

NATIONAL GAY AND LESBIAN TASK FORCE ACTION FUND

# Testimony

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House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Hearing on Protecting the American Dream: A Look at the Fair Housing Act

**Rea Carey, Executive Director, National Gay and Lesbian Task Force Action Fund**

**March 11, 2010**

Testimony of Rea Carey  
Executive Director of the National Gay and Lesbian Task Force Action Fund  
Before the House Committee on the Judiciary  
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Good afternoon Chairman Nadler and members of the Subcommittee. On behalf of the National Gay and Lesbian Task Force Action Fund – the oldest national organization advocating for the rights of lesbian, gay, bisexual and transgender (LGBT) people, I would like to thank you for the opportunity to testify on the Fair Housing Act and housing discrimination as it relates to sexual orientation and gender identity. We are truly grateful to be included in this hearing to discuss housing discrimination. The National Gay and Lesbian Task Force Action Fund supports non-discrimination legislation at the local, state and national level that prohibits discrimination based upon sexual orientation and gender identity. This testimony will discuss reasons why the Fair Housing Act should be expanded to include protections for lesbian, gay, bisexual, and transgender individuals by first describing the type of housing discrimination that LGBT community members encounter and next sharing examples of the LGBT-inclusive housing protections within a few jurisdictions across the country.

The Fair Housing Act was designed to allow people to freely choose where to live and be able to integrate into neighborhoods where they had historically been excluded. While ethnic and racial discrimination in rental or home sales has been well-documented, until recently, few studies have examined the prevalence of such discrimination against LGBT people. A growing body of research reveals widespread discrimination against LGBT people in the housing and rental markets due to fear of difference.

The 2000 Census found LGBT same-sex couples living in 99 percent of all U.S. counties and raising children in 93 percent of all counties. Despite the myth of the well-heeled lesbian or gay couple with no children, living on vast stores of disposable income, Census figures indicate that same-sex couples are raising children on lower incomes than their heterosexual counterparts. This is especially true for Black and Latino same-sex couples, who are raising children at nearly the same rates as their heterosexual peers, on \$10,000 less annually.<sup>i</sup> Additionally, our review of the literature on LGBT people as caregivers, find LGBT people taking care of their parents at higher rates than their heterosexual siblings. These families are struggling without the benefit of basic provisions such as employment protections against arbitrary bias, family health plans, family medical leave, social security spousal or survivor benefits, veteran survivor benefits, etc. Discrimination against our families across the board in federal programs creates a financial fragility that most certainly spills over to create heightened housing insecurity. These individual facts tell a story that speaks to the need for a housing safety net for same-sex couples, their families, and individual LGBT people.

For us, the pursuit of the American dream, including home ownership, is a risky proposition. We may experience resistance or outright hostility from a variety of sources including landlords, lenders, and realtors. When we disclose our sexual orientation or gender identity, voluntarily or involuntarily, we may be subjected to violence and/or property damage.<sup>ii</sup> Prospective apartment dwellers also face difficulties. Studies have documented that when test callers described themselves as gay or lesbian, apartments were more likely to be described as unavailable. Testers who presented as homosexual received fewer call-backs and fewer invitations to pursue the property than their heterosexual counterparts.<sup>iii</sup>

Last year we completed a groundbreaking national study on discrimination against transgender people, working with the National Center for Transgender Equality. We found that a shocking 11 percent of transgender people have been evicted because they were transgender and 19 percent have been homeless because they are transgender.

Another study, conducted by the Michigan Fair Housing Centers in 2007, examined rental housing and home ownership to investigate the likelihood of housing discrimination based on sexual orientation; they found 30 percent of same-sex couples were treated differently when attempting to buy or rent a home. This study not only included realtors and landlords but also home finance options with researchers deploying testers in rural areas, small cities, large cities and college towns.<sup>iv</sup> Same-sex couples were shown less desirable properties, were quoted higher rent prices, received less favorable customer service, or encountered outright refusal to sell or rent properties. There were also circumstances during which parties suffered verbal harassment from landlords, realtors, and lenders.

Several court cases and settlements mirror research finding LGBT people as aggrieved parties. For instance, a 2002 case in New York found that housing regulations negatively affected lesbian and gay tenants<sup>v</sup>. And in 2003, our colleague organization, Lambda Legal, settled a case on the basis of anti-gay housing discrimination in Palm Beach County<sup>vi</sup>. The apartment complex agreed to pay \$75,000 in damages and legal fees for violating the local law which prohibits discrimination on the basis of sexual orientation and marital status. In August 2008, a Hawaii couple settled a case against the University of Hawaii for failure to provide family housing to same-sex couples.<sup>vii</sup>

When alerting our constituents to this historic hearing, the National Gay and Lesbian Task Force Action Fund received several submissions from LGBT community members whose stories illustrate similar experiences of housing discrimination. As one person stated:

“...my partner and I, both fresh out of college, could not find housing anywhere. I would call property management agencies in and around our city and mention that my partner and I were looking and all too often the phone would simply go dead on the other end. When I received a promotion in 2006 and had to relocate...things got worse. I was highly criticized for being gay and all too often heard derogatory remarks concerning my sexual orientation. Eventually we would just state that we were roommates, immediately receiving housing.”

