



# We the People

## LGBT Americans and the Public Square

By Sarah McBride    March 10, 2015

Public accommodations—or places that offer goods or services to the general public—are the businesses, facilities, and spaces where American life prospers. It is in these public marketplaces that families gain the necessities to live and thrive, from food to clothing to temporary shelter. Unfortunately, in most states and at the federal level, lesbian, gay, bisexual, and transgender, or LGBT, people lack basic protections from discrimination in public accommodations. This license to discriminate exposes LGBT individuals and their families to unacceptable instances of discrimination when attempting to access their communities' goods and services.

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### Examples of discrimination

Public accommodations discrimination against LGBT people occurs in all aspects of America's economy, from retail to medicine to hotels.

- Nearly 56 percent of lesbian, gay, and bisexual respondents and 70 percent of transgender respondents experienced at least one instance of discrimination or patient profiling when attempting to access health care. This includes medical professionals refusing to touch them, refusing care outright, or blaming the patient for their medical condition.<sup>1</sup>
- Nearly one in three transgender Americans reported being denied equal treatment in a retail store. One in five have been denied equal treatment at a hotel or restaurant.<sup>2</sup>
- Homeless LGBT youth—which make an average of 40 percent of homeless youth—have reported mistreatment and discrimination in homeless shelters. This discrimination ranges from denying transgender youth the ability to access a facility unless they dressed contrary to their gender identity to requiring LGBT youth to wear a specific color in order to separate and identify them.<sup>3</sup>

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## Current protections

Title II of the Civil Rights Act of 1964 bans discrimination in public accommodations based on race, color, national origin, and religion.<sup>4</sup> Title III of the Americans with Disabilities Act bans discrimination in public accommodations based on disability.<sup>5</sup> The current definition of public accommodations within the ADA is more inclusive than the one in the Civil Rights Act.<sup>6</sup> Unlike other areas of federal nondiscrimination law, there is no blanket ban on discrimination based on sex in public accommodations at the federal level, leaving no avenue for LGBT protections under the interpretation of existing law in many places of public accommodation. Twenty-one states have passed public accommodations nondiscrimination protections based on sexual orientation, while 17 states have passed explicit gender identity protections in those spaces.<sup>7</sup>

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## Recommendations

- Congress should pass a comprehensive nondiscrimination bill banning discrimination based on sexual orientation and gender identity in employment, public accommodations, housing, credit, and federal funding.
- Congress and state legislatures should appropriate necessary funds for full enforcement of nondiscrimination protections.

Updating the law to protect LGBT people from discrimination in America's economy won't end unfair treatment overnight. But it will provide the necessary clarity and uniformity for business owners and customers alike, while ensuring that all people are treated fairly in their community's marketplace.

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## Endnotes

1 Lambda Legal, "When Health Care Isn't Caring" (2010), available at <http://www.lambdalegal.org/publications/when-health-care-isnt-caring>.

2 Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey" (Washington: National Center for Transgender Equality and the National Gay and Lesbian Task Force, 2011), available at [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

3 Nico Sifra Quintana, Josh Rosenthal, and Jeff Krehely, "On the Streets: The Federal Response to Gay and Transgender Homeless Youth" (Washington: Center for American Progress, 2010), available at <https://www.americanprogress.org/issues/lgbt/report/2010/06/21/7983/on-the-streets/>.

4 42 U.S. Code § 2000a.

5 42 U.S. Code § 12181.

6 42 U.S. Code § 2000a, 42 U.S. Code § 12181.

7 Movement Advancement Project, "Non-Discrimination Laws," available at [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](http://www.lgbtmap.org/equality-maps/non_discrimination_laws) (last accessed July 2014).

This document was compiled from material in Chapter 4 of the CAP report, "We The People: Why Congress and the U.S. States Must Comprehensive Nondiscrimination Protections."