

## TESTIMONY

To: New York City Commission on Human Rights  
From: Charlie Arrowood, Esq., Director of Name & Gender Recognition,  
Transcend Legal  
Date: September 25, 2018  
Re: Testimony on Prevention of Gender Identity-Based Discrimination  
Reference No.: 2018 RG 022

Transcend Legal welcomes the opportunity to testify on the proposed rules to establish certain definitions and clarify the scope of protections with respect to gender in the New York City Human Rights Law.

Transcend Legal is a NYC-based national nonprofit that cultivates equitable, social, medical, and legal recognition of transgender people by offering culturally competent, transgender-led legal representation, public policy advocacy, and community education.

Through our work, Transcend Legal is well-positioned to be familiar with the issues facing transgender people living and working in New York City. We assist local transgender individuals with legal name and gender changes. We also assist transgender individuals with accessing transgender-related health care by challenging insurance denials and exclusions in employer and university-based plans. We provide cultural competency trainings to employers in New York City. Finally, we receive numerous requests for assistance from New York City residents experiencing discrimination in housing, employment, and places of public accommodations such as hospitals.

### **Transgender New Yorkers experience high rates of discrimination**

Additional explicit regulatory clarifications are needed because of the pervasive, on-going discrimination against people who are transgender or gender nonconforming.

According to The Report of the 2015 U.S. Transgender Survey<sup>1</sup> (“USTS”), transgender and gender non-conforming New Yorkers face discrimination in every area of their lives. Compounding effects of multiple forms of discrimination are particularly devastating for transgender and gender non-conforming people of color who “experienced deeper and broader forms of

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<sup>1</sup> JAMES, S. E. *ET AL.*, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, NAT’L CTR. FOR TRANSGENDER EQUALITY (2016), <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20%20FINAL%201.6.17.pdf>.



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discrimination than white USTS respondents and people in the U.S. population overall.”<sup>2</sup>

Transgender workers experience unacceptable rates of workplace discrimination. The 2015 LGBT Health and Human Services Needs Assessment found that out of almost 900 transgender and gender-nonconforming New Yorkers, nearly one in three reported being fired and 42% reported being not hired because of their gender identity.<sup>3</sup> In a prior survey of 531 transgender New Yorkers, one in five reported being fired because of gender identity, 37% reported not being hired because of gender identity, and nearly 3 out of 4 reported harassment on the job because of their gender identity or expression.<sup>4</sup> Unfortunately, these data are comparable to other surveys from New York and around the nation.<sup>5</sup>

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<sup>2</sup> 2015 U.S. TRANSGENDER SURVEY: REPORT ON THE EXPERIENCES OF BLACK RESPONDENTS, NAT’L CTR FOR TRANSGENDER EQUALITY (2017), <http://www.transequality.org/sites/default/files/docs/usts/USTSBlackRespondentsReport-Rev1017.pdf> (last visited Sept. 23, 2018) at 2.

<sup>3</sup> M. Somjen Frazer & Erin E. Howe, *Transgender health and economic insecurity: A report from the 2015 LGBT Health and Human Services Needs Assessment Survey*, 8 (2015) (878 respondents in the survey identified themselves as transgender and/or gender non-conforming), <http://www.prideagenda.org/sites/default/files/PDFs/TG%20health%20and%20economic%20insecurity%20report%20FINAL.pdf>.

<sup>4</sup> Jaime M. Grant et al., *Findings of the National Transgender Discrimination Survey: New York Results*, 1 (2011), [http://www.endtransdiscrimination.org/PDFs/ntds\\_state\\_ny.pdf](http://www.endtransdiscrimination.org/PDFs/ntds_state_ny.pdf).

<sup>5</sup> See Make the Road New York, *Transgender Need Not Apply: A Report on Gender Identity Job Discrimination*, 12 (2010) [http://www.maketheroad.org/pix\\_reports/TransNeedNotApplyReport\\_05.10.pdf](http://www.maketheroad.org/pix_reports/TransNeedNotApplyReport_05.10.pdf) (using matched pair testing and a survey to measure employment discrimination against transgender people in New York City, results showed a 42% net rate of discrimination against transgender job seekers; that for 11 out of the 24 employers tested, the transgender job applicant received no offer, but the control group tester did; only one transgender tester received a job offer in the first round, 59% percent of survey participants experienced employment discrimination, and 49% had never been offered a job living openly as a transgender person); Brad Sears & Christy Mallory, *Evidence of Employment Discrimination Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies*, The Williams Institute, 4 (2015),

Housing discrimination against transgender people is rampant. The 2015 LGBT Health and Human Services Needs Assessment found that more than one in ten transgender New Yorkers reported being denied housing because of being transgender or gender non-conforming, and more than a quarter reported being harassed by neighbors.<sup>6</sup> An earlier nationwide study found that 19% of transgender respondents were denied housing, 11% were

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<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Employment-Discrimination-Complaints-2008-2014.pdf> (finding that workers filed discrimination complaints based on sexual orientation and gender identity discrimination with state agencies at a higher frequency than race and sex discrimination complaints); Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 9 (2011), [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf) (finding 90% of transgender individuals surveyed nationwide reported experiencing harassment, mistreatment or discrimination on the job, or took actions like hiding who they are to avoid it, and 47% said they had experienced an adverse job outcome, such as being fired, not hired, or denied a promotion because of being transgender or gender nonconforming); District of Columbia Office of Human Rights, *Qualified and Transgender: A report on results of resume testing for employment discrimination based on gender identity*, 6 (2015), [http://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/QualifiedAndTransgender\\_FullReport\\_1.pdf](http://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/QualifiedAndTransgender_FullReport_1.pdf) (resume testing found that 48% of employers appeared to prefer at least one less qualified cisgender (non-transgender) applicant over a more qualified applicant perceived to be transgender and that 33% of employers offered interviews to one or more less qualified applicants perceived as cisgender while not offering an interview to the more qualified applicants perceived as transgender); Transgender Law Center, *State of Transgender California Report: Results from the 2008 California Transgender Economic Health Survey*, 1 (2009), <http://transgenderlawcenter.org/wp-content/uploads/2012/07/95219573-The-State-of-Transgender-California.pdf> (70% of respondents reported having experienced workplace discrimination related to their gender identity); and Shannon Minter & Christopher Daley, National Center For Lesbian Rights & Transgender Law Center, *Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Communities*, 14 (2003), <http://www.nclrights.org/wp-content/uploads/2013/07/transrealities0803.pdf> (reporting nearly half of transgender respondents reported experiencing job discrimination).

