



Testimony of the National Gay and Lesbian Task Force Action Fund

Rea Carey, Executive Director

Committee on Health, Education, Labor, and Pensions
United States Senate

November 5, 2009

Mr. Chairman, Vice-Chairman, and Members of the Committee:

We thank Chairman Harkin and the Committee for holding a hearing on the Employment Non-Discrimination Act (ENDA), S. 1584. 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 support this critically important legislation. Hard work and fair treatment are core American values and no American should be denied the opportunity to work because of factors unrelated to job performance.

Improvements in the nation's current economic crisis hinge on the talents and expertise of a fully functioning workplace. An analysis of Census 2000 data shows a strong link between thriving tech-oriented economies and diverse populations, including those with high LGBT populations. Workplace equity encourages regional growth centers, as top-notch employees have migrated to centers where they can be assured that their talents will not be suppressed due to legal inequities and arbitrary prejudices. ENDA will ensure that all Americans have an equal playing field as they seek to secure a livelihood for their families and grow our communities.¹

Currently, the playing field is far from even. Analyses of existing studies and new data suggest that up to two thirds of LGB people—and nearly all transgender people—have experienced employment discrimination. ENDA is essential to addressing this widespread problem.

LGBT Americans Face High Levels of Employment Discrimination

Over 50 studies of discrimination against LGB people have established that they face significant barriers to equality. Fewer studies have been conducted about discrimination against transgender people; our work surveying 6,450 transgender and gender non-conforming people about gender identity-based discrimination in the workplace begins to fill that gap. Further research is needed,

particularly the inclusion of sexual orientation and gender identity in population-based surveys of the workforce, such as the Bureau of Labor Statistics surveys.

Discrimination against lesbian, gay, bisexual and transgender people in the workplace persists despite the increasing visibility of these communities and improved local and statewide protections against anti-LGBT prejudice and violence.

A 2007 meta-analysis of 50 studies of workplace discrimination against LGBT people found consistent evidence of bias in the workplace. Ranges for critical workplace concerns such as overt discrimination, firing, denial of promotion or negative performance evaluation (based on bias) were as follows:

- 16% to 68% of LGBT people report experiencing employment discrimination;
- 8% to 17% were fired or denied employment;
- 10% to 28% were denied a promotion or given negative performance evaluations;
- 7% to 41% were verbally/physically abused or had their workplace vandalized;
- 10% to 19% reported receiving unequal pay or benefits.

In addition, 12 to 30% of heterosexual co-workers report witnessing discrimination against their LGB peers. These realities, often minimized as a problem of subjective “self-reporting,” have been confirmed in a study that surveyed observations of heterosexual co-workers. Researchers querying heterosexuals about witnessing discrimination against their LGB peers found that 12% to 30% of respondents in certain occupations, such as the legal profession, have witnessed anti-LGB discrimination in employment.

Discrimination and attendant loss of income and benefits can lead to poverty for LGB people over their lifespan. According to the Williams Institute, lesbian couples have a poverty rate of 6.9% compared to 5.4% for different-sex married couples and 4.0% for gay male couples. Outcomes are more severe when we examine LGB families. When we calculate the poverty rates for all members of the family, that is two adults and their children, the poverty rate for lesbian families is 9.4% compared to 6.7% for those in different-sex married couple families and 5.5% for those in gay male coupled families. In general, lesbian couples have much higher poverty rates than either different-sex couples or gay male couples. Lesbians who are 65 or older are twice as likely to be poor as heterosexual married couples.

Poverty rates for children of same-sex couples are twice as high as poverty rates for children of married couples. Although gay and lesbian couples are less likely to have children in their households than are heterosexual married couples, children of same-sex couples are twice as likely to be poor as children of married couples. One out of every five children under 18 years old living in a same-sex couple family is poor, compared to almost one in ten (9.4%) children in different-sex married couple families. The research points to the negative outcomes of discrimination for LGB people and refutes the common misconception that gay people have more money and live large. Workplace discrimination affects the entire family.ⁱⁱ

National Study Finds Rampant Workplace Discrimination

The Bureau of Labor Statistics fails to ask sexual orientation and gender identity questions in its annual data collection efforts, making it impossible to get randomized data on LGBT people's experiences of workplace discrimination. Instead, the work of chronicling the community's experiences of bias has been left to community-based organizations and a handful of pioneering researchers and institutes. While the data on discrimination against LGB people is relatively scarce, there have been even fewer studies on the workplace experiences of transgender Americans.

