

# Why LGBT Elders Need the Equality Act

ISSUE BRIEF: July 2021



## Introduction

It is surprising for many people to learn that federal nondiscrimination laws do not explicitly prohibit discrimination based on sexual orientation and gender identity in employment, housing, places of public accommodation, and in other key areas of life. The lack of consistent, federal protections against discrimination is a particular problem for LGBT older people. That's because they are more likely to live alone<sup>1</sup> and struggle financially<sup>2</sup>, face housing insecurity, and may continue working as they age; all experiences that place them at higher risk for discrimination. Not to mention, the nearly one-quarter of the nation's LGBT population are ages 50 and older<sup>3</sup>, the so-called "Stonewall Generation," have fought their entire lives to be treated fairly at work, at home, and in public places. Unfortunately, without protections, too many feel compelled to return to the closet to protect themselves.

At this moment, our country has the potential to pass the Equality Act, which would finally update our federal civil rights laws to explicitly protect people from discrimination on the basis of sexual orientation and gender identity in public accommodations, housing, health care, employment, federally funded programs, jury service, and credit. These comprehensive protections are particularly significant for LGBT older people, who face unique and serious obstacles to successful aging.



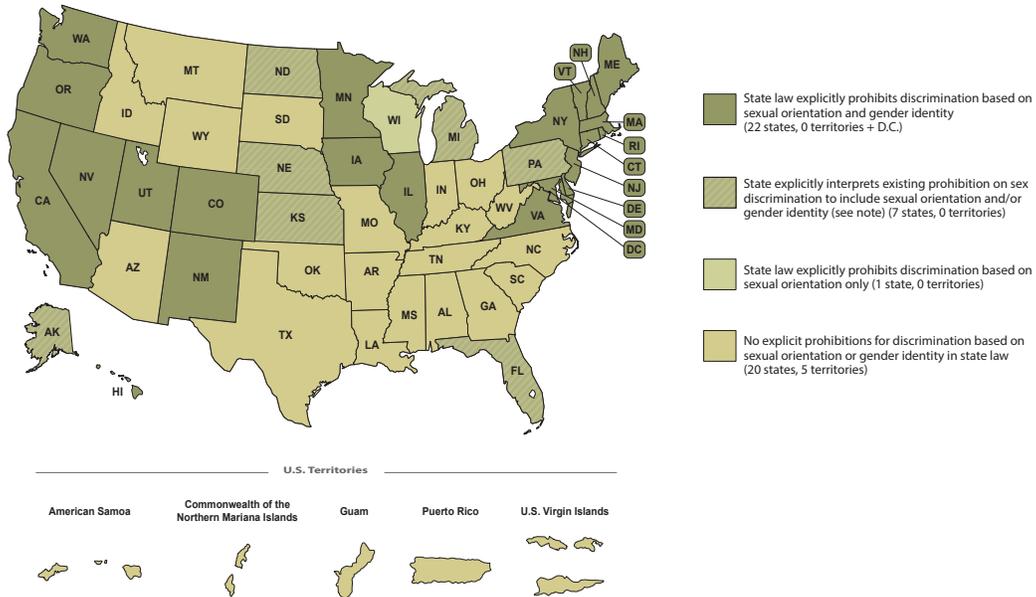
## LGBT Older People Face a Patchwork of Protections

While the lack of a national probability study makes it impossible to know the size of the LGBT older adult population with precision, it is estimated that by 2030 there will be approximately 7 million LGBT people in the U.S. who are 50 and older<sup>4</sup>. Yet the protections available to LGBT older people vary immensely depending on where they live and are shifting as a result of a June 2020 U.S. Supreme Court ruling and the Biden Administration's agency actions.