<sup>6</sup> Frazer & Howe, *supra* note 3, at 4.

evicted, and 19% had been homeless simply because of being transgender.<sup>7</sup> In that same survey, New Yorkers fared no better than the rest of the nation.<sup>8</sup> Transgender people of color experienced housing discrimination at up to three times the rate of their white counterparts.<sup>9</sup>

Transgender people also face high rates of unequal treatment and harassment in places of public accommodation. Among transgender New Yorkers, 53% reported having been harassed in public accommodations, 18% being treated unequally by a government agency or official, and 17% being denied medical care.<sup>10</sup> Accommodations in which discrimination is most frequent included retail stores, the police, doctors and hospitals, and government agencies.<sup>11</sup> In other words, transgender people are discriminated against when accessing basic necessities.

Discrimination comes at a cost to New York State. The Williams Institute estimates that denial of housing and job loss due to bias against transgender people costs New York State millions of dollars a year in Medicaid and homeless services expenditures and that reducing or eliminating employment discrimination against transgender people could generate millions of additional dollars in income tax revenue.<sup>12</sup>

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<sup>7</sup> *Injustice at Every Turn*, *supra* note 5, at 106.

<sup>8</sup> *Nat'l Transgender Discrimination Survey: New York Results*, *supra* note 4, at 1 (19% of respondents had been denied a home, 18% had been homeless, and 8% had been evicted).

<sup>9</sup> *Injustice at Every Turn*, *supra* note 5, at 107 (respondents reported being denied housing because of being transgender at the following rates: American Indian 47%; Black 38%; Multiracial 32%; Latino/a 26%; Asian 17%; White 15%).

<sup>10</sup> *Nat'l Transgender Discrimination Survey: New York Results*, *supra* note 4, at 2.

<sup>11</sup> *Injustice at Every Turn*, *supra* note 5, at 124-134 (in the following establishments respondents reported particularly high rates of unequal treatment or service, harassment or disrespect, and physical assault respectively: retail stores-32%, 37%, 3%; police officers- 20%, 29%, 6%; doctors office or hospital-24%, 25%, 2%; gov't agency or official 22%, 22%, 1%).

<sup>12</sup> Jody Herman, *The Cost of Employment and Housing Discrimination against Transgender Residents of New York*, The Williams Institute, 1 (2013), <http://williamsinstitute.law.ucla.edu/research/transgender-issues/ny-cost-of-discrimination-april-2013>. See also Center for American Progress and Movement Advancement Project, *Paying an*

A recent report also links discrimination against transgender people with involvement in the sex trade.<sup>13</sup> The report analyzed the information from the National Transgender Discrimination Survey, which found that 10.8% of the overall survey respondents reported having participated in sex work and an additional 2.3% indicated that they had traded sex for rent or a place to stay. Black and Black Multiracial respondents had the highest rate of sex trade participation overall (39.9%), followed by those who identified as Hispanic or Latino/a (33.2%).<sup>14</sup> Those involved with sex work were far more likely to have reported experiencing employment, education and housing discrimination. For example, an overwhelming majority (69.3%) of sex workers reported experiencing an adverse job outcome in the traditional workforce because of discrimination (vs. 44.7% of non-sex workers).<sup>15</sup> And transgender people who lost a job due to anti-transgender bias were almost three times as likely to engage in the sex trade (19.9% vs. 7.7%).<sup>16</sup> Over half (54.6%) of all survey respondents who were currently homeless also had been involved in the sex trade.<sup>17</sup> The respondents who were involved in the sex trade were at increased risk for HIV infection,<sup>18</sup> drinking or misusing drugs,<sup>19</sup> suicide attempts, mistreatment and assault by law enforcement and abuse while incarcerated.<sup>20</sup> Ending discrimination against transgender people is an important step in ensuring that people do not have to engage in sex work simply to survive.

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*Unfair Price: The Financial Penalty for Being Transgender in America* (2015), <http://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf>.

<sup>13</sup> Erin Fitzgerald et al., *Meaningful Work: Transgender Experiences in the Sex Trade* (2015), [http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report\\_FINAL\\_3.pdf](http://www.transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf).

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 16.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 17.

<sup>18</sup> *Id.* at 23.

<sup>19</sup> *Id.* at 24.

<sup>20</sup> *Id.* at 18.

**The Commission has the authority to promulgate the proposed rules, which are in harmony with the Human Rights Law and have a rational basis.**

The Commission has the authority to enforce the Human Rights Law by promulgating these rules. The New York City Charter gives the Commission a power and a duty to promulgate rules and regulations to carry out the provisions of the Human Rights Law.<sup>21</sup> These amendments fall well within the Commission's power "to adopt rules necessary to carry out the powers and duties delegated to it" to "promote equal opportunity and freedom from unlawful discrimination."<sup>22</sup> Accordingly, the proposed regulations are in line with the Commission's authority as set forth in the New York City Charter.

**The amendments are in harmony with the Human Rights Law's broad public policy goals of eliminating discrimination.**

The Commission's authority to promulgate regulations is not absolute; all regulations must be in harmony with the Human Rights Law. Here, the statute itself provides that the Human Rights Law must liberally construed.<sup>23</sup> Furthermore, "there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences."<sup>24</sup> There is a "broad policy behind the local law to discourage discrimination," *Krohn v. N.Y. City Police Dep't.*, 2 N.Y.3d 329, 778 N.Y.S.2d 746 (2004), so these provisions are valid as they discourage discrimination against a particularly vulnerable population.

**The amendments have a rational basis, namely the urgent need to eliminate pervasive discrimination facing transgender New Yorkers.**

As demonstrated above, the Human Rights Law is currently not being adequately enforced with respect to transgender people.<sup>25</sup> Despite the fact that

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<sup>21</sup> New York City Charter § 905, 1043.

<sup>22</sup> *Id.*

<sup>23</sup> New York City Administrative Code § 8-130.

<sup>24</sup> New York City Administrative Code § 8-101.

<sup>25</sup> In a recent study conducted by the Williams Institute on the utilization of state agency complaint processes by lesbian, gay, bisexual, and transgender individuals in response to experiences of discrimination and harassment, data for transgender and gender-nonconforming New Yorkers had to be removed from analysis because New York's statute or regulations do not

transgender people have been recognized as protected under State Human Rights Law since 1977,<sup>26</sup> covered entities are still unclear on their duty to not discriminate against transgender and gender-nonconforming people, and are greatly in need of further regulations to spell out what discrimination against these individuals looks like and how they can avoid it.

