



March 16, 2021

Honorable Dick Durbin
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Senate Judiciary Committee Hearing on the Equality Act

Dear Chairman Durbin, Ranking Member Grassley, and members:

Thank you for the opportunity to submit written testimony on the Equality Act For the legislative record.

On behalf of the National Black Justice Coalition (NBJC), the nation's premier civil rights organization dedicated to the empowerment of Black Lesbian, Gay, Bisexual, Transgender, Queer+, and Same Gender Loving (LGBTQ+/SGL) people, including those living with HIV or AIDS, we write in full support of the Equality Act.

Nearly 70 years after Thurgood Marshall overturned the principle of "separate but equal," using Black genderqueer lawyer Rev. Dr. Pauli Murray's legal theory, we continue to debate whether treating humans differently is moral and constitutional – and this debate endures in a country founded on the promise of equality, liberty, and justice for all.

We continue to debate while certain Americans are targeted for surveillance; while taxis and rideshare drivers refuse service based on appearance; while women—who have no explicit civil rights protections in the constitution—are charged more for car servicing or hotel rooms; while children are told they can no longer participate in activities with their friends, because some adults are overly concerned about their genitalia. While we debate, our citizens experience profound and unnecessary hardship, without recourse, but that can finally change.

During the last term, the United States Senate chose not to respond to the question of whether every American should be treated equally and have clear, consistent federal protection in the face of stigma, bias, and discrimination, by not voting to pass the Equality Act through the chamber. We hope that in this pivotal moment, the leaders we have elected to represent us will choose to protect all of us. We hope you will assert, resoundingly, that every American deserves to be treated fairly by passing the Equality Act.

One of our nation's foundational promises is freedom, but if we are going to celebrate freedom, it must be for *all of us*: the white Jewish kid denied a haircut at the only barber shop in town because of their religious beliefs; the Black same gender loving couple given a higher home loan interest rate because of their sexual orientation and race; the interracial couple denied the opportunity to foster or adopt a child because the agency's bias overshadows its mission to give every child a forever home--freedom from discrimination and the ability to participate in public programs must be universal. *All of us* includes Black transgender women profiled by police and Black boys murdered under the guise of resembling a suspect. *All of us* includes innocent medical workers sleeping at home in their own beds. Discrimination should not be legal in a country with the mottos *in God We Trust* and *Out of Many, One*. Passing the Equality Act is necessary if we are to live into our national promise..

Our diversity makes us strong. We will be greater, still, when our laws truly reflect the commandment to love our neighbors as ourselves. The Equality Act helps us close existing gaps that leave members of our families, communities, and country without federal protections. It balances religious and civil freedoms at the heart of our constitution by removing the notion that any person is inherently inferior to another by virtue of who they are, how they look, who they love, or how they show up in the world. Passing the Equality Act helps to ensure that diversity remains among our greatest strengths and does not weaken our communities or our country by

preventing each of us from contributing politically, socially, economically, or as defenders of the nation we love and call home.

The Equality Act builds out the incomplete protections provided by the Civil Rights Act, the Americans with Disabilities Act, and other civil rights laws by ensuring that existing federal protections expand to include those who have been left out until now, whether by virtue of race, ethnicity, gender, sexual orientation, religion, or other identities that remain marginalized and stigmatized. The Equality Act makes clear that public accommodation protections extend to and protect people from discrimination in [ride-sharing services](#), [retail](#) stores, and other places not included in codified anti-discrimination laws. The Equality Act also ensures that tax dollars are not used to deny services or support. This will encourage more equitable access to child welfare programs, education, healthcare, housing, food access, and other critically important resources, especially while Black Americans continue to deal with the disproportionate impact of the novel coronavirus. As a Black same gender loving man who is excited about family planning, the idea that my tax dollars can be used to prevent me from accessing child welfare programs designed to give our most vulnerable children forever homes is beyond troubling--it contradicts the promise of the American Dream.

Passing the Equality Act is particularly important for people who are both Black and LGBTQ+/SGL. The Equality Act ensures consistent and overarching protections for all [LGBTQ+ Americans](#), many of whom currently [live in fear](#) of discrimination because no legal protections exist in key areas including [employment](#), [housing](#), [education](#), credit, public spaces and services, [jury service](#), and federally funded programs. Supplementing the recent Bostock Decision, the Equality Act would ensure that I cannot be fired because someone assumes or knows that I am same gender loving. The Equality Act acknowledges that LGBTQ+/SGL people should be protected by existing civil rights protections provided by laws like the Civil Rights Act of 1964 and the Fair Housing Act.

During NBJC's 8th annual Black Institute, hosted in January 2021, Black LGBTQ+/SGL leaders from communities across the country shared stories of discrimination. The leaders who attended the Black Institute, as well as the stories they shared, reflect a diverse range of identities, faiths, and experiences. We are including information from stories shared to underscore the importance of codifying the Equality Act. These examples are not exhaustive, they are illustrative, and they reflect what we continue to hear from members of our beautifully diverse community:

Discrimination in and out of School:

- Students described being kicked out of class for mentioning Black history and/or nuances of Black LGBTQ+ life.
- Transgender and nonbinary students described experiencing [distress](#) and bullying by educators and school leaders who refused to honor their gender pronouns or chosen names.
- Transgender and nonbinary students described being segregated from other teammates after games, and being unable to receive diplomas with their actual names (a prerequisite for entering post-secondary education programs as well as some workforce development programs).
- Black LGBTQ+/SGL students shared that their teachers and guidance counselors often assumed they were economically insecure and lacked parental support due to their gender identities and/or race. This translated into being discouraged from signing up for programs that would advance their academic careers, especially if there was an additional cost.
- Students tried to avoid discrimination by not participating in extracurricular activities that would leave them vulnerable to police violence and intimidation when leaving school late at night.
- Students of color and girls described being accused of aggression when advocating for themselves at school, and being punished in ways that white students and boys were not.
- Students mentioned lacking access to accurate, representative, and responsive [sex education](#), as well.