To address this gap, in a joint effort with the National Center for Transgender Equality, the Task Force recently undertook a national survey of transgender people and the discrimination they endure in employment, education, health care, housing, public accommodation, criminal justice, family life, and access to governmental documents. Over a six-month period, we surveyed 6,450 transgender people throughout the United States via an extensive questionnaire, including people in every state of the nation as well as Washington, DC, Puerto Rico, Guam, and the US Virgin Islands. Until this study, data on the prevalence of this discrimination has been limited to small studies and anecdotal reports.

Our key finding is this: the state of the workplace for transgender Americans is absolutely shameful.

Discrimination in employment against transgender people is a nearly universal experience.

- Ninety-seven percent (97%) of our sample reports being mistreated or harassed at work.
- Nearly half (47%) lost their jobs, were denied a promotion, or denied a job as a direct result of being transgender. These statistics are alarming and have multiple, spiraling negative affects on quality of life.

Transgender Americans face twice the rate of unemployment as the general population for our sample during the time of the study.

Black transgender people reported nearly four times the rate of unemployment as the general population (26%), while Latino and Multi-racial transgender people experienced nearly three times the rate of unemployment.

High unemployment had predictably detrimental effects on income, with participants in our study experiencing twice the level of extreme poverty as those in the general population. Census figures for 2005-2007 show seven percent of the general population living on incomes at or below \$10,000 while our study found 15% in this income category. Again, transgender people of color are struggling with poverty at significantly higher rates, with 23% of multiracial transgender people living on \$10,000 or less, Latino/as at 28%, and African American transgender people at an outrageous 35% percent.

Survey respondents experienced a series of devastating negative outcomes, many of which stem from the challenges they face in employment. A large percentage of our sample has experienced negative impacts on their housing security as a direct result of their gender identity, with almost one-fifth of the respondents becoming homeless because they are transgender. In addition, 26%

of our sample reported having to find different places to sleep for a short period of time and 25% were forced to leave their homes and move in with family or friends.

Employment issues also impact transgender people's access to health care. Transgender and gender non-conforming people do not have adequate health insurance coverage or access to competent providers. Respondents in our sample are uninsured at the same rate of the general population in the U.S.—19%—but only 40% of the sample enjoys employer-based insurance coverage, compared to 62% of the population at large. This figure underscores how high unemployment creates multiple liabilities for our sample.

These preliminary figures represent the tip of the iceberg for what employment discrimination does to transgender people. In the weeks to come, the Task Force and National Center for Transgender Equality will release data on housing instability, inability to access shelter, poor health care provision, harassment and violence at school and other alarming outcomes of far-reaching discrimination. Without work, transgender people are at the mercy of systems that are unwelcoming at best and, more often, actively hostile.

ENDA Benefits Real People

As our study and those of the Williams Institute demonstrate, employment discrimination against LGBT people is more prevalent and widespread than statistics drawn from reported court decisions and administrative complaints generally indicate.

Our mandate today is clear: employment protections are paramount.

Because the law protects LGBT people in only 40% of the country, and many of these protections are in the form of hard-to-enforce local laws, there is unfortunately very little LGBT people can do to seek redress. Where there are laws and complaint processes, LGBT employees often are reluctant to use these processes because they must “out” themselves to members of the community or to future employers by filing official complaints.

ENDA is crucial because it will create a federal standard that imposes a baseline of respect and equal treatment for LGBT people as a whole, while specifically addressing a desperate need for protections for transgender people in the workplace that are demonstrated by our survey data.

ENDA recognizes that a person's sexual orientation or gender identity bears no relationship to his or her ability to perform at work and provides employees with the same protections for sexual orientation and gender identity that all people receive for race, color, religion, sex, and national origin under Title VII of the Civil Rights Act. ENDA does not give special protection; it covers heterosexual and non-transgender people if they are discriminated against as well.

Nevertheless, those who are the most likely to benefit from this legislation are members of the LGBT community. Nearly every type of employer regularly engages in discrimination: there is no sector, private or public, technical, skilled or unskilled, in which LGBT people are safe from discrimination. State governments, in their capacities as employers, have acted as every other employer, engaging in a widespread pattern of employment discrimination against LGBT employees and applicants. When 97% of transgender people are experiencing mistreatment and

harassment in employment and reporting rampant unemployment and underemployment, as our study showed, it is clear that every employment sector is discriminating, including state employers.