We routinely receive calls from transgender individuals who are being deliberately misgendered in hospitals within the five boroughs. Transgender people experience health disparities, and being afraid of experiencing discrimination deters transgender people from accessing needed health care.

We receive calls from people who work in New York City and are experiencing employment discrimination, which often includes mispronouncing. We are also contacted by students who are having trouble getting their school to use their preferred name absent a legal name change.

The proposed rules are in accordance with protections that have already been recognized under city, state, and federal law, but codifying them helps to make them more accessible to covered entities than case law.

### **Conclusion**

We support the proposed rules and believe they will contribute to a decrease in incidents of discrimination against transgender people in New York City.

If you have any questions or need further information, please contact Charlie Arrowood at [carrowood@transcendlegal.org](mailto:carrowood@transcendlegal.org) or (347) 612-4312.

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expressly include gender identity and gender expression, and so it is not readily apparent how many transgender and gender-nonconforming people are filing complaints on the basis of “sex,” “disability,” or even “sexual orientation.” Such data is absolutely necessary in order for state officials and legal advocates to better understand the lived experiences of this vulnerable community, and to address their needs more efficiently and effectively. See Christy Mallory and Brad Sears, *Evidence of Employment Discrimination Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014*, The Williams Institute, 2-3 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Employment-Discrimination-Complaints-2008-2014.pdf>.

<sup>26</sup> See *Richards v. United States Tennis Assn.*, 400 N.Y.S.2d 267, 272 (Sup. Ct. 1977).





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**Executive Director**  
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**Deputy Executive Director**  
Glenh Metsch-Ampel, Esq.

Fax Sheet

Date: 9/25/18

To: MICHAEL SILVERMAN

Fax No: 646-500-7022

From: LINDA M. DIAZ, ESQ.

Pages to follow: 1  
VIA FAX AND EMAIL.

Comments: COMMENTS ON PROPOSED RULES  
N.Y.C. COMMISSION ON HUMAN RIGHTS.

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September 25, 2018

**Executive Director**  
Karen J. Freedman, Esq.  
**Deputy Executive Director**  
Glenn Metsch-Ampel, Esq.

Dear Michael Silverman and Commission Members:

In response to a request for comments, I am providing the following terms for your consideration and review as they are defined in the GLAAD (formerly known as Gay and Lesbian Alliance Against Defamation) media reference guide, 10th edition, issued in October 2016. As you can see, they vary slightly from the definitions proposed by CCHR in "Section 2-01 Definitions."

• **Gender Non-Conforming**

A term used to describe some people whose gender expression is different from conventional expectations of masculinity and femininity. **Please note that not all gender non-conforming people identify as transgender; nor are all transgender people gender non-conforming.** Many people have gender expressions that are not entirely conventional – that fact alone does not make them transgender. Many transgender men and women have gender expressions that are conventionally masculine or feminine. Simply being transgender does not make someone gender non-conforming. The term is not a synonym for *transgender* or *transsexual* and should only be used if someone self-identifies as gender non-conforming.

• **Non-binary and/or genderqueer**

Terms used by some people who experience their gender identity and/or gender expression as falling outside the categories of man and woman. They may define their gender as falling somewhere in between man and woman, or they may define it as wholly different from these terms. The term is not a synonym for *transgender* or *transsexual* and should only be used if someone self-identifies as non-binary and/or genderqueer.

Additionally, I would raise the issue of whether the commission should include in its definitions the term "Gender Non Conforming." A recent abstract from the American Academy of Pediatrics ("the Academy") titled "Ensuring Comprehensive Care and Support for Transgender and Gender Diverse Children and Adolescents" dated October 2018, Vol. 142, number 4, suggests that the term Gender Diverse replace Gender Non Conforming. The Academy defines Gender Diverse as "a term that is used to describe people with gender behaviors, appearances, or identities that are incongruent with those culturally assigned to their birth sex, gender-diverse individuals may refer to themselves with many different terms, such as transgender, nonbinary, genderqueer, gender fluid, gender creative, gender independent, or noncisgender. "Gender diverse" is used to acknowledge and include the vast diversity of gender identities that exists. It replaces the former term, "gender nonconforming," which has a negative and exclusionary connotation." (emphasis added)

In closing, the Commission's proposed amendments clarifying and defining the scope of protections available to address gender based discrimination will insure that all New Yorkers have equal access to the protections provided by various local laws.

Respectfully submitted,

Linda M. Díaz, Esq.

**From:** Kristen Prata Browde [mailto:kpb@browdelaw.com]  
**Sent:** Tuesday, September 18, 2018 10:26 PM  
**To:** Cukor, Ezra (CCHR) <ecukor@cchr.nyc.gov>  
**Subject:** CCHR - Didn't know you were in on this one...but

Your text: Sex: "Sex" is a combination of primary sex characteristics such as chromosomes, hormones, and internal and external reproductive organs, and secondary sex characteristics which appear at puberty such as the presence of facial hair, vocal pitch, and development of breasts, and gender identity.

I'd suggest that the words "which appear at puberty" be deleted. There are many, particularly those who are either intersex or transgender whose secondary sexual characteristics may develop at times other than puberty, and, further, the distinction between "gender" and "sex" is fraught with peril from a litigation perspective.

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Michael Silverman  
New York City Commission on Human Rights  
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New York, New York 10007

Via email: [policy@cchr.nyc.gov](mailto:policy@cchr.nyc.gov)

Dear Michael Silverman,

The New York City Department of Social Services (DSS) submits these comments in support of the City Commission on Human Rights (CCHR)'s proposed amendments to Chapter 2 of Title 47 of the Rules of the City of New York, concerning gender-related protections under the New York City Human Rights Law. DSS supports the amendments, as they provide clear, expansive, and comprehensive detail for the broad protections afforded under the City's Human Rights Law. DSS submits and offers comments to provide additional clarity, which will ensure that the amendments have maximum impact and enhance DSS's ability to effectively implement the law.