In America it should not be that some students are protected by federal non-discrimination laws while others are not, but that is the current reality for students who identify as members of the LGBTQ+/SGL community, as well as students who people assume are members of the community. The Equality Act's prohibition against discrimination at identity [intersections](#) is a crucial tool for protecting students who have more than one stigmatized identity, for example Black LGBTQ+/SGL children and youth. Without this measure, [research shows](#) that these students become disproportionate victims of school [pushout](#), [homelessness](#), sexual abuse, and juvenile incarceration. They experience discrimination in state, municipal, and community spaces, all of which echoes into adulthood. They are also disproportionately misidentified into special education, denied competitive opportunities, like advanced study in Science, Technology, Engineering, and Math, and when they avoid extracurriculars in order to stay safe, they become less attractive to colleges. They are seen as less “well-rounded.” We have heard countless stories from members of our Youth and Young Adult Action Council about being targeted, assaulted, and insulted; being ridiculed for how they wear their hair, or being denied opportunities both in school and outside of school simply because of

how they show up in the world. Like all children and youth, the members of our Council, who did not ask to be born into their families, communities, or country, deserve equal non-discrimination protections.

Crucially, as we grapple with mental health across the nation, there is [evidence](#) that respecting transgender and nonbinary students' pronouns and chosen names can save their lives. We have no difficulty respecting a newly married teacher's change in surname, for example, even if it hasn't been formalized in a court. This is no different. While we expect that many educators will honor and respect their diverse students' identities and self-expression, the Equality Act ensures that in those moments when compassion or competence fails, our students can seek recourse for suffering stigma, bias, or discrimination.

Aging:

The COVID-19 pandemic has shone a bright light on how vulnerable our elders are, and have been for quite a long time. One transgender senior, also a widow, described discrimination she faced at an LGBTQ+ community program that she joined to combat [loneliness](#) after her partner passed away. She explained that she was treated like she was disposable and that she was intentionally left out of events and activities created by the staff, because of both her advanced age and gender identity.

Mental Health:

In addition to struggling to find culturally competent mental health practitioners able to meet Black LGBTQ+/SGL wellness needs (a widespread shortcoming in the field), participants also told stories about experiencing conversion therapy, a horrific practice that increases depression, self-harm, and [suicide dramatically](#). The American Psychological Association's [recent shifts](#) in policy and practice signal a national change in perspective that is in line with the spirit and the letter of the Equality Act.

Black Institute participants also shared stories about being denied professional development opportunities because they were neuro-atypical **and** LGBTQ+/SGL; being subjected to racial, gender, and other slurs at work, at school, and while shopping; being targeted by law enforcement officers and agents because they dressed in gender nonconforming ways; being unable to receive domestic violence care and support because they were not seen as a viable recipient due to their sexual orientation and/or gender identity; experiencing discrimination in housing as well as COVID test and vaccine distribution; barriers to adoption and childbirth, including being turned away from agencies or having to adopt the children they helped to

create through in vitro fertilization or other assisted reproduction; the list goes on and on.

The Equality Act pays explicit attention to expanding protections in the workplace, in healthcare, in federally funded and government programs, in public accommodations and services, and in all the places that all of our nation's people deserve to be safe. One hope is that this policy will anchor improvements in training, as well as reductions in bias – actions that will not only benefit individual Americans but also strengthen communities and our country.

The Supreme Court ruled in *Bostock v Clayton County* that Title VII of the Civil Rights Act prohibited discrimination in employment based on sexual orientation and gender identity. President Joe Biden recently signed an executive order directing government agencies to apply the *Bostock* ruling to other areas beyond employment, like housing and health care. The guidance included a critical provision that civil rights claims can be made on the basis of multiple identities, and adds protections for those experiencing discrimination due to actual or perceived association with stigmatized groups. An executive order, however, is easy to overturn, putting us back into crisis once again. The Equality Act must be codified. It must become the law of the land for all of us; including me.

As a tall, Black, same gender loving man, I have been followed in stores by employees who assumed that I might steal something. I have worried that employers might mistake photos with friends as pictures of me and my partner, or discriminate against me as a result of ignorance and normative privilege. I have witnessed and actively advocated against Black people being discriminated against in the criminal justice system, the medical-industrial complex, traditional public schools, and other programs funded by my tax dollars. I have seen my siblings fired or excluded from jobs because of how they express their race and gender through the act of wearing locs in their hair, or skirts in places where people assume only women and girls should enjoy the fun that comes with fashion. The Equality Act would finally provide everyone with legal protections designed to prevent bias, discrimination, and hate crime.

Our nation is composed of people like me who manage complex, compound challenges, especially now, in the wake of the coronavirus pandemic. What data shows us, time and again, is that the more stigmatized or marginalized identities a person has, the heavier their burden is likely to be. The Equality Act makes it possible for our neighbors, friends, and family members to not only design a healthier nation together, but to seek and achieve justice where the people and institutions fall short

along the way. Whether in a mall or an Uber, at school or in the community, seeking a job or a home, the Equality Act will make it easier for everyone to participate, contribute, and thrive. We can fulfill the promise of our nation, but we can't do it without this bill becoming law. We're counting on you to see it through.

Thank you in advance for your consideration. If you have questions or need additional information, please contact Victoria Kirby York, Deputy Director Executive at (202) 460-4420 or vkirbyyork@nbjc.org.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Johns", with a large, stylized initial "D" and a long, sweeping horizontal line extending to the right.

David J. Johns
Executive Director
National Black Justice Coalition