

**STATEMENT OF
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BEFORE THE
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

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Mr. Chairman and members of the House Education and Labor Committee, thank you for the opportunity to appear before you at this important hearing. It is a privilege to represent the Obama Administration and the EEOC at the first hearing this Congress to consider ENDA, to voice the Administration's strong support for legislation that prohibits discrimination on the basis of sexual orientation and gender identity. This legislation will provide sorely needed and long overdue federal protection for lesbian, gay, bisexual, and transgender (LGBT) individuals, who unfortunately still face widespread employment discrimination.

Our Nation prides itself on embracing the principle that persons should be judged based on merit and ability, not on race, religion, class, culture or other extraneous factors. Our civil rights laws reflect and uphold this principle. All Americans have the right to find jobs, keep jobs, and earn promotions, pay raises and other benefits of employment based on their qualifications and hard work, not on characteristics such as sexual orientation or gender identity, which have no bearing on workplace performance.

Unfortunately, this right remains elusive, or even non-existent for many Americans, because of the lack of federal legislation explicitly prohibiting sexual orientation and gender identity discrimination in employment. Studies have shown that employment discrimination against LGBT individuals remains a significant problem. Job applicants and employees who are talented, fully qualified, and hardworking are denied jobs, fired, or otherwise discriminated against in the workplace simply because they happen to be lesbian, gay, bisexual, or transgender.

Only 21 states and D.C. prohibit employment discrimination on the basis of sexual orientation and an even smaller number – 12 states plus D.C. – also prohibit employment discrimination on the basis of gender identity. State laws therefore leave large numbers of LGBT individuals without recourse for workplace discrimination on the basis of the sexual orientation or gender identity.

While our investigators often hear complaints of sexual orientation and gender identity discrimination from members of the public who come to us hoping to find justice, we are currently without jurisdiction to help them in most cases. This discrimination can take many forms, ranging from overt instances of the use of anti-gay epithets to harass or belittle employees, to the explicit denial of employment, promotion,

or career enhancing assignments because of the employee's sexual orientation or gender identity. Unfortunately, although we hear regularly from working Americans who complain that they have been discriminated against because of their sexual orientation or gender identity, we have to tell them that our federal laws provide them no explicit protection.

Because the current patchwork of state laws leaves big gaps in coverage, federal government action is necessary to provide protection against employment discrimination on the basis of sexual orientation and gender identity. Protecting valued members of our workforce from discrimination should not be left solely to the states – discrimination in Washington State is just as wrong as discrimination in Florida. It is a critical statement of national policy that the federal government will not tolerate discrimination that is based on invidious bias against individuals because of their sexual orientation and gender identity.

Yet, no federal statute yet provides the comprehensive and unambiguous protection that is needed to combat employment discrimination on the basis of sexual orientation and gender identity. As you know, under current law, no federal employment civil rights statute explicitly includes “sexual orientation” or “gender identity” among its protected categories. Although some courts have held that Title VII’s prohibition against sex discrimination can protect LGBT persons from certain types of discrimination under certain circumstances, the extent of such protection is often quite limited and varies significantly from court to court.

Moreover, our federal workforce also lacks strong statutory protection from sexual orientation and gender identity discrimination. The Civil Service Reform Act, which prohibits discrimination on the basis of conduct not affecting job performance, has been interpreted by the Office of Personnel Management to prohibit discrimination on the basis of sexual orientation. In addition, Executive Order 13087 prohibits employment discrimination on the basis of sexual orientation in much of the Executive Branch. But the administrative remedies available under these provisions are far more limited than those available to federal employees who experience other forms of discrimination, such as race, sex, or disability discrimination.

For these reasons, enactment of legislation is needed to clearly prohibit employment discrimination on the basis of sexual orientation and gender identity and to give victims of such discrimination adequate remedies.

Preventing employment discrimination on the basis of sexual orientation and gender identity is a matter of basic fairness in the workplace. But it also is a smart business decision for those employers who seek to attract and retain talented, dedicated, and hardworking employees. By allowing employment discrimination on the basis of sexual orientation or gender identity, our society cheats itself out of the contributions of very able and talented individuals throughout the nation. As the international marketplace becomes increasingly competitive, and as we work to revitalize and

strengthen our economy, America does not have the luxury of wasting talent or allowing workplace hostility to overtake productivity and teamwork.

Many of the nation's top businesses recognize that discrimination is bad for business. Hundreds of companies now bar employment discrimination on the basis of sexual orientation and/or gender identity. According to the Human Rights Campaign's recently published Corporate Equality Index 2010, as of September 2009, 434 (87%) of the Fortune 500 companies had implemented non-discrimination policies that include sexual orientation, and 207 (41%) had policies that include gender identity. Although an increasing number of businesses in the United States have started addressing workplace fairness for LGBT employees, a large number of individuals still face discrimination on the basis of sexual orientation or gender identity and desperately need the nationwide protections and remedies that ENDA would provide.

I've explained why legislation like ENDA is needed and why it makes good business sense. Now let me briefly summarize some misconceptions about the scope and impact of the legislation you are considering.

Broadly stated, ENDA would prohibit intentional employment discrimination on the basis of actual or perceived sexual orientation or gender identity, by employers, employment agencies, and labor organizations. Its coverage of intentional discrimination parallels that available for individuals under Title VII, and the principles that would underlie this coverage have been well-established for decades.

Also important is what the proposed legislation does not do. ENDA explicitly precludes disparate-impact claims, does not permit quotas or other forms of preferential treatment, and does not allow the EEOC to collect statistics on sexual orientation and gender identity from covered entities or to require those entities to collect such statistics themselves. Moreover, ENDA does not apply to small business with fewer than 15 employees, tax-exempt private membership clubs, or religious organizations. Indeed, ENDA contains a broad exemption for religious organizations, and does not apply to any corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of Title VII. Moreover, nothing in ENDA infringes on individuals' ability to practice their religion, to hold and adhere to their religious beliefs, and to exercise their First Amendment rights of free speech on these or other issues. In addition, ENDA would not apply to the relationship between the federal government and members of the armed forces, and would not affect federal, state, or local rules providing veterans' preferences in employment decisions.

While ENDA would be a vital tool to ensure equal rights and opportunities in the workplace for LGBT Americans, there is nothing to suggest that it will burden employers, cause a flood of cases that would threaten to overwhelm the EEOC or the Department of Justice, or clog the federal courts. On the contrary, the experience of states with sexual orientation and gender identity discrimination statutes suggests that complaints under these statutes make up a relatively small portion of total employment discrimination complaints. We expect that the same would hold true at the federal level.

As I noted at the outset of my testimony, this hearing is the first in this Congress to consider ENDA. But ENDA is not a new bill. The first sexual orientation non-discrimination bill was introduced in the U.S. House of Representatives in the early 1970s. Unfortunately, the need for this legislation remains as strong today as it was then.

By holding this hearing today, this Committee has taken an important step to address the need of employees to be protected from arbitrary discrimination and those of employers to operate their businesses.

Thank you once again for the opportunity to testify. I welcome your questions.