#### **About the Department of Social Services**

The Department of Social Services, comprised of the Human Resources Administration (HRA) and the Department of Homeless Services (DHS), serves more than three million New Yorkers annually through a broad range of services that aim to address poverty, income inequality, and prevent homelessness. In April 2016, following a comprehensive review of the City's homelessness policies, Mayor de Blasio announced a major restructuring of homeless services in New York City and appointed Commissioner Steven Banks to lead the Department of Social Services, which integrated HRA and the Department of Homeless Services under a joint management structure. HRA serves over three million New Yorkers through the administration of more than 12 major public assistance programs with 15,000 employees. DHS oversees a broad network of shelters and services with 2,000 employees, and is dedicated to helping New Yorkers experiencing homelessness get back on their feet as quickly as possible. DSS plays a key role in implementing Mayor de Blasio's agenda to expand opportunity for more New Yorkers, help homeless New Yorkers secure stable housing, address income inequality, and ensure that New Yorkers receive the benefits and assistance to which they are entitled.

### Suggested Changes to the Proposed Rule Amendments

DSS supports the proposed amendments to Chapter 2, as they reduce ambiguity in interpretation and enforcement of the law. The amendments also provide needed explanations for terms, and clarify that gender identity and expression are protected categories. However, DSS has specific comments on how the proposed amendments could be adjusted for clarity and for effective implementation by DSS and, presumably, other City agencies. Accordingly, DSS offers the below comments to further enhance the rule's effectiveness, clarity and intent.

1. Include the definition for the term "Non-binary."

Section 2-01 includes definitions for the terms used in Chapter 2. However, the section does not define the term "non-binary," which is referenced later in the text. DSS recommends including a definition for the term "non-binary." This term is defined in the Teaching Transgender Toolkit<sup>1</sup> as follows:

A continuum or spectrum of gender identities and expressions, often based on the rejection of the gender binary's assumption that gender is strictly an either/or option of male/men/masculine or female/woman/feminine based on sex assigned at birth.

Words that people may use to express their non-binary gender identity include "agender," "bigender," "genderqueer," "genderfluid," and "pangender."

A simpler definition might be:

Gender identity or identities that do not fit into the typical Male-Female model, also known as the binary understanding of gender.

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<sup>1</sup> <http://www.teachingtransgender.org/wp-content/uploads/2016/12/TTT-Glossary-of-Terms.pdf>

## 2. Address Ambiguity Regarding the Lawful Use of Identity Documents

Section 2-06(b) relates to the refusal of a covered entity to allow individuals to use facilities consistent with their Gender Identity. DSS supports this provision, with one suggested modification.

Under the examples of violations, the proposed rule amendment includes:

- ii. Requiring a transgender or gender non-conforming person to provide proof of their gender to access the single-sex program or facility corresponding to their gender.

DSS has been sensitive to concerns raised by transgender and gender non-conforming (TGNC) advocates about government-issued identity documents and access to single-sex programs and services. In 2014, we advocated for and worked with the New York State Office of Temporary and Disability Assistance (OTDA) to remove the gender marker from the Common Benefit Identification Card (CBIC). Additionally, DSS continues to oversee the IDNYC program, a government-issued ID card which allows for self-attestation of gender. And, since 2006, DHS has provided shelter to TGNC clients based on their stated gender identity.

While DSS has no concerns with the strict implementation of this enforcement provision *per se*, we are concerned that the rule could be construed broadly to mean that covered entities may not request any proof of identity whatsoever. DSS understands that many individuals may not have access to traditional government-issued identification, including transgender and gender non-conforming people, homeless New Yorkers, and immigrants – which is why the IDNYC program that DSS administers is so essential for providing such identification.

Government agencies are, under some circumstances, required to ask for identification. For example, many government offices frequently use government-issued identification as a way of verifying identity. Identification requirements are often imposed by law or by external regulatory bodies and made a requirement to access benefits, such as single adult and family shelters.

CCHR's enforcement guidance on Gender Identity / Gender Expression provides that:

Where covered entities regularly request a form of identification from members of the public for a legitimate business reason, requesting a form of identification from transgender and/or gender non-conforming individuals is not unlawful. Just as is the case for many cisgender individuals, many transgender and/or gender non-conforming individuals' appearances may not appear the same as what is represented on their photo identification. Covered entities may use a form of identification to corroborate an individual's identification, but may not subject a transgender or gender non-conforming individual to a higher level of scrutiny than any other person presenting a form of identification.<sup>2</sup>

Accordingly, consistent with CCHR's existing guidance, we suggest the Commission add the following clarification.

- ii. Requiring a transgender or gender non-conforming person to provide proof of their gender to access the single-sex program or facility corresponding to their gender. *This provision shall not be construed to restrict a covered entity from requiring proof of an individual's identity in a manner required by law or regulation governing the entity's operation, so long as use of the identification is otherwise consistent with Human Rights Law.*

Or

*This provision shall not be construed to restrict requests for identification as required by law or regulation governing eligibility for benefits or services, so long as use of requested identification is consistent with Human Rights Law.*

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<sup>2</sup> See CCHR Law Enforcement Guidance on Gender Identity / Gender Expression, available at <https://www1.nyc.gov/site/cchr/law/legal-guidances-gender-identity-expression.page#3.1>, at footnote 12.



### Conclusion

DSS believes that the proposed rule amendments will strengthen the City Human Rights Law's already strong protection of New York City residents and visitors. DSS offers these suggestions to further support this protection, with particular concern for the individuals served by DHS and HRA. Thank you for the opportunity to comment on the proposed amendments to this rule.



I'm a women of trans experience who has been locked up in the past, recently I went through a lot when I was locked up. I have PTSD from the officers who were there, I filed complaints, and I got help from my lawyer and SRLP but I feel that the city needs to reconsider training correctional officers, we need to feel comfortable when we walk in there. They are suppose to be officers of the law, they shouldn't just mess with us because of who we are. Some officers act they don't know what I'm talking about when I mention training. NYC, Rikers Island, and the boat are still discriminatory places, when a transwomen gets locked up or punished for defending herself they never ask what happened, it can also take a long time to. I have seen many transwomen get cut on the island, jumped in the bathroom, and raped. And some of the CO's don't do anything about it. When I was upstate they use to make us cut all our hair up, twice, they don't do it anymore because of people like me who spoke up. I think people should be penalized, without pay, or transferred, there's no reason that should happen here in New York City. The same day I wrote this testimony my and my fiance were discriminated against at a health center, we were there from 9am to 2pm trying to get PREP, my fiance asked if I could come in the room since he was a little nervous and the doctor denied that, and said I didn't need to be in the room. We left without even getting PREP, when everyone else has gotten theres, they told my fiance to wait a whole week when I know plenty of people get their pills the same day. He would have started taking it today but now we have to wait. - **Rihanna (SRLP Member)**