Below are a few examples of the employment discrimination and problems with underemployment that lesbian, gay, bisexual and transgender people have endured in the workplace simply for being who they are:

Laura Calvo:

Laura Calvo, a transgender woman in her 50s who resides in Portland, Oregon, worked for the Josephine County, Oregon Sheriff's Office for 16 years as a Deputy Sheriff and Sergeant. During the course of her employment, she served in many capacities: shift supervisor, Sheriff Sub-Station Commander, Detective in the Major Crimes Unit, Detective in the Josephine County Interagency Narcotics Task Force, S.W.A.T. team leader and Commander. Laura remained closeted in the workplace because she wanted to carry on a responsible career where she could contribute to society and knew if her transgender status was discovered she would be terminated. In October of 1996, Laura Calvo was the victim of a burglary and many of her personal belongings were stolen. In the course of the recovery effort her transgender identity was discovered by her employers. She was called into her supervisor's office and told she could not retrieve her belongings because they needed to be examined for evidence of violations of department policy and potential crimes. She was then ordered by her supervisor to undergo a psychiatric determination for fitness of duty to return to work. The panel of doctors, selected by the Sheriff's office, determined she was not fit to return to duty. Laura was told that she could not return to work and that the Sheriff thought she was a 'freak.' Laura was then forced to resign. Source: Testimony to the Oregon State Senate, 2007.

Linda Czyzyk:

Linda is an attorney and her partner is a college professor who teaches biology and genetics. The couple lived in North Carolina and Linda worked at a law firm where she was openly gay. When Linda's partner accepted a faculty position at a university in Virginia, the couple needed to relocate to Virginia.

In August of 2000, Linda had a phone interview with a law firm in Virginia and was invited for a second interview at the firm's office. During the interview, the firm repeatedly asked her why she was moving to Virginia. Linda replied that her spouse had taken a position at a local university, making sure that she avoided using pronouns. The law firm asked Linda to come back for a third interview, but this time she was told to bring her spouse because the interview would include a dinner with all the partners and their spouses "to make sure we all got along."

*Linda told the only female partner at the law firm that her spouse was a woman. The female partner said that was fine by her, but she would have to inform the other two partners at the firm. After talking to the male partners, the female partner called Linda back to tell her that the male partners said the firm would not hire a lesbian and Linda should not bother coming to the third interview. Source: American Civil Liberties Union, *Living in the Shadows: Ending Employment Discrimination for LGBT Americans*, 2007.*

Alexandra:

Prior to Illinois passing a gender identity inclusive non-discrimination law in 2002, Alexandra, a transgender woman, worked in an Illinois state government office at the College of Lake County in Grayslake, IL. She transitioned from male to female at work with the help of her therapist who met with staff and supervisors. At this meeting, Alexandra's supervisors told her to continue to use the men's restroom. After the meeting, her supervisor and co-workers persisted in calling her by her male name and referring to her as "he." Alexandra voiced her issue with this, asking to be treated as the woman she had transitioned to become. She was told by her supervisor that she was acting confrontationally. This "confrontationalism" was cited as a reason Alexandra needed to improve her personal relations at work. The supervisor claims that the staff is trying to make "adjustments" for Alexandra, but the supervisor is one of the biggest culprits who continue to call Alexandra by male pronouns. Alexandra went to the steward of her union to ask for assistance in this matter, but even the steward did not want to help. Now, Alexandra believes she may have to get her own representation to deal with discrimination she has faced in the workplace. *This is not the true name of the victim to protect her privacy. Source: 6th Report on Discrimination and Hate Crimes Against Gender Variant People. *It's Time, Illinois...Political Action for the Gender Variant Community*, Spring 2002.*

Ronald Fanelle:

Ronald Fanelle taught seventh and eighth graders at a California middle school. The other faculty and the principal knew that Ronald was gay, but his students did not. A month after Ronald and his partner were married in February 2004, his co-workers congratulated him at a staff meeting. Then a teacher told his students that Ronald had gotten married to a man over the weekend and the news spread around the school. Ronald's students asked if it was true that he married a man. Ronald told them it was true.

In the following weeks, one parent, a personal friend of the school board president, vocalized his opposition to a gay man teaching in the school and arbitrarily accused him of bringing "his homosexual agenda into the classroom." The school hired a private investigator to investigate the situation and Ronald's background. Nothing damaging emerged. Ronald, however, received hate mail on his school email account and dozens of viruses were sent to the district, which shut down its system. Ronald was instructed in writing to

open a private email account in order for parents and students to communicate with him.

