



**Written Statement of Shannon Price Minter, Esq.
Legal Director, National Center for Lesbian Rights
To the
Subcommittee on Health, Education, Labor and Pensions
Committee on Education and Labor
United States House of Representatives
Room 2175
Rayburn House Office Building**

An Examination of Discrimination Against Transgender Americans in the Workplace

June 26, 2008

Mr. Chairman and Members of the Subcommittee:

This is truly a historic day, and one that is deeply meaningful not just to transgender people, but to all of our family members and loved ones as well. This is the first time that most transgender people have had the reality of our lives addressed by Congress. I am grateful to have this chance to speak to you today both as an attorney who specializes in transgender legal issues and as a transgender man.

I was born female and transitioned from female to male at the age of thirty-five, about twelve years ago. Growing up as a transgender young person in rural East Texas, I never would have dreamed of having this opportunity to address our nation's legislators. I am keenly aware, as I am sure my fellow witnesses are as well, that we speak to you on behalf of your transgender constituents across the country, whether it be others living in rural Texas, suburban New Jersey, or metropolitan Minneapolis.

I am going to touch on three issues: who transgender people are; the pervasiveness of workplace discrimination against transgender people; and the inadequacy of current federal law to address that discrimination.

Transgender people are individuals whose internal identification as male or female does not match their assigned sex at birth, including many who undertake the medical process of changing their physical gender. Transgender people have existed throughout history and have been part of almost every culture and community. In the United States, transgender people

come from every racial and ethnic group and live in every part of our country. Transgender people also work in virtually every occupation.¹

Like other Americans, transgender people fervently wish to be able support ourselves and our families and to have the dignity of being treated as equal members of society. As employees, we want to be judged based on our skills and our qualifications—on what we have to offer, not on whether we happen to be transgender.

Many transgender people are fortunate to have support in their workplace and are able to continue working in their chosen careers both during and after their transition from one gender to another; unfortunately, however, many others face some of the most blatant and severe workplace discrimination imaginable, to a degree that is often truly shocking. All too often, the mere disclosure that a person is transgender and intends to undergo, or has undergone, sex-reassignment results immediately in severe harassment or job loss. That is true even for highly skilled employees who may have served in their position for years.

For example, in a case that attracted national attention last year, Steve Stanton had served as the City Manager of Largo, Florida for 14 years, longer than any other City Manager in Largo's history. Throughout his tenure, Mr. Stanton always received excellent job evaluations and was widely respected as one of the most effective city managers in the country. During his last evaluation, in September, 2006, he was given a large raise in recognition of his long tenure and accomplishments. But just seven months later, the Largo City Commission abruptly fired Mr. Stanton after a local news article disclosed that he was transgender and intended to transition from a man to a woman. The Commission refused to reconsider its

¹ The representation of transgender people in virtually all professions is evidenced by the broad range of occupations that have been the subject of transgender employment discrimination actions. *See, e.g., Enriquez v. West Jersey Health Systems*, 777 A.2d 365 (N.J. Ct. App. Div. 2001) (medicine); *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984), *cert. denied*, 471 U.S. 1017 (1985) (airline industry); *Broadus v. State Farm Ins. Co.*, 2000 WL 1585257 (W.D. Mo. Oct. 11, 2000) (insurance industry); *Mitchell v. Axcan Scandipharm, Inc.*, 2006 WL 456173 (W.D. Pa. Feb. 17, 2006) (sales); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (firefighting); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005), *cert. denied*, 546 U.S. 1003 (2005) (law enforcement); *Schroer v. Billington*, 525 F.Supp.2d 58 (D.D.C. 2007) (terrorism research analysis).

decision. As a result, the City of Largo lost a valuable employee, and Stanton, who has subsequently changed her first name to Susan and is now living as a woman, has been unable to find another job.²

Unfortunately, there are many similar stories, most of which receive little or no public attention. One such story concerns Kathleen Culhane, a veteran who also served in the Iowa National Guard. Prior to her transition from male to female, Ms. Culhane had worked for several years as a research assistant at a state university in Iowa. She informed her supervisor that she was transgender and would be transitioning from male to female. Within weeks of that disclosure, Ms. Culhane was told she would be fired. She applied for positions in other departments, but no one was willing to hire a transgender person. Ms. Culhane lost her job and was forced to move to another state to find work, leaving behind her home of sixteen years.³