*Internal Note: Co preacher, at attica who attacks all the transwomen who come to attica. One sister got beat up so bad after her law suite failed, they still have him up front.*

I'm a woman of color who is transgendered. 6 years ago when I started transitioning and I worked at my old job where I use to work use to discriminate against me, Project Sweep, they told me I come to work wearing nails they are going to dock me for my money. They told me I couldn't wear any hair, makeup, wearing,skirts, dresses or lipstick. The bosses would make comments about me and my co-workers as well, and there was nothing done. I tried to get help to advocate but I ended up getting fired. The doctors here in NYC discriminate and misgender you, the doctors call me he even when I correct them they don't care, all my ID says she and my name. Here in NYC at Social Security they discriminate against me, they have my old name and I have working with my lawyer at SRLP to hold them accountable. I got my name changed June 2016 and ever since then I've had issues with them. They respect my pronoun but insist on using my old name. My insurance continues to send me mail in my old name, and I just throw out the mail because I hate seeing the name. They make it seem like a computer glitch but it's not. I work as a home health aide with my husband but the people who are in charge or his services refer to me as sir. - **Sheneeneh (SRLP Member)**

*Internal Note: Retaliation as a form of discrimination - being denied access to a service, or support or good.*



Statement of Edward Mechmann  
Director of Public Policy- Archdiocese of New York  
Proposed Rules-Gender Identity  
September 25, 2018

My name is Edward Mechmann, I am the Director of Public Policy of the Archdiocese of New York. I submit these comments in opposition to the proposed regulations of the Commission on Human Rights relating to discrimination on the basis of gender. These regulations pose a substantial and unreasonable burden on the constitutional rights of Catholic institutions and individuals, including the rights to the free exercise of religion, freedom of speech, and freedom of expressive association.

Catholic Religious Beliefs

The Catholic faith holds that the difference between male and female is an intrinsic and unchangeable element of every human person, made in the image and likeness of God. "Being man' or 'being woman' is a reality which is good and willed by God: man and woman possess an inalienable dignity which comes to them immediately from God their Creator." (Catechism of the Catholic Church (CCC) 369; see also Gen 1:27)

The Church further believes that a person's "sexual identity" or "gender" cannot be contrary to biological fact. Pope Francis has specifically challenged any ideology that "denies the difference and reciprocity in nature of a man and a woman and envisages a society without sexual differences... It needs to be emphasized that biological sex and the socio-cultural role of sex (gender) can be distinguished but not separated." *Amoris Laetitia (The Joy of Love)*, 56.

These religious beliefs are fundamental to many aspects of our faith, for example our teachings on the morality of sexual behavior, the virtues of chastity, modesty, and privacy, and the nature of human love and the covenant of marriage. These beliefs are expressed through formal doctrinal teaching, and also in many areas of Church life and practice. For example, fostering a Catholic religious environment in our schools and providing healthy role models for young men and women serve to inculcate these beliefs by actions as well as words.

Unconstitutional Burdens Imposed by the Regulations

The proposed regulations are based on the idea that one's "gender identity" or "gender expression" can be at odds with biological reality. The incompatibility between this concept and the principles of Catholic faith described above will

impose substantial and unreasonable burdens on the constitutional rights and freedoms of Catholic institutions and individuals.

These burdens are unavoidable, because many (if not most) Catholic institutions will be encompassed by the New York City Human Rights Law's definition of a "covered entity" (i.e., those entities that must conform to the law). The very limited exemption for religious schools in the current law (see §8-102(9)) only applies to the definition of "public accommodation". So even though Catholic schools would qualify for that specific exemption, these same schools and our other organizations would still be encompassed within the other definitions that include "educational institutions" or "employers" and thus would be subject to the proposed regulations. Therefore a broader exemption would be necessary to protect all of our institutions.

The following are some examples of the unconstitutional burdens the proposed regulations would impose:

- School Uniforms – Our Catholic schools would not be permitted to require biological males to dress in a boy's uniform and biological females to dress in a girl's uniform. This would force our schools to contradict our Catholic religious beliefs about the difference between men and women by being required to adopt gender neutral or gender variant school uniforms. This creates a stark inconsistency between what is taught to our students and what is practiced.
- Shared bathrooms and locker rooms – All of our facilities, including our elementary schools, have designated facilities such as bathrooms or locker rooms for boys or girls. Under the regulations, a person would have to be allowed to choose which one they will use based on their gender identity, even if the other people using the shared bathroom object. This is a violation of Catholic religious values, such as modesty and privacy, as well as our beliefs as to the intrinsic difference between men and woman.
- Coerced speech and silence – Our institutions and individuals would be forced to say things that that we believe to be false and that violate our Catholic faith. They will also force us to be silent about our what we believe to be true based on our faith. We would be required to adopt and implement policies and train staff to falsely deny that humans are either male or female. At the same time, we would be forced to remain mute about Catholic doctrine on the meaning of sexuality, masculinity and femininity, lest we risk creating a "hostile environment". We will have no viable option to live according to our faith, since both speech and silence would be a violation of the regulations.
- School admissions – Single-sex schools will be required to admit and accommodate students according to their gender identity, not their biological sex. For example, a boys' school may have to admit a girl who has decided that she will adopt a male "gender identity" or to retain a boy who has chosen a female "gender expression". This would cause disruption to the

environment of these schools, and would directly contradict the faith that is being taught about the nature of the human person.

- Employee benefits – Many of the health benefit plans offered by Catholic employers would be required to cover "transgender care", which would include hormone treatments and possible surgery. This creates a very grave conflict with Catholic moral teachings, according to which it would be a violation of our duty to be good stewards of our bodies, such that we cannot be involved in any way with such medical procedures.

The burdens imposed by the proposed regulations can be mitigated to a limited extent. We would request the inclusion of a provision that guarantees that nothing in the regulations will restrict or violate the rights guaranteed under the federal and state constitutions. In the alternative, a specific exemption could be included that would cover all religious organizations and other non-profit corporations controlled or operated by religious organizations.