*In the following year, a few students created an anti-gay webpage that ridiculed Ronald. Offensive stickers relating to Ronald's sexual orientation were posted all over the school. The principal called a meeting prior to the new 2006-07 school year. In the meeting, the principal made disparaging comments to Ronald in front of another principal, the union president, and the district's superintendent of personnel. His principal went on to tell Ronald: "Your problem is you're angry because no one will accept your gay marriage!" The school district then began interrogating students about Ronald. The students reported that Ronald did not talk about his personal life and he was well liked. A week later, the superintendent of personnel formally disciplined Ronald for "inappropriate email communication" with students and parents because Ronald was sending email from a private email account instead of his school account. Ronald was only using a private account because the school had shut down his school account, due to the amount of hate mail and viruses. Over three years, four students were removed from Ronald's classroom because their parents disapproved of his sexual orientation. The district's response to Ronald was simply stated as: "It's a conflict of family values." In February 2007, due to the principal's and the district's harassment, Ronald took an extended sick leave. Source: American Civil Liberties Union, *Living in the Shadows: Ending Employment Discrimination for LGBT Americans*, 2007.*

Tony:

Tony, a transgender man, was employed for 13 years by a nightclub in San Francisco, California, a state that includes gender identity in its employment non-discrimination law. Tony informed his employers that he is transgender and his direct supervisor began egregiously harassing him. Tony's supervisor repeatedly asked Tony inappropriate questions about his body and his sexual preferences. The supervisor refused to address Tony with male pronouns and often made comments to Tony such as, "You are not a real man." Tony was demoted from a high level management position to a low level service position and his pay was severely cut. He became incredibly depressed. The harassment escalated over many months and finally culminated in an incident wherein Tony's supervisor chased Tony in the club calling him a "freak" and a "b**ch" and threatening him with physical violence. Tony could no longer handle the harassment and was forced to quit his job. Tony brought a lawsuit against his former employer under California's Fair Employment and Housing Act, which bars discrimination based on gender identity, and reached a favorable settlement. *This is not the true name of the victim to protect his privacy. Source: Transgender Law Center, Kristina Wertz, Legal Director.*

Juan Moreno:

Juan is a Latino community college student studying nursing who also works to help support his single mom and teenage sister. Juan applied for a part-time

*job at a local fast food restaurant where his friend worked. He interviewed with a shift manager in February 2007. He had a successful interview with the shift manager who told Juan's friend that Juan would work out. The shift manager recommended to the store manager that Juan be hired. The store manager knew Juan was friends with a current employee and had seen Juan come into the store to visit his friend. The store manager asked Juan's friend: "Is he into men or women?" Juan's friend informed the store manager that Juan was gay, but then asked, "what does that have to do with hiring him?" The store manager replied: "I'm the head manager and I can do what I want to do." Juan was not hired. Source: American Civil Liberties Union, *Living in the Shadows: Ending Employment Discrimination for LGBT Americans*, 2007.*

Jacqui Charvet:

*Jacqui Charvet, a transgender woman, worked for 10 years as a consultant in computer technology with a firm with clients in the New Jersey and New York areas, with 16 years of computer technology experience that preceded her years as a consultant. Numerous consulting gigs were with the State of New Jersey, including with the NJ Department of Health, NJ Department of Treasury, and NJ Department of Human Services. She let her supervisor at the consulting firm know that, between assignments, she had plans to transition gender, so that at the next assignment, she would be coming to work as her new gender, including using her new name, Jacqui (instead of her old male name), dressing as other women employees, and that female pronouns would be appropriate for her at that point. She had planned to transition between assignments to keep the process as smooth as possible. However, instead of supporting her transition, her supervisor laid her off, refusing to assign her to a new gig. For the next three and a half years she attempted to find a job, public or private, in New Jersey, but to no avail. Upon discovering she was transgender and used to be a man, many hopeful employers turned her away. At one interview, she walked in and was told that they wanted to hire a "real man" for the position. With 26 years of work experience, 10 years as a consultant at the firm that "laid" her off, Jacqui found herself forced to leave the state to find employment with a private company in Florida that hired her after a phone interview. Source: *Conversations between Task Force staff and Jacqui Charvet*, 2008 & 2009.*

Brooke Waits:

Brooke worked as the inventory control manager for a cell phone vendor. In the four months Brooke worked for the company, her supervisor continually praised her for her work. Brooke was not out to her co-workers at the store. She was quiet and kept to herself because she did not fit in with the other women who worked at the store and her male coworkers told a lot of lesbian jokes. In an effort to avoid controversy, Brooke did not say anything when her co-workers made anti-gay jokes and derogatory comments.