-Name withheld

And another person wrote to us about her experience with section 8 housing.

“even section 8 has been discriminatory at least towards my partner and I...when we got our section 8 and went through their inspection of the apartment on [t]he field site [visit], everything was ok...then as soon as they found out we were Trans lesbians, they then demanded she have a bed in her own room or they would make it very hard on us.”

-Joanne B.

While the Fair Housing Act provides that it is illegal to threaten, coerce, intimidate or interfere with anyone exercising a fair housing right, we received this account of harassment from Joanne B.:

“...another run in with housing discrimination was above the roller rink...next to the community church that was a storefront church. Since the church, roller rink, and the apartment were owned by the same people who were a part of the storefront church [they] made sure to practice their conversion therapy on my partner and I whenever they could...and my partner and I were evicted.”

-Joanne B.

Incidents of housing discrimination are heightened for transgender individuals who are often more marginalized and experience harassment, unemployment and poverty at double or triple the rates of the general population. As mentioned before, in 2009 we, the National Gay and Lesbian Task Force, together with the National Center for Transgender Equality, completed a groundbreaking survey of 6,456 transgender or gender nonconforming people nationwide;

respondents came from all 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands; the racial and ethnic composition of the sample mirrored that of the U.S. population.<sup>viii</sup> Despite having a higher educational attainment level than the general population – 88 percent of our sample had attained some college education – our respondents were living at twice the rates of extreme poverty and double the rate of unemployment than the general population. As a whole, the transgender community reported frequent discrimination in the housing market. As I mentioned before, our research results showed that 11 percent of transgender people had been evicted because they were transgender and 19 percent became homeless because of being transgender. An additional 26 percent of transgender people had to find temporary places to stay with friends or family because they were transgender. Our sample also had a significantly lower home ownership rate than the general population’s rate of 68 percent, with only 32 percent of transgender people owning their homes.

The Transgender Law Center (TLC) found similar rates of housing insecurity and discrimination when surveying 646 transgender individuals in California where the state law actually prohibits discrimination against transgender people in housing.<sup>ix</sup> Nineteen percent of respondents indicated that they have experienced housing discrimination because of their gender identity or presentation. Homeownership rates among transgender Californians is disproportionately low at 20 percent compared to 56 percent for the overall population in California.

The following two stories illustrate obstacles transgender individuals face when seeking apartment housing:

“In October of 2007, I lived in an apartment that I'd occupied since May, having just pulled myself up from homelessness. I was looking for a job daily, and getting help to pay my rent. I paid my rent a tad bit late in October, and then went full time as a woman shortly after that. I let the apartment management know

what was going on with me, including showing them my letter from my therapist, which was copied and included in my file. I started going to school after that. In November, I went in to pay my rent and it was refused. I was evicted a few days before Thanksgiving, and used my rent money to pay for a hotel room while I asked the school to help with housing. The school rep promised me they would find something. What I got was a craigslist ad to room with a lesbian they had not called, and that was not part of their system. I ended up in a homeless shelter.”

-Toni D.

“In April of 2008 I was searching for apartments in Baltimore. I found an apartment in a nice area with affordable rent. When I met the woman I was to be renting from she raised the price from the advertised price by \$100. She also informed me that she would not take checks from me and would only accept cash. This woman was noticeably uncomfortable with me. She asked me if I was a boy or a girl and after I explained everything, her tone noticeably changed. I then had a female friend of the same age inquire about that very apartment and she was given the original price and was told that a check would be an acceptable form of payment.”

-Owen S.

Like transgender individuals, seniors fall within a higher risk category in terms of housing issues for LGBT populations. In November of 2009, the National Gay and Lesbian Task Force released *Outing Age 2010*<sup>x</sup>, a comprehensive review of elder policy in the U.S. We reviewed multiple studies that demonstrate a combination of negative forces bearing down on LGBT elders. Employment discrimination over the lifespan, combined with a lack of recognition of our relationships and families in federal safety net programs such as social security, leave LGBT people especially fragile economically and socially as they age. This certainly translates into higher rates of housing insecurity among LGBT elders – either as they try to retain family homes in the face of long-term care and discrimination in the structure of Medicaid; or when they attempt to secure LGBT friendly elder housing, which is virtually non-existent. Amending the Fair Housing Act to include LGBT people will provide a critical safety net that currently does not exist for the 2-7 million LGBT people who will attain the age of 65 or older over the next decade.