In another case, Anthony Barreto-Neto, an experienced and skilled police officer, was hired by a local police department in Hardwick, Vermont. Shortly thereafter, town officials found a website that described Mr. Barreto-Neto as “transsexual” and disclosed the fact that he had been born female and had undergone sex-reassignment several years earlier. The town officials communicated that information to senior police department personnel, who then subjected Mr. Barreto-Neto to severe harassment and dangerous workplace conditions, including issuing him faulty security equipment. In a subsequent investigation by the Vermont Attorney General, a former police chief testified that he was directed to make Mr. Barreto-Neto so uncomfortable that he would leave the force. Mr. Barreto-Neto was able to settle his case; however, the police department took the position that discrimination against a transgender person was not prohibited by law.⁴ A few years later, the Vermont Legislature enacted a statewide law specifically prohibiting such discrimination.

² Deborah J. Vagins, “Working in the Shadows: Ending Employment Discrimination for LGBT Americans,” at 17 (American Civil Liberties Union, Sept. 7, 2007).

³ *Id.* at 19.

⁴ Mr. Barreto-Neto was represented by Gay & Lesbian Advocates & Defenders. For a description of his case, see http://www.glad.org/News_Room/press73-4-23-04.html.

As lawyers who specialize in this area are well aware, such stories of discrimination are painfully common. Employees who disclose their transgender status or who attempt to transition on the job risk being summarily dismissed, regardless of their qualifications or prior history.

State and local lawmakers throughout the country increasingly are addressing this type of discrimination. Currently 12 states and the District of Columbia have laws that specifically ban workplace discrimination based on gender identity: California, Colorado, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.⁵ The first such statewide law was passed by Minnesota in 1993; however, most have been enacted in the past three to five years. Several other states are considering similar laws, and earlier this month, on June 3, 2008, the New York State Assembly passed the Gender Expression Non-Discrimination Act by a vote of 108 to 34.⁶ More than 100 cities and counties have enacted local non-discrimination laws protecting transgender workers.⁷ And many of the country's employers, both large and small, have adopted non-discrimination policies that prohibit gender identity discrimination.⁸

⁵ California (Cal. Gov't Code §§ 12926(p), 12940, 12955, Cal. Penal Code § 422.76); Colorado (Colo. Rev. Stat. § 24-34-401(7.5)); Illinois (775 Ill. Comp. Stat. 5/1-102, 5/1-103(O-1)); Iowa (Iowa Code § 216.6); Maine (Me. Rev. Stat. Ann. tit. 5, § 4552, 4553(9-C)); Minnesota (Minn. Stat. § 363A.03(44)); New Jersey (N.J. Stat. Ann. §10:5-3 et seq.); New Mexico (N.M. Stat. Ann. § 28-1-2(Q)); Oregon (Or. Rev. Stat. §§ 175.100, 659A.030); Rhode Island (R.I. Gen. Laws § 28-5-6, R.I. Gen. Laws § 11-24-2.1(a)(8)); Vermont (Vt. Stat. Ann. tit. 1, § 144); Washington (Wash. Rev. Code § 49.60.040); and the District of Columbia (D.C. Code Ann. § 2-1402.11).

⁶ A06584A, 231th Leg. (N.Y. 2008).

⁷ National Gay and Lesbian Task Force, "Jurisdictions with Explicitly Transgender-Inclusive Non-Discrimination Laws" (April 2008), available at http://www.thetaskforce.org/downloads/reports/fact_sheets/all_jurisdictions_w_pop_4_08.pdf.

⁸ Transgender Law & Policy Institute, "Employer and Union Policies Prohibiting Discrimination Against Transgender People," available at <http://www.transgenderlaw.org/employer/index.htm>.

Despite these advances, the current patchwork of local and state laws is inadequate to remedy the pervasive gender identity discrimination taking place across the country. Most transgender employees do not live in a jurisdiction that provides them with legal protection. In most states, a transgender worker who is fired or harassed for being transgender has no legal recourse.