In May 2006, Brooke's manager approached Brooke's desk to ask her a question. Brooke was on the other side of the room sending a fax. Brooke's

manager picked up Brooke's cell phone off of her desk, opened it, and then exclaimed "Oh my goodness!" Brooke's manager had seen the screen saver inside Brooke's cell phone, which was a picture of Brooke and her partner sharing a New Year's Eve kiss. Brooke's manager immediately left the room and did not speak to Brooke at all for the rest of the day. Later in the day, Brooke overheard the manager tell another co-worker, "I knew there was something off about her."

*The next day, Brooke arrived at work and, as soon as she walked in the door, her manager asked to speak with her. The manager told Brooke that she was fired. When Brooke asked why, the manager told her that they needed someone more "dependable." Brooke told the manager that she was dependable and, in fact, had been coming to work an hour early every day to work on implementing the new inventory system. The manager replied: "I'm sorry, we just need to let you go." Source: American Civil Liberties Union, *Living in the Shadows: Ending Employment Discrimination for LGBT Americans*, 2007.*

Dylan Scholinski:

Dylan Scholinski, a transgender man, lives on the edge of poverty despite holding a master's degree and writing an award-winning memoir of his institutionalization as a teenager for "gender identity disorder." Dylan was forced into "treatment" from the ages of 14-17 that included mandatory make-up sessions and the wearing of skirts and other attire to "cure" him of his gender identity. Now in his 40s, despite having experienced life-long depression as a result of abuse from teachers, medical providers and mental health professionals, Dylan has never qualified for disability as is commonly available to people with PTSD and debilitating depression. Dylan currently runs a free teen suicide prevention arts program out of an art studio in Denver, Colorado. He is not compensated for his work, despite serving hundreds of LGBT youth struggling with gender identity and sexual orientation issues. Having lived his youth in enforced isolation and torment, he is committed to creating a safe space for LGBT youth in his community. Dylan continues to search for sustainable income to no avail. Source: Conversation between Jaime Grant, Ph. D, Task Force Policy Institute and Dylan Scholinski, 2009.

Janice Dye:

Janice worked as a mechanic in an oil change service center in San Diego. Janice got along well with the other mechanics at the service center, who were excited to have a female mechanic working with them. Janice was out at work and her girlfriend occasionally brought her lunch at work. The service center's management, however, was not supportive of Janice. Janice was the only female mechanic in the shop, as well as the only African American and lesbian who worked at the service center.

In 1997, Janice applied for a three month training program to become an assistant manager. At the end of the training program, she had to take timed

tests. Janice was fired because she could not complete an oil change in less than ten minutes. However, management made her do the oil change alone, even though the usual procedure was to use two workers to complete an oil change (one in the ground pit below the car, and one on the ground floor at the car's hood). Janice's coworkers told her that they heard managers in the break room saying: "we won't let that lesbo-bitch get that job."

*After being fired, Janice left the service center and started to work at another location owned by the same company. She hoped she would not be discriminated against at the new location, but the managers treated her the same. She had to take the same test of completing an oil change in ten minutes and, again, she had to do the oil change alone (taking time to run up and down the stairs to the pit below the car). Management did not even let her finish the oil change because she had gone over the 10-minute limit. After 10 minutes, the manager yelled: "time's up" and "you're fired." Source: American Civil Liberties Union, *Living in the Shadows: Ending Employment Discrimination for LGBT Americans*, 2007.*

Michelle Hansen:

Michelle Hansen is an Episcopal priest and computer industry trainer who lives in Connecticut. Michelle worked successfully at a medium-sized computer repair and training company for nearly eighteen years, the latter part of her time as the company's senior technical trainer. In June of 2004, a week after notifying her employer of her plans to transition from male to female, she was terminated from her job. Michelle's employer claims to have terminated her for economic reasons; however, the company had recently hired two other employees who were not fully trained or certified. Michelle has two Master's degrees from Yale University and a long list of certifications in the computer industry, but she has not been able to find employment since being terminated several years ago. Source: Testimony to the Judiciary Committee of the Connecticut General Assembly, 2009.