### Conclusion

The proposed regulations put our institutions and the Catholics who work in them into an impossible situation – they must either risk ruinous fines for violations (up to \$250,000 per offense) or violate the beliefs of the Catholic faith by conforming to a different orthodoxy defined by the City of New York. No government has the right to force such a choice. The Supreme Court said many years ago, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by work or act their faith therein" *Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). The proposed regulations would punish Catholic institutions and individuals for acting according to our religious beliefs and are in direct violation of the freedom of conscience, speech and religious freedom guaranteed by our state and federal constitutions.







September 25, 2018

Michael Silverman  
New York City Commission on Human Rights  
22 Reade Street  
New York, NY 10007

Subject: Proposed Rules on Gender

Dear Mr. Silverman:

My name is Cathleen Lisk and I, along with my co-chair Adri Spoto, am submitting this comment on the behalf of the Identity Documents Project, Inc. and individual students at New York University School of Law. We write to express our strong support for the proposed rule establishing definitions for a series of terms connected to laws prohibiting discrimination on the basis of gender and the specific inclusion of deliberate misgendering behavior or refusal of facilities as grounds for a discrimination claim. We believe these definitions will allow New Yorkers of all gender identities to more successfully assert gender-based discrimination claims. In particular, we believe these changes are crucial because they recognize that gender discrimination claims can be asserted by individuals outside of the gender binary.

The Identity Documents Project is a new non-profit run by students at NYU School of Law that assists transgender, gender non-conforming, and intersex (TGNCI) New Yorkers in obtaining legal name change orders and various state and federal IDs. Our work is centrally concerned with ameliorating gender-based discrimination in commonplace activities, such as applying for an apartment, applying for a job, or opening a bank account. The students who founded the Identity Documents Project recognized that TGNCI individuals frequently face discrimination when doing these and other activities and that this discrimination can be triggered or exacerbated when one's ID does not match one's gender identity.

We support including definitions, particularly the inclusion of cisgender and transgender as co-equal and the separate description of sex, gender identity, and gender expression, because we believe they will make it easier for TGNCI New Yorkers to assert discrimination claims. Discrimination and violence are an unfortunate reality faced by many TGNCI individuals. A 2014 study by the National Coalition of Anti-Violence Programs found that transgender women, were 1.6 times more likely to experience physical violence than cisgender survivors.<sup>1</sup> Moreover, a 2013 survey by Make the Road found that one third of of transgender participants reported

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<sup>1</sup> NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED HATE VIOLENCE IN 2014 at 9 (2015), [http://avp.org/wp-content/uploads/2017/04/2014\\_HV\\_Report-Final.pdf](http://avp.org/wp-content/uploads/2017/04/2014_HV_Report-Final.pdf).

being fired from at least one job due to their actual or perceived gender identity or expression.<sup>2</sup> Transgender and non-binary New Yorkers must have the right to challenge these behaviors. However, without these definitions the rules are unclear and may be wrongly interpreted by employers or other covered entities to only include cis-normative definitions of gender. These clarifications will ensure that the protections for TGNCI New Yorkers are more clearly accessible to them.

In addition to strengthening and clarifying protections for TGNCI New Yorkers, these proposed rules affirm that the city recognizes and values its transgender, gender non-conforming, and intersex citizens. New York City has an extensive and ugly history of subjecting transgender and non-binary persons to violence by police officers, and police harassment and brutality toward TGNCI individuals is still disturbingly common. In a 2012 national survey, Lambda Legal, a New York-based organization that advocates for LGBTQ persons, found that nearly a third of TGNC respondents reported police attitudes toward them had been hostile.<sup>3</sup> While not a panacea, these regulations are one step to disrupting the narrative that the city and its agents are indifferent or hostile to TGNCI members of our community. These regulations also help to integrate a multiplicity of gender identities and expressions into our normative concept of gender. Thus, beyond a vital tool for ensuring access to justice, these proposed changes also have symbolic value for creating more inclusive narratives.

Misgendering behaviors and denial of facilities are particular problems faced by the TGNCI community for which redress is necessary. Just one month into his presidency, President Trump rescinded an Obama-era policy allowing students to use whichever bathroom corresponded with their gender identities.<sup>4</sup> Galvanized by this, sixteen states considered legislation to restrict bathroom use by TGNCI individuals in 2017.<sup>5</sup> These attacks are not new, but their surge in popularity and media attention mean that it is important that transgender and non-binary individuals be explicitly protected from this. By providing specific examples of actions that would violate the City Human Rights Law (such as prohibiting an individual from using the bathroom consistent with their gender identity), the proposed rules would help covered entities to understand the need to respect people's gender identities in NYC regardless of federal policy changes.

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<sup>2</sup> MAKE THE RD. N.Y., DISCRIMINATION IN THE WORKPLACE, FROM APPLICATION TO TERMINATION 7 (2013), [https://www.maketheroadny.org/pix\\_reports/Discrimination\\_at\\_the\\_Workplace\\_from\\_Application\\_to\\_Termination\\_Full\\_Report\\_Oct2013.pdf](https://www.maketheroadny.org/pix_reports/Discrimination_at_the_Workplace_from_Application_to_Termination_Full_Report_Oct2013.pdf).

<sup>3</sup> *Fighting Anti-Trans Violence*, LAMBDA LEGAL, <https://www.lambdalegal.org/know-your-rights/article/trans-violence> (last visited Sept. 24, 2018).

<sup>4</sup> Letter from Sandra Battle and T. E. Wheeler, II, to various institutions receiving federal funding (Feb. 22, 2017), <https://www.nytimes.com/2017/02/22/us/politics/devos-sessions-transgender-students-rights.html>.

<sup>5</sup> "Bathroom Bill" Legislative Tracking, NAT'L CONF. OF STATE LEGISLATURES (July 28, 2017), <http://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx>.

In sum, we encourage the Commission to adopt these rules so as to better convey NYC's commitment to TGNCI communities and to provide businesses with much-needed guidance in setting TGNCI-friendly policies.

Sincerely,  
Cathleen Lisk and Adri Spoto  
Identity Documents Project

**Co-Signers:**

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From Kathryn Evan

Submitted on Rules website on 9/24/18

"I support the proposed rule change. It is so important to recognize that gender is a complex concept involving personal identification, how others perceive you, and the roles society expects you to play. Our transgender and gender non-conforming community needs all of the support they can get to be able to live their lives to the fullest without constantly facing discrimination, and this is a good step toward that. Keep moving forward, NYC!"