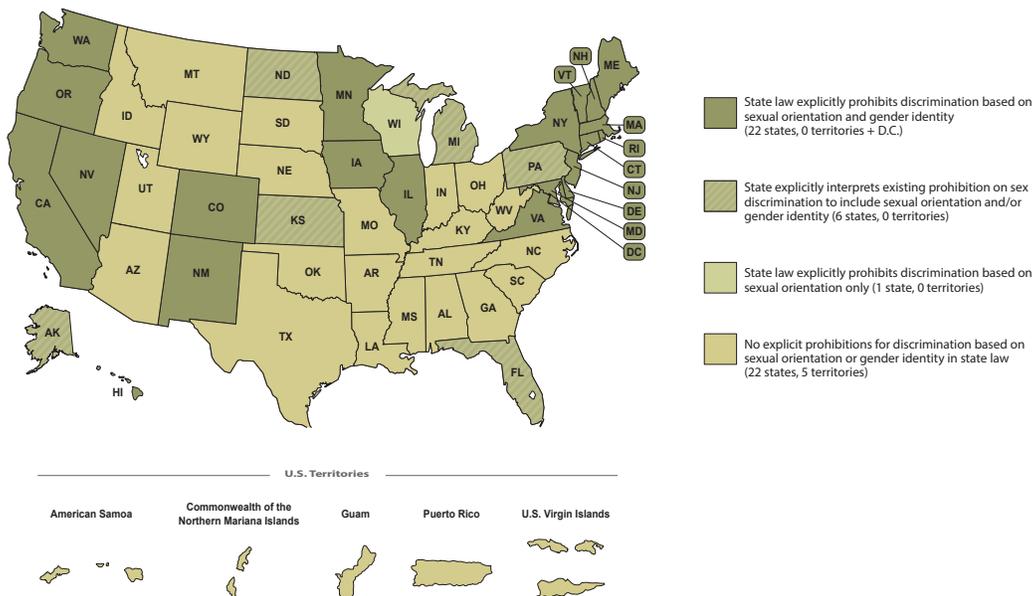
# Protections in the States

More than half of states lack laws explicitly prohibiting discrimination based on sexual orientation and gender identity in housing and places of public accommodation, as shown in Figures 1 and 2. The places and spaces that elders access for services are often considered public accommodations. Without state-level protections, LGBT older people may be powerless to confront discrimination when it happens, and service providers, for example, may have no obligation to address it when it does.

**Figure 1: More than Half of States Lack Laws Explicitly Protecting LGBT Older Adults from Housing Discrimination**



**Figure 2: More than Half of States Lack Laws Explicitly Protecting LGBT Older Adults from Discrimination in Public Accommodations**



## Shifting Federal Protections

Importantly, the Biden Administration and various agencies have utilized the 2020 U.S. Supreme Court ruling in the Bostock case to make clear that federal law barring discrimination based on sex in employment, housing, health care, jury service, and credit, also bars discrimination against LGBT people because of their sexual orientation and/or gender identity. While the Bostock case centered on federal employment law and its prohibition on sex discrimination, the rationale used by the Court extends to these other contexts. As a result, various federal agencies including the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Education, and have made clear that when discrimination happens against LGBT people, including LGBT older people, it is illegal under federal law and those agencies will investigate such complaints. HUD's application of Bostock to the Fair Housing Act is particularly important for LGBT older people, as housing is an area where many experience high levels of discrimination. Notably, however, no federal law prohibits discrimination based on sex (or sexual orientation and gender identity) in places of public accommodation such as restaurants or clothing stores and by federally funded programs such as congregate meal facilities, senior centers, and transportation services.

This is where the Equality Act comes in, providing vital protections not only for LGBT older adults, but for people across the country.

## The Equality Act Makes Important Updates to Federal Civil Rights Laws

The Equality Act would update our civil rights laws for the 21st century. It includes significant protections in the areas of public accommodations and federally funded programs, where sex protections do not currently exist. It also updates the other core areas of federal law where sex protections do exist, including employment, housing, health care, education, credit, and jury service, by explicitly prohibiting discrimination based on sexual orientation and gender identity. These are critical for LGBT older people because they create clear, consistent protections regardless of where people live and enduring protections that are not subject to a presidential administration's shifting interpretations. What's more, the Equality Act provides important new legal protections for women and expands existing protections for people of color, immigrants, and people of minority faiths in critically important and long overdue ways.