The court cases and research findings attest to the significant need for legislative and policy level protections. In response to this situation, several states have adopted civil rights laws to protect LGBT individuals from housing discrimination. Over twenty states and the District of Columbia prohibit discrimination on the basis of sexual orientation and 13 states and the District of Columbia include gender identity.<sup>xi</sup> Examples include Iowa's Civil Rights Act of 1965 which was amended in 2007 to include both "sexual orientation" and "gender identity," protecting LGBT people in employment, housing, and credit;<sup>xii</sup> California's Fair Employment and Housing Act which protects all LGBT people; and<sup>xiii</sup> New Jersey's Law Against Discrimination which protects LGBT people against discrimination in employment, housing, and public accommodations.<sup>xiv</sup>

In addition, there are over 100 municipalities, both large and small cities, which protect the housing rights of transgender people, including New York City, Chicago, Houston, Dallas, San Diego, Seattle, San Francisco, Atlanta, Philadelphia and Pittsburgh to name just a few. Of particular note is the New York City Human Rights Law which is one of the most comprehensive civil rights laws in the nation. This Law prohibits discrimination in employment, housing and public accommodations based on race, color, creed, age, national origin, alienage or citizenship status, gender, gender identity, sexual orientation, disability, marital status, and partnership status.<sup>xv</sup> It is important to emphasize that despite the protections afforded by state and local level measures, federal protections are still needed particularly given that implementation and uniformity of enforcement varies across jurisdictions. A patchwork quilt of protections is insufficient.

Lesbian, gay, bisexual and transgender (LGBT) individuals suffer pervasive discrimination in employment, housing, education, medical care, and everyday life because of

continuing societal prejudice and fear of the “other.” LGBT Americans often find they must leave their homes and move if they wish to live honest, open lives. Indeed, the lack of civil rights legislation helps perpetuate an environment in which hate and harassment can flourish. And the research suggests that despite widespread support for laws protecting people on the basis of sexual orientation and gender identity, the behavior of those involved in the housing industry still warrants strong federal action.<sup>xvi</sup> For these reasons, the Fair Housing Act should be amended to ban discrimination in housing on the basis of sexual orientation and gender identity.

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<sup>i</sup> Dang, A., & Frazer, S. (2004). *Black Same-Sex Households in the United States: A Report from the 2000 Census*. New York: National Gay and Lesbian Task Force Policy Institute and the National Black Justice Coalition and Cianciotto, J. (2005). *Hispanic and Latino Same-Sex Couple Households in the United States: A Report from the 2000 Census*. New York: National Gay and Lesbian Task Force Policy Institute and the National Latino/a Coalition for Justice.

<sup>ii</sup> Leppel, K. (2007). Home-Ownership among Opposite- and Same-Sex Couples in the US. *Feminist Economics* , 1-30.

<sup>iii</sup> Ahmed, A. M. (2009). Detecting Discrimination against Homosexuals: Evidence from a Field Experiment on the Internet. *Economica* , 76, 588-597.

<sup>iv</sup> Fair Housing Centers of Michigan. (2007). *Sexual Orientation and Housing Discrimination in Michigan*. Ann Arbor: www.fhcmichigan.org.

<sup>v</sup> Brooklyn Housing and Family Services v. Lynch, 740 N.Y.S. 2d 753 (Jan. 24, 2002).

<sup>vi</sup> Available at: <http://www.lambdalegal.org/news/pr/florida-housing-discrimination-gay.html> last visited 3/9/10.

<sup>vii</sup> O’Leary v. University of Hawai’i, Civil Action 08-1-0504-03, Circuit Court of the First Circuit, State of Hawai’i (Mar. 10, 2008).

<sup>viii</sup> National Center for Transgender Equality and the National Gay and Lesbian Task Force. (2009). *Preliminary Findings: National Transgender Discrimination Survey*.

<sup>ix</sup> Transgender Law Center, *The State of Transgender California: Economic Health of Transgender Californians*, (2009) <http://www.transgenderlawcenter.org/pdf/StateofTransCAFINAL.pdf>

<sup>x</sup> Grant, J. (2010). *Outing Age 2010*. New York: National Gay and Lesbian Task Force Policy Institute.

<sup>xi</sup> More expansive protections are available in thirteen states and the District of Columbia which explicitly ban discrimination based on gender expression and identity in housing, employment, and public accommodations. States extending such protection include: California, Colorado, Hawaii (only housing and public accommodation), Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

<sup>xii</sup> Iowa Code, § 216

<sup>xiii</sup> Cal. Gov’t Code §§ 12900-12996, specifically Cal. Gov’t Code § 12921(b); Gov’t Code § 12955

<sup>xiv</sup> N.J.S.A. 10:5-1 et. seq., specifically N.J.S.A. § 10:5-12(h); § 10:5-12(o).

<sup>xv</sup> <http://www.ci.nyc.ny.us/html/cchr/home.html> Gender identity is included in the definition of gender.

<sup>xvi</sup> Lax, J. and Phillips, J. (2009). Gay Rights in the States: Public Opinion and Policy Responsiveness. *American Political Science Review*. 103(3):40.