Brad Nadeau:

In April 2002, an insurance company in Bangor, Maine employed Brad as a receptionist. After about a month, Brad was called into a meeting for his performance review. All of his work was rated satisfactory - he was not told that any areas of performance needed improvement. In fact, Brad trained a new employee who was hired a couple weeks after he was hired. Brad was not out at work because he was concerned that if he was honest about his sexual orientation, he might lose his job.

On June 2, 2002, Brad's partner picked him up at work and they went out for lunch together. When his partner brought him back to the office, they kissed goodbye in the parking lot. Brad noticed that an agency executive saw their kiss. The very same day, Brad was called into a meeting with his supervisor and the executive. His supervisor told Brad that he was being fired because his work was not satisfactory, despite his positive performance evaluation and the fact that he had over four years of office and administrative work experience.

Brad's termination seems to have violated company policy. The company policy states that the company is "committed to providing a work environment that is free of discrimination." The company also has a policy of progressive discipline, which the company states is "intended to give employees advance notice, whenever possible, of problems with their conduct or performance in order to provide them an opportunity to correct any problems." Regardless, the company did not give Brad any warning before they fired him. Source: American Civil Liberties Union, Living in the Shadows: Ending Employment Discrimination for LGBT Americans, 2007.

Kim Dower:

Kim Dower is a transgender woman who is employed as a pharmacist in Colorado. After working for nine years as a pharmacist, Kim told her employer of her future plans to transition from male to female. In March of 2004, Kim was ready to start coming to work as herself, but her employer informed her that she would not be allowed to work at the pharmacy unless she continued to dress as a man. In effect, this would block her from transitioning to her new gender at work. In response, Kim filed a claim under Denver's anti-discrimination ordinance. She was given a preliminary ruling in her favor. However, this only resulted in mandatory mediation. In this mediation, Kim's employer refused to allow her to present as a woman unless she signed a nondisclosure agreement that would prevent her from telling anyone that she had won her case and that people in Denver do have the right to transition gender at work. Kim, wanting to be able to share her story so that other transgender people would know they have rights to transition and dress as themselves at work, refused to agree to this gag order. An entire year had passed with her employer threatening to fire her if she dared come to work dressed as herself. Eventually, with great trepidation, she came to work dressed as a woman hoping that her employer would choose not to fire her on the spot as they had threatened. To Kim's surprise the employer did not take action against her as they had previously threatened to do. All in all, it was a terrible year for Kim, unsure that the local law would be strong enough to protect her if she came to work as her true self. Source: Testimony to the Colorado Civil Rights Commission, July 30, 2009.

John Schumacher:

John is a Marine veteran who worked the overnight shift as stocker and "four star" cashier at a large retail store in Michigan's Upper Peninsula. In three years on the job, he was named "Associate of the Month" four times. He is the primary breadwinner because his partner has a disability. He and the cashier supervisor carpooled to work everyday. At the time, the cashier supervisor was not John's supervisor, however, because John worked in the stockroom. After three months of carpooling, John told the cashier supervisor he was gay and she immediately began treating him coldly.

For several months, John was ignored by the cashier supervisor and he went about his business. But when John was promoted to cashier, the cashier supervisor became his direct supervisor. "It was hell, starting off the bat," John said. The cashier supervisor treated John differently than the other cashiers. She assigned John stocking tasks in the shelves around the checkout lanes then yelled at him for leaving his register. This

pattern of treatment continued over time. John complained to the head manager to no avail; each night the cashier supervisor would find a new way to make it more difficult for John to do his job.

*On February 5, 2007, John came to work and realized he forgot to bring lunch. John called home and asked his partner to bring something for lunch. His partner brought him a frozen dinner from home. John ate the dinner in the break room in view of other workers and the cashier supervisor. Two weeks later, John was accused of stealing a frozen dinner from the store's grocery section. He was not able to produce a receipt for the frozen dinner because he and his partner had bought it weeks before and did not save the receipt. He was fired on the spot. Source: American Civil Liberties Union, *Living in the Shadows: Ending Employment Discrimination for LGBT Americans*, 2007.*

Ethan St. Pierre:

Ethan St. Pierre, a transgender man from Massachusetts, was a respected security junior manager at Barton Protective Services, overseeing 30 employees that staffed the East Coast offices of Sun Microsystems. He was hired by Barton in 2001 and received numerous favorable performance evaluations and a number of corresponding pay raises. In 2002, he talked to his direct supervisor at Barton and the Sun Microsystems security manager that interfaced with him at Barton about his desire and intention to undergo a gender transition from female to male, and generally he was received favorably. When the time was right, an announcement was made to the 30 employees Ethan supervised that Ethan was now going to be Ethan and would be going by male pronouns. All of his 30 employees treated him with respect, including using his new name and male pronouns. All was fine for six months, until the Sun Microsystems manager happened to interface with Ethan for the first time since Ethan had transitioned and saw that Ethan had transitioned. The Sun Microsystems manager slowly whittled away Ethan's responsibilities. In the meantime, Ethan's supportive manager at Barton was replaced by someone who did not respect Ethan. This new manager told coworkers, including Ethan's supervisees, that he did not agree with Ethan's "lifestyle." One day, this manager informed Ethan that he was being removed from his position at Sun Microsystems because the Sun Microsystems manager did not believe Ethan could do the job because of his gender transition. That was the final word. Ethan repeatedly asked to be assigned to another of Barton Protective Services' clients, but to no avail. Ultimately, he had to seek unemployment benefits. Ethan's attempts to find other jobs in the security field failed because Barton provided an unfavorable job performance review. Ethan was never able to find another job in the security field after this experience. Source: Testimony of Ethan St. Pierre to the Massachusetts Legislature, available at: <http://www.masstpc.org/publications/legis/StPierreFiring.pdf>.

Jacinda Meyer:

Jacinda is Latina and a licensed life and health insurance agent in California. She worked for a company that administers employee benefits to client companies. After she worked at the company for nine months, she received positive feedback about her job performance and was given a raise. Her supervisors even gave her handwritten cards to thank her for her good service, teamwork, and positive attitude.

Throughout her tenure at the company, Jacinda's supervisors made several derogatory comments about lesbians. One of Jacinda's supervisors "warned" her before a meeting that the client was a lesbian and said: "I'm telling you now so you don't freak out when you see the pictures of two women on her desk." Jacinda did not respond to this comment but later told another of her supervisors about the conversation. That supervisor asked: "Do you swing that way?" Jacinda replied that she was gay. The supervisor said: "Well, I'm fine with it as long as you don't kiss or hold hands in public."

Soon after Jacinda came out to her supervisor, the owner of the company approached her and told her about a book, The Road Less Traveled, which helped his son, who was a recovering drug addict. Jacinda interpreted the owner's comment as comparing being gay to being a drug addict. Her supervisor gave Jacinda the assignment of reading the book and writing a one-page essay about how it could improve her life.

Jacinda was offended by the book's characterization of homosexuality as immoral behavior. She was also offended by other passages that mentioned masturbation. Additionally, the book's perspective on spiritual growth made her uncomfortable. Jacinda wrote a letter to her supervisor saying she was uncomfortable with the assignment because the book's message violated her beliefs and she requested that her assignment be changed to read another book. After she requested a different assignment, Jacinda's co-workers stopped talking to her and stopped asking her to join them at lunch. Shortly after that, Jacinda was fired on March 23, 2007. The company claimed that she was fired because the company's revenue was too low, but the company hired other people for the same job after they fired Jacinda. Source: American Civil Liberties Union, Living in the Shadows: Ending Employment Discrimination for LGBT Americans, 2007.

Alynn Lunaris:

Alynn Lunaris, a transgender woman from Maryland, was employed at the Washington Humane Society (WHS), a non-profit that receives a government contract from the District of Columbia for animal control services. She was first hired by WHS in January of 2005, as a front desk assistant at the District of Columbia Animal Shelter where she quickly rose through the ranks, being promoted to an Animal Control Officer soon after she started. In June 2006, Alynn began taking hormones and making other steps as part of her transition from male to female in all areas of her life. In September 2006, she took vacation, informing management that when she returned, she would be returning as a woman. When she returned, Alynn submitted a court order showing her change of name, as well as a copy of her new driver's license, which designated her as a female. Within two weeks of her return, however, she started feeling discrimination from WHS management. This began when a promotion to Field Services Supervisor became available. Alynn was asked to apply only to be told later that an application from her would not be considered.