### #1: The Equality Act fills critical gaps in public accommodation nondiscrimination law for everyone

In addition to prohibiting discrimination based on sex, sexual orientation, or gender identity in places of public accommodation, the Act expands what is considered a place of public accommodation under federal law to include nearly every public-serving business. This means that federal law and its current protections for race, color, and national origin would apply to places like clothing stores, salons and personal care providers, transportation services, and funeral homes, which are not currently covered. Expanding what public places are covered by federal nondiscrimination law is especially critical for LGBT people of color, LGBT people of faith, and

LGBT people who are immigrants and frequently experience discrimination not only because of their sexual orientation and gender identity but also because of their race, color, religion, and national origin. It is also important for women, regardless of whether they are lesbian or bisexual or straight, cisgender or transgender, to be protected from sexual harassment in public places.

## **#2: The Equality Act adds nondiscrimination protections for sex, sexual orientation, and gender identity to federally funded programs**

Currently not all federally funded programs have nondiscrimination protections for sex, sexual orientation, and gender identity, though individual programs may. The Equality Act's updates to federal law mean that initiatives that are supported with federal tax dollars such as food assistance, Meals-on-Wheels, rural utility programs, senior centers, weatherization assistance programs, federal contracting, disaster assistance, job training programs, and more would be prohibited from discriminating. The same changes extend to any grantees or contractors that receive federal funds. For LGBT older people, one in three of whom live at or below 200% of the poverty line<sup>5</sup>, being treated fairly when accessing federally funded programs is critical, whether through local area agencies on aging or social service providers who receive federal funding.

## **#3: The Equality Act adds explicit nondiscrimination protections for LGBT people in key areas of life**

The Equality Act explicitly adds "sexual orientation and gender identity" to existing federal civil rights laws that prohibit sex discrimination, as well as to the expanded and new protections noted above. This means that the Equality Act would provide clear, vital—and, importantly, consistent—nationwide protections for LGBT people across many key areas of everyday life, beyond federally funded programs, public places, and accommodations, including: employment, housing, health care, credit, education, and federal jury service.



## **Why LGBT Older People Need the Equality Act**

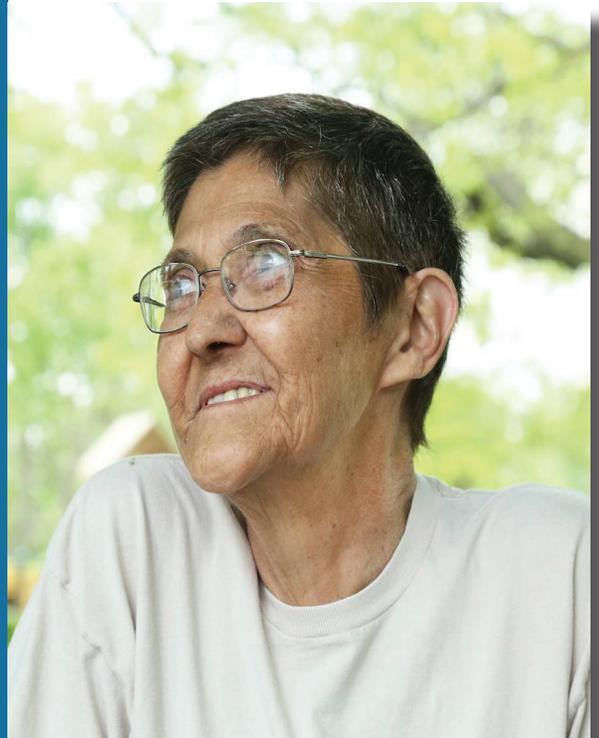
LGBT older people living across the country are diverse in terms of where they live, their national origin, the color of their skin, their religion, their political persuasion, and more. LGBT older people are vulnerable to discrimination because of their sexual orientation, their gender identity, their age, and other factors like race. LGBT older people report experiences of discrimination across many areas of life—at work, at the doctor's office, within residential communities and when seeking housing, and when accessing social supports like senior centers. Too many are financially insecure and need access

to credit. And many are reliant on faith-based institutions like senior living providers, 82.5% of which are religiously affiliated<sup>6</sup>.

