



**Statement by Jennifer Levi, Esq.
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before the Committee on Health, Education and Welfare
concerning An Act Relating to Civil Rights
presented on March 22, 2001**

Madam Chairperson and Members of the Committee:

I am grateful for the opportunity to testify on the importance of including the phrase “gender identity or expression” in Rhode Island’s Fair Housing Practices Act, Fair Employment Practices Act, Hotel and Public Places Law, and Equal Opportunity and Affirmative Action Law. I would like to thank Representatives Edith Ajello and Nancy Hetherington particularly for sponsoring this important and much-needed legislation. I am a staff attorney at Gay & Lesbian Advocates & Defenders, New England’s leading legal rights organization dedicated to ensuring legal equality for bisexuals, gay men, lesbians, transgender people, and those living with HIV or AIDS. A key focus of my work at GLAD is addressing discrimination faced by transgender people, in housing, employment, public accommodation, access to benefits, education, and other areas.

I would like to express my strong support for the proposed legislation, which would add “gender identity or expression” to the other categories already enumerated in Rhode Island’s non-discrimination statutes, such as race, color, religion, sex, sexual orientation, marital status, country of ancestral origin, disability, age, or familial status. My goal today is to explain why it is so crucial that the General Assembly add the phrase “gender identity or expression” to Rhode Island’s non-discrimination statutes, as well as highlight what this bill will and will not do.

I. Definitions

In order to lay the groundwork for my comments, I want to provide Committee with some important definitions that should aid in understanding how this legislation will protect people from discrimination. The words “sex” and “gender” often are used synonymously. The trend, however, both in the legal world and in the social sciences, is to use the two terms to refer to two distinct yet related ideas. The word “sex” is regularly defined as relating solely to one’s physical anatomy at birth, being born male or female. The word “gender”, in contrast, has come to refer to those characteristics traditionally or stereotypically associated with

being male or female. For example, gender stereotypes drive the assumptions that only women wear make-up and men must wear pants or that women are naturally gentle and men are naturally aggressive.

The phrase “gender identity” refers to one’s self-identification as a man or a woman, as opposed to one’s anatomical sex at birth. Usually, one’s gender identity comports with one’s anatomical sex, that is, people born with the physical characteristics of males usually identify as men and those with physical characteristics of females identify as women. However, one’s gender identity does not always align with one’s anatomical sex. Thus, for transsexual people, gender identity and anatomical sex are discordant. Someone born male has a strong internal self-image and self-identification as a woman, or someone born female has a strong internal self-image and self-identification as a man. Some transsexual people may seek medical treatment in the form of hormone therapy or surgery to correct their physical sex to agree with their gender identity.

The phrase “gender expression” refers to how society views and interprets one’s gender identity, that is, recognizing someone as a woman or a man. Here, one’s gender identity very well may comport with one’s anatomical sex, but may nonetheless be perceived by others as gender non-conforming. This may be a case where someone who is born male and self-identifies as a man, but is perceived by others as feminine, or someone born female who self-identifies as a woman, but is seen by others as masculine.

The term “transgender”, is an umbrella term to describe anyone who in some way(s) does not conform to gendered stereotypes. This may include transsexual people but also includes masculine appearing women and feminine appearing men. Because of the serious and egregious discrimination many transgender people face on a daily basis, I urge your support of this bill.

II. Gender Non-Conforming People Desperately Need Legal Protection from Discrimination

The need to protect people from discrimination on the basis of gender identity and expression is great.

A number of high profile recent incidents during which transgender people have faced serious discrimination and violence highlights this point. Because of the success of the movie, “Boys Don’t Cry,” many people now know about the violence a transgender young man named Brandon Teena, faced when others learned that he was a biological female with a masculine gender identity. Upon learning this, two friends of Brandon’s girlfriend brutally raped and assaulted him. Rather than appropriately responding to his criminal complaint, local Nebraska

police officers treated Brandon like the criminal and delayed in arresting his attackers. As a result, his attackers hunted down Brandon and murdered him.

In a second example of horrifying discrimination experienced by a transgender person, Tyra Hunter was without emergency medical care for a lengthy time because of the bigoted response of the Washington, DC, EMTs who stopped treating Tyra when they learned that she had male genitals. Rather than caring for her, the stood back and made comments such as “This ain’t no bitch” and “Look, it’s got a cock and balls.”

Two other cases of employment discrimination that have received some public attention include those of Lynn Conway, a pioneer of microelectronic chip design, and Dana Rivers, an award-winning teacher in the California public schools. In both of these cases, otherwise well-respected and admired employees lost their jobs when their employers learned that they were transgender. Otherwise exemplar employees were terminated simply because of outdated notions of appropriate expressions of masculinity and femininity.

Unfortunately, these cases represent just the tip of the iceberg. Transgender people throughout Rhode Island, in cases which have not received the attention of those just mentioned, face serious discrimination every day in jobs, housing, lending, and public accommodations. Unfortunately because of pervasive prejudice, discrimination and misunderstanding, transgender people need a law to allow them to do that which most people take for granted – work, take out loans, seek and find housing, and use public accommodations without being subjected to prejudice and discrimination.