Over the next five months she suffered under discriminatory conditions fostered by two managers. The managers continually referred to Alynn using male pronouns and were otherwise hostile toward Alynn. The situation escalated to the point where WHS

transferred her to a position in the private law enforcement department that was not under the control of those two managers. Alynna worked for the next six months without incident, receiving many compliments on her work. Things were going well until the executive director left his position. One of the managers who had unfairly treated Alynna in her previous position was promoted to interim executive director. Upon the manager's promotion, the harassment and discrimination began again. Within three months, Alynna was fired from WHS by e-mail after management had filed several fabricated incident reports against her. Alynna has filed a complaint with the District of Columbia's Office of Human Rights which enforces the city's transgender-inclusive nondiscrimination law and has recently received preliminary findings related to probable cause. The appeals process is underway. Source: Testimony to the Maryland House of Delegates, February 25, 2009 and Senate, March 3, 2009; Conversation between Thomas Bousnakis, Task Force Fellow and Alynna Lunar, 2009.

ENDA Protects American Workers

ENDA will help protect workers from discrimination in the workplace by prohibiting discrimination on the basis of sexual orientation or gender identity in the same way that Title VII of the Civil Rights Act prohibits discrimination on the basis of race, color, religion, sex, or national origin. ENDA provides employees with the same meaningful remedies that are available under Title VII.

ENDA covers public employers, private employers, employment agencies, and labor organizations. It makes it unlawful to fire, refuse to hire, or take any other action that would negatively impact a person's status as an employee based on that person's sexual orientation or gender identity. Additionally, it would prohibit discrimination against an employee as a result of the sexual orientation or gender identity of someone with whom the employee associates. Furthermore, ENDA would make illegal any discrimination against an individual because that person has opposed or spoken out about an unlawful employment practice.

The military, religious organizations, and employers with fewer than 15 employees are all exempt from ENDA.

ENDA is consistent with existing federal law and requires no changes in enforcement mechanisms. ENDA would grant the Equal Employment Opportunity Commission (EEOC) and other appropriate agencies the power to enforce its provisions. If an aggrieved employee's complaint is not resolved by the EEOC, the individual may then file suit.

Most Americans Already Support ENDA

The Employment Non-Discrimination Act is also consistent with the opinions of the American public. According to numerous surveys, substantial majorities of likely voters in the US support an inclusive federal employment non-discrimination law. The Hart Research poll conducted in 2007, found that 6 in 10 Americans specifically support ENDA. Voters and their representatives in 12 states and more than 100 localities—areas comprising nearly 40 percent of the US population—have already taken action by adopting employment protections for employees based upon their sexual orientation and gender identity.

Businesses, too, have realized the importance of nondiscrimination policies that protect against discrimination based upon sexual orientation or gender identity; 177 of the Fortune 500 companies have enacted non-discrimination policies inclusive of sexual orientation and gender identity to protect their employees. Companies such as AT&T, Bank of America, Best Buy, Boeing, Coca-Cola, Dell, Ford Motor, Google, IBM, Kraft Foods, Marriott International, Microsoft, Monsanto, Pfizer, Procter & Gamble, and Target have all adopted non-discrimination policies that include sexual orientation and gender identity.

Conclusion

Employment discrimination affects all Americans, preventing them from contributing to our nation's workforce. Rampant discrimination leaves many LGBT Americans with the choice of either hiding their LGBT identity in the workplace or disclosing their LGBT identity and risking discriminatory treatment and harassment in the workplace.

The United States cannot afford to allow qualified people to be irrationally excluded from employment simply because of prejudice against their sexual orientation or gender identity. The competitiveness of the nation in the world market depends on US companies, and government employers, hiring and retaining the best qualified employees.

We urge Congress to support the Employment Non-Discrimination Act as a measured response to the problem of job discrimination and the havoc wreaked upon American families by job discrimination. Although we are unaware of efforts to measure the cost to society of employment discrimination, it is real. Ending both the toll that discrimination takes on individuals and families, and on society, is a worthwhile governmental and financial goal.

Passing ENDA into law would reaffirm America's longtime commitment to the values of honest, hard work and fair employment and would assure all Americans that they will be judged upon the merits of their work, not on the people they love or the gender they express.

In support of this goal, we respectfully ask that the Committee support ENDA as a critical step toward securing fair treatment for all Americans.

ⁱ Gates and Florida, 2002. The link between diversity and economic success was first proposed in a paper that examined 5 urban centers with the largest LGBT population – San Francisco, Washington, D.C., Austin, Atlanta and San Diego. Richard Florida's research in this arena suggests a strong linkage between equal justice in the workplace and creativity and success within companies and communities.

ⁱⁱ The Williams Institute: *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination*, 2007 and *Poverty in the Lesbian, Gay, and Bisexual Community*, 2009.