## MARSHA'S STORY

"Marsha was subjected to a pattern of discrimination and harassment because of her sex and sexual orientation, including persistent verbal harassment, threats, intimidation, and three separate assaults, at the hands of other residents. She has been called countless homophobic slurs, taunted about her relationship with [her partner] and their child, threatened with bodily harm, bullied and intimidated in all of the communal spaces in the facility, and physically injured by other residents, all because she had a committed relationship and created a family with another woman and because she is a lesbian."

- Lambda Legal's first amendment complaint in *Wetzel v. Glen St. Andrew Living Community*



*Photo of Marsha Wetzel, courtesy of Lambda Legal  
Marsha passed away on November 1, 2020*

LGBT older people cite fears about moving out of their own homes and into residential communities among their top fears because of the discrimination they may experience. Nearly half of LGBT people who had entered long-term care or had a loved one in long-term care experienced mistreatment in a care facility<sup>7</sup>. Nearly one-quarter (23%) of incidents that were based on a resident's real or perceived sexual orientation and/or gender identity involved verbal or physical harassment from other residents, while 20% involved refusal to admit or re-admit, or attempted or abrupt discharge of a resident. Fourteen percent of incidents involved verbal or physical harassment by staff. While too often, these cases remain invisible, they are all too real. The same is true for LGBT older people when seeking health care. LGBT older people may be less likely to go to the doctor or seek assistance because they fear discrimination or have experienced discrimination<sup>8</sup>. Forty percent of the LGBT older respondents to SAGE's survey – people who are in their 60s and 70s - reported that their healthcare provider didn't know about their sexual orientation<sup>9</sup>. In the same survey, Hispanic LGBT older respondents were the most worried that the quality of health care they receive would decrease if they were open about their sexual orientation (34% of Hispanic respondents, compared to 23% of African American and 16% of white respondents). Older transgender adults reported high levels of negative experiences and concern about their healthcare. Two-thirds of transgender respondents felt there would be limited access to healthcare as they aged and over half feared they would be denied

medical treatment because of their age<sup>10</sup>. Without explicit protections written into federal law, LGBT older adults must navigate getting the health care they need while fearing discrimination.

## Now is the Time for the Equality Act

The vast majority of people in the United States support fully inclusive laws to protect against sexual orientation and gender identity discrimination. And yet LGBT older people in 28 states across the country live without explicit discrimination protections under state law. It's up to Congress now to end these patchwork protections so that all LGBT older people in the United States can go about their daily lives—going to the doctor, living in a long-term care facility, accessing federally funded programs, going to the movies, eating at a restaurant, or riding an Uber —without fear of discrimination or refusal of service.

After facing a lifetime of discrimination, a long-term lack of legal and social recognition, and a lack of access to competent, inclusive healthcare, LGBT older people have waited long enough for comprehensive protection under federal law. Congress should act now to pass the Equality Act, to permanently provide indispensable protections that will help LGBT older people age with the health, dignity, and respect everyone deserves.

## Endnotes

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- 2 Charles A. Emler, "Social Economic, and Health Disparities Among LGBT Older Adults," *Generations: Journal of the American Society on Aging* 40, no. 2 (2016).
- 3 LGBT Demographic Data Interactive. (January 2019). Los Angeles, CA: The Williams Institute, UCLA School of Law
- 4 *Outing Age 2010: Public Policy Issues Affecting Lesbian, Gay, Bisexual and Transgender Elders*, The National Gay and Lesbian Task Force Policy Institute, 2010.
- 5 *Understanding Issues Facing LGBT Older Adults*, Movement Advancement Project & SAGE, 2017.
- 6 *LeadingAge Ziegler 200*, 2020
- 7 *LGBT Older Adults in Long-Term Care Facilities: Stories from the Field*, The National Senior Citizens Law Center et al., 2011
- 8 *Discrimination Prevents LGBTQ People From Accessing Health Care*, Center for American Progress, 2018
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- 10 Sandy E. James, Jody L. Herman, Susan Rankin, Mara Keisling, Lisa Mottet, and Ma'ayan Anafi, "The Report of the 2015 U.S. Transgender Survey," National Center for Transgender Equality, 2016