September 25, 2018

Via Electronic Mail

Michael Silverman  
New York City Commission on Human Rights  
22 Reade Street  
New York, New York 10007  
[policy@cchr.nyc.gov](mailto:policy@cchr.nyc.gov)

**Re: Comments on Proposed Rules to Establish Certain Definitions and Clarify the Scope of Protections with Respect to Gender in the New York City Human Rights Law, Amending Title 47 § 2-01 and § 2-06 of the Rules of the City of New York.**

Dear Mr. Silverman,

Thank you for your and the New York City Commission on Human Rights' (the "Commission") ongoing commitment to ensuring that everyone in New York City is able to live free from discrimination. As the nation's oldest and largest legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender people and everyone living with HIV through impact litigation, policy advocacy, and public education, Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") appreciates the opportunity to provide comments in response to the Proposed Rules to Establish Certain Definitions and Clarify the Scope of Protections with Respect to Gender in the New York City Human Rights Law ("NYCHRL"). Lambda Legal has a strong interest in ensuring that transgender, non-binary, and gender-nonconforming people can live their lives without discrimination, harassment, or stigma. Accordingly, Lambda Legal's Transgender Rights Project works to ensure the equal dignity of transgender, non-binary, and gender-nonconforming people in New York and nationally.

Lambda Legal strongly supports the Commission's efforts to eliminate discrimination against transgender, non-binary, and gender-nonconforming people, and commends the Commission for the issuance of the Proposed Rules. These Proposed Rules strongly reflect New York City's commitment to assuring equal opportunities to all individuals and to safeguarding their rights to live and work free from discrimination. The Proposed Rules provide important definitions related to gender-based discrimination and clear requirements to covered entities regarding what is considered discrimination under the NYCHRL. The Proposed Rules are necessary to help protect the rights of everyone in New York City, and to ensure the Commission has the "power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination and bias-related violence or harassment."<sup>1</sup>

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<sup>1</sup> N.Y.C. Admin. Code §§ 8-101.

We provide these comments in support of the Commission's efforts to achieve the NYCHRL's purpose of eliminating, remedying, and preventing discrimination in New York City.

### EXECUTIVE SUMMARY

In New York City and throughout the country, transgender, non-binary, and gender-nonconforming people experience high rates of discrimination, harassment, stigma, and other serious challenges. The Proposed Rules represent a necessary step to ensure that the purposes of the NYCHRL are effectively executed. To be sure, the NYCHRL already protects transgender, non-binary, and gender-nonconforming people, but the Proposed Rules are a necessary clarification to make such protections explicit and clear.

The Proposed Rules accomplish several important objectives. The Proposed Rules serve to educate the public about how the NYCHRL's prohibition on gender discrimination protects transgender, non-binary, and gender-nonconforming people from discrimination on the basis of gender identity, gender expression, transgender status, or sex stereotypes. It also assists employers, housing providers, businesses, organizations, service providers (including government), and other entities in understanding their responsibilities under the NYCHRL. The Proposed Rules provide specific descriptions and concrete examples of the discriminatory actions that the NYCHRL prohibits. This specificity and clarity in the Proposed Rules may also assist other jurisdictions seeking to clarify their anti-discrimination laws.

Accordingly, Lambda Legal's comments address the following key points:

First, the Proposed Rules are a necessary step to address the continued alarming rates of discrimination transgender, non-binary, and gender-nonconforming people face in employment, housing, health care, and access to services and public accommodations within New York City.

Second, the Commission has explicit and broad authority to enact the Proposed Rules. Sections 905(e)(9) and 1043 of the New York City Charter provide the Commission with the power to adopt rules to carry out the provisions of the NYCHRL, as well as the Commission's own policies and procedures. The Proposed Rules serve to clarify and make explicit particular actions that violate the NYCHRL in regards to transgender, non-binary, and gender-nonconforming people in New York City.

Third, Lambda Legal recommends the following clarifications to the definitions contained within the Proposed Rules. Additions are in *italics*. Deletion are stricken.

- a) Lambda Legal recommends a clarification of the definition of "Sex" in the Proposed Rules as follows:

Sex: "Sex" is a combination of ~~primary~~-sex characteristics such as chromosomes, hormones, ~~and~~ internal and external reproductive organs, ~~and other secondary sex~~ characteristics which appear at puberty (such as the presence of facial hair, vocal pitch,



and development of breasts), and gender identity. *Gender identity is the primary determinant of a person's sex.*

- b) Lambda Legal recommends including a definition of the phrase “sex assigned at birth” as follows:

*Sex Assigned at Birth: sex assigned at birth refers to the sex recorded on a person's birth certificate at the time of birth.*

- c) Lambda Legal recommends a clarification of the definition of the term “Transgender” in the Proposed Rules as follows:

Transgender. “Transgender” – sometimes shortened to “trans” – is an adjective used to describe an individual whose gender identity ~~or expression~~ is not typically associated with the sex assigned to the individual at birth. The term “transgender” is sometimes used to describe people with a broad range of gender identities and expressions and may include individuals who identify their gender as, for example, androgynous, gender queer, nonbinary, gender nonconforming, male, female, MTF (male to female), or FTM (female to male). “Transgender” is not indicative of gender expression, sexual orientation, hormonal makeup or physical anatomy.

## **LAMBDA LEGAL COMMENTS ON THE PROPOSED RULE**

### **A. TRANSGENDER AND GENDER-NONCONFORMING PEOPLE EXPERIENCE HIGH RATES OF DISCRIMINATION.**

Transgender and gender-nonconforming people—across our nation and New York State—face discrimination, harassment, stigma, and other serious challenges at alarming rates. The challenges faced by transgender and gender-nonconforming people encompass all aspects of daily life, including employment, housing, education, health care, and access to services and public accommodations. In addition, transgender and gender-nonconforming people are doubly victimized in our criminal justice system: they are disproportionately affected by bias-motivated crime, including violence and harassment, and disproportionately policed and criminalized by law enforcement. The Proposed Rule is, therefore, not only a necessary clarification of the law; it also sends a powerful message that in New York City discrimination will not be tolerated.

