducted experiments to assess the degree of discrimination by employers in the hiring of LGBT applicants. Typically, the researchers send out a job application for an LGBT applicant and a very similar heterosexual or non-transgender applicant to see if employers treat them differently. The degree of discrimination observed is striking in some studies. To get one job interview, a gay male applicant would need to apply to fourteen jobs, but a heterosexual man would only need to apply to nine. A similar study in New York City sent pairs of real people—one transgender applicant and one cisgender (non-transgender) applicant—to apply for retail sales jobs. In about half of the stores, the cisgender applicant got a job offer but the transgender person did not; in only one case was that pattern reversed.

Fourth, charges filed against employers alleging sexual orientation or gender identity discrimination demonstrate a high degree of perceived discrimination. Since 2013, the EEOC has allowed workers to file sex discrimination charges that allege sexual orientation or gender identity discrimination. With several colleagues, I have analyzed more than 9,000 such charges filed with the EEOC or a state or local agency. The types of discrimination alleged are serious, and about half of the charges include claims of discriminatory discharges and harassment. We found that a wide range of employees file such charges, with particularly high rates being filed by African American workers and men for sexual orientation charges and by women and White workers for gender identity. Many of these charges are filed against employers in low wage industries, such as the retail sector and the food services industry.

Finally, based on my research in this area, I conclude that the patterns of discrimination are similar in the public and private sector. For example, 1,151 discrimination charges were filed against employers that are state and local government agencies. That accounts for 12% of charges, while LGBT people make up only about 10% of state and local employees. That quantitative finding in the charge data is consistent with the many reported court cases in fields such as law enforcement, corrections, health care, and education, all fields disproportionately made of up of state and local employees.

To summarize, more than twenty-five years of research finds ample evidence of discrimination against LGBT workers. These patterns of discrimination demonstrate the need for and importance of the Equality Act to help our country end harmful discrimination.

Yours truly,

A handwritten signature in cursive script, appearing to read "Lee Badgett".

M. V. Lee Badgett, Ph.D.
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Public Policy Faculty