III. Rhode Island Will Join Other State and Local Jurisdictions That Ensure Freedom From Discrimination Based on Gender Identity and Expression

Rhode Island need not fear that by prohibiting discrimination based on gender identity and expression it will be entering into uncharted territory. Instead, Rhode Island will join a growing number of state and local governments who have already recognized that preventing discrimination based on gender identity and expression is both necessary and desired. In 1975, Minneapolis was the first municipality to adopt transgender non-discrimination language by prohibiting discrimination based on having or projecting a self-image not associated with one’s biological maleness or one’s biological femaleness. Since then, the number of additional jurisdictions that have adopted similar measures has grown at a dramatic rate. Currently, there are over 30 cities with such laws on the books and at least one state, Minnesota, which enacted a law prohibiting discrimination in 1993. In nearby Connecticut, the state’s human rights commission recently issued a declaratory ruling that the state’s sex discrimination laws protect its transgender

citizens. In addition, there are dozens of universities and employers (including Lucent Technologies and Apple Computers) with non-discrimination policies protecting transgender people.

Protection from discrimination based on gender identity and expression is not limited to large metropolitan areas. Instead, the localities that have enacted transgender inclusive language run the gamut from smaller towns like York, Pennsylvania and Ypsilanti, Michigan, to medium sized cities like Toledo, Ohio, and larger metropolises like San Francisco, California and Atlanta, Georgia. Currently, over nine and a half million Americans are protected from gender-based discrimination. The number is sure to grow. In 2000, bills to create statewide non-discrimination laws for transgender people were introduced in California, Georgia, Illinois, Iowa, Michigan, Missouri, and Vermont. This legislative session Rhode Island joins Arizona, California, Colorado, Illinois, Kentucky, Missouri, New York, and Texas in considering legislation which would prohibit discrimination against transgender people.

IV Myths and Misconceptions

In discussing the need for protections for people who are gender non-conforming, some people express an unfounded fear that the proposed legislation will lead to an increase in cross-dressing, particularly in the workplace. Specifically, people sometimes state a fear about the law leading to protections for men in dresses in the workplace.¹ I want to address that misconception head on. First, the notion that employers will be forced to hire men in dresses is a total red-herring. As I mentioned before, for over 25 years, Minneapolis, a major metropolitan area, has protected transgender people from discrimination. Currently, nine and a half million people are protected from discrimination based on gender expression. Surely, if the concern regarding men in dresses was real, it would have surfaced by now. Despite this concern, one raised in nearly every jurisdiction to have considered passage of a similar law, businesses across America are still running, employees are still going to work, and the chaos that detractors portend has not occurred. Simply put, there is not one iota of evidence that

¹ It bears mention that shifting cultural norms have lead to a near total acceptance of women in the workplace wearing male-styled clothing. Applying a different standard for men may, in any case, not be permissible under Rhode Island sex discrimination law. However, the experience of transgender plaintiffs bringing sex discrimination claims has been mixed despite strong legal arguments to support such claims. It has often been the province of the legislature to clarify the scope of existing laws and passage of new ones when existing ones have not been appropriately interpreted by courts.

protecting gender non-conforming people would lead to any increase in the amount of cross-dressing on the job. Furthermore, protecting transgender people from discrimination does not mean that employers cannot require their employees to present a neat and professional appearance. Rather, such protections would only permit people to dress according to their gender identity.

Another source of fear often articulated when discussing protecting transgender people from discrimination is which bathroom people will use. Like everyone else, transgender people deserve to use bathroom facilities with safety and dignity. What makes the most sense is to allow people to use the bathroom that matches their gender identity. People identifying themselves, and living their lives, as women would use the women's restroom. Likewise, people identifying themselves, and living their lives, as men would use the men's restroom.

It would be unreasonable to force people to use only the bathroom that comports with their anatomical sex for a variety of reasons. For example, with a female-to-male transsexual who has transitioned from female to male by taking hormone with or without surgery, it would be wholly inappropriate to ask him to use the women's restroom. Because his gender expression would be similar to any non-transgender man, requiring him to use the women's restroom in conformity with his anatomical sex would actually cause more distraction than the more reasonable policy of permitting him to use the men's room. Similarly, requiring a transgender woman (a person who may have been ascribed the sex of male at birth but has a female gender identity or expression) to use only the bathroom that comports with her anatomical sex would be similarly degrading to that woman. In addition, there is simply no legitimate way to take "anatomy checks" before determining who can use what restroom.

Going to the bathroom is a private matter, in which common sense and compassion should govern. When going to the bathroom, you cannot really know what the anatomical sex is of the person in the next stall over. Permitting transgender people to use the bathroom that comports with their gender identity does not change that in any way. Any rule to the contrary would.

V. Conclusion

In closing, and on a personal note, this legislation is very important to me not just because of the work I do but because of the way it would impact my life. As a visibly gender non-conforming person (and one who identifies as transgender), I have often faced discrimination or adverse treatment because I am a woman who does not look like one. It is, for me, a daily experience to be referred to as "he" or be given hostile stares in the women's department of a clothing store. Judges will often call me to the bench as "Mr." While the proposed legislation will not and need not change people's understandings of who is male and who is female, it will allow

transgender people like me to continue to work, find housing, obtain credit, and use public accommodations, despite others' outdated notions of what it means to be a "real man" or a "real woman."