Existing federal law, including Title VII, does not adequately protect transgender employees. As a logical matter, discrimination against a person for changing his or her sex *should be* recognized as discrimination *based on sex*, just as discrimination against a person for changing his or her religion or nationality *is* recognized as discrimination based on religion or nationality. Many legal scholars, as well as women’s rights and civil rights advocates, strongly support the view that the prohibition of sex discrimination in Title VII logically, and as a matter of principle, should prohibit transgender discrimination. In practice, however, most courts have rejected that view, creating a significant loophole in sex discrimination law. For decades, starting in the 1970s, courts summarily held that Title VII does not protect transgender people from discrimination.⁹ Too often, those decisions not only denied protection, but spoke about transgender people in disparaging and demeaning terms. In recent years, some federal courts have begun to hold that, at least under some circumstances, Title VII may protect transgender people who are discriminated against because they do not conform to gender stereotypes.¹⁰

⁹ See, e.g., *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984), *cert. denied*, 471 U.S. 1017 (1985) (pilot did not have a cause of action under Title VII because, based on the plain meaning of the word “sex” and the legislative history of Title VII, sex does not include a person’s transsexual status); *Sommers v. Budget Marketing, Inc.*, 667 F.2d 748 (8th Cir. 1982) (Title VII does not encompass discrimination against transgender persons); *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659 (9th Cir. 1977) (Congress did not intend for Title VII to protect transgender employees); *James v. Ranch Mart Hardware, Inc.*, 881 F. Supp. 478 (D. Kan. 1995) (same); *Powell v. Read's, Inc.*, 436 F. Supp. 369 (D. Md. 1977) (same); *Voyles v. Ralph K. Davies Medical Center*, 403 F. Supp. 456 (N.D. Cal. 1975) (same), *aff'd*, 570 F.2d 354 (9th Cir. 1978); *Oiler v. Winn-Dixie Louisiana*, 89 Fair Empl. Prac. Cas. (BNA) 1832, 2002 WL 31098541 (E.D. La. Sept. 16, 2002) (male grocery store clerk denied Title VII protection when fired for wearing female clothing off the job).

¹⁰ *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004) (holding that transgender firefighter who was transitioning from male to female was discriminated under Title VII against based on

The most notable example is the Sixth Circuit, which thus far is the only federal *appellate* court to issue such a decision.¹¹ This is a welcome development, and has provided a remedy for some transgender employees against some forms of gender identity discrimination. For the most part, however, courts have continued to apply Title VII narrowly to exclude transgender people.¹² Moreover, even the few courts, including the Sixth Circuit, that have held that Title VII may protect transgender people against discrimination based on gender stereotypes have stopped short of holding that Title VII prohibits discrimination simply because a person is transgender.

Thus, it is essential that Congress make clear that discrimination against transgender people because of their gender identity is against the law.

Thank you for your leadership in convening this historic forum and for the opportunity to testify. Growing up in my small Texas town, I could not have imagined a day like this. So many transgender people and their families around the country are waiting and watching, hoping that Congress will take action to address this harmful discrimination and to help ensure that transgender people have an equal opportunity to work.

failure to conform to masculine gender stereotypes); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005) (holding that transgender police officer who was transitioning from male to female was discriminated against under Title VII based on failure to conform to masculine gender stereotypes), *cert. denied*, 546 U.S. 1003 (U.S. 2005); *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F.Supp.2d 653 (S.D. Tex. 2008) (denying employer's motion for summary judgment and holding that transgender plaintiff was entitled to prove her gender stereotyping claim).

¹¹ See *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); and *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005), *cert. denied*, 546 U.S. 1003 (U.S. 2005).

¹² See, e.g., *Sweet v. Mulberry Lutheran Home*, 2003 WL 21525058 (S.D. Ind. June 17, 2003) (holding that termination because of employee's intent to change sex was not actionable as sex discrimination under Title VII); *James v. Ranch Mart Hardware, Inc.*, 881 F. Supp. 478 (D. Kan. 1995) (holding that Title VII does not prohibit discrimination against transgender people).