#### **Employment**

In New York City, the rates of discrimination against transgender and gender-nonconforming people are alarming. In a recent survey of LGBTQ people in New York City, 42% of transgender and gender-nonconforming respondents reported they had been denied a promotion at a job, not hired for a job they applied for, or fired or forced to resign from a job due to their sexual

orientation or gender identity.<sup>2</sup> Such rates of discrimination have been confirmed through matched pair testing. Indeed, a matched pair testing study conducted in New York City found a 42% net rate of discrimination against transgender job seekers.<sup>3</sup> Additionally, in a recent national survey, the unemployment rate of transgender respondents who were residents of New York State was 18%.<sup>4</sup> This rate was over three times the national average at the time of the survey.<sup>5</sup> Of the respondents to this same survey, 37% were living in poverty.<sup>6</sup>

### Housing

Transgender and gender-nonconforming New Yorkers face significant discrimination in accessing housing. In recent surveys, between 27-38% of transgender and gender-nonconforming New Yorkers have reported experiencing homelessness, with 11% reporting they were homeless within the previous year because they were transgender.<sup>7</sup> In a New York City specific survey, 79% of those who had experience homelessness and had accessed shelter through the New York City shelter system reported they felt “very unsafe” in the shelter.<sup>8</sup> In the New York State Report of the 2015 U.S. Transgender Survey, 21% of respondents reported experiencing some form of housing discrimination in the previous year, such as being evicted from their home or denied a home or apartment because of being transgender.<sup>9</sup>

Addressing housing discrimination is also of particular salience for transgender and gender-nonconforming older adults and youth. Studies confirm that transgender and gender-nonconforming older adults in particular struggle to find senior housing where they are treated fairly.<sup>10</sup> Indeed, in a national survey of LGBT older adults in long-term care facilities, nearly one

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<sup>2</sup> New York City, Office of the Comptroller, Bureau of Policy and Research, *Results of a Survey of LGBTQ New Yorkers* (June 2017), available at [https://comptroller.nyc.gov/wp-content/uploads/documents/Results\\_of\\_a\\_Survey\\_of\\_LGBTQ.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/Results_of_a_Survey_of_LGBTQ.pdf) (last visited Sept. 24, 2018) (hereinafter “NYC Office of the Comptroller Survey”).

<sup>3</sup> Make the Road N.Y., *Transgender Need Not Apply: A Report on Gender Identity Job Discrimination* (Mar. 2010, updated May 2010), at 4, available at [http://www.maketheroad.org/pix\\_reports/TransNeedNotApplyReport\\_05.10.pdf](http://www.maketheroad.org/pix_reports/TransNeedNotApplyReport_05.10.pdf) (last visited Sept. 24, 2018) (according to 2009 survey, 59% percent of transgender workers in New York City reported experiencing job discrimination and 49% had never been offered a job living openly as a transgender person).

<sup>4</sup> National Center for Transgender Equality, *2015 U.S. Transgender Survey: New York State Report* (Oct. 2017), at 1, available at <http://www.transequality.org/sites/default/files/USTS%20NY%20State%20Report%20%281017%29.pdf> (last visited Sept. 24, 2018) (hereinafter “2015 NCTE NY Survey”).

<sup>5</sup> *Id.* at 3, note 2.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 2; NYC Office of the Comptroller Survey, *supra* note 2, at 3.

<sup>8</sup> NYC Office of the Comptroller Survey, *supra* note 2 at 3.

<sup>9</sup> 2015 NCTE NY Survey, *supra* note 4, at 2.

<sup>10</sup> See Ctr. for Am. Progress and Movement Advancement Project, *Paying an Unfair Price: The Financial Penalty for Being Transgender in America* (Feb. 2015), at 5, available at <http://www.lgbtmap.org/file/paying-an-unfair-price-transgender.pdf> (last visited Sept. 25, 2018); Justice in Aging, *LGBT Older Adults In Long-Term Care*

in four of the LGBT older adults reported being verbally or physically harassed by other residents and nearly one in six reported being verbally or physically harassed by staff.<sup>11</sup> In addition, because many transgender and gender-nonconforming youth are forced out of their homes or run away due to family rejection or abuse, transgender and gender-nonconforming youth use drop-in centers, street outreach programs, and housing programs at disproportionately high rates.<sup>12</sup> Indeed, a disproportionate number of homeless youth serviced by agency providers reported identifying as transgender or gender-nonconforming.<sup>13</sup> Yet, despite their overrepresentation in the homeless youth population, transgender and gender-nonconforming homeless youth report higher rates than the general homeless youth population of needing assistance with both short- and long-term housing and being unable to find services.<sup>14</sup> Indeed, according to one study, approximately one in five LGBT youth were unable to access short-term shelter, and 16% could not get assistance with longer-term housing—rates that are approximately double those of non-LGBT homeless youth.<sup>15</sup>

### Health Care

Discrimination against transgender and gender-nonconforming people in health care is also rampant. In New York State, 32% of transgender people who saw a health care provider in the previous year reported having at least one negative experience related to being transgender.<sup>16</sup> In the past year, 27% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person, and 28% did not see a doctor when needed because they could not afford it.<sup>17</sup> Additionally, 26% of the respondents reported experiencing a problem with health insurance coverage within the previous year that was related to them being transgender.<sup>18</sup> Consequently, studies have found that transgender and gender-nonconforming people in New York are nearly 50% more likely to be in fair or poor health when compared to cisgender people, and they are three times more likely to report inadequate insurance.<sup>19</sup>

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*Facilities: Stories from the Field* (June 2015), available at <http://www.justiceinaging.org.customers.tigertech.net/wp-content/uploads/2015/06/Stories-from-the-Field.pdf> (last visited Sept. 24, 2018).

<sup>11</sup> See Justice in Aging, *supra* note 10, at 9.

<sup>12</sup> See Soon Kyu Choi et al., The Williams Institute, *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* (June 2015), at 4, 5, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf> (last visited Sept. 24, 2018).

<sup>13</sup> *Id.* at 4.

<sup>14</sup> See Andrew Cray et al., Ctr. for Am. Progress, *Seeking Shelter: The Experiences and Unmet Needs of LGBT Homeless Youth* (Sept. 2013), at 23, available at <https://www.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf> (last visited Sept. 24, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> 2015 NCTE NY Survey, *supra* note 4, at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Somjen Frazer and Erin Howe, N.Y. State AIDS Inst. and LGBT Health & Human Serv. Network, *Transgender health and economic insecurity: A report from the 2015 LGBT Health and Human Services Needs Assessment*

### Access to Services and Public Accommodations

To compound the discrimination faced in employment, education, housing, and health care, 53-70% of transgender and gender-nonconforming people in New York have been verbally harassed or disrespected in a place of public accommodation or service, including hotels, restaurants, buses, airports and government agencies.<sup>20</sup> And nearly two-thirds (63.9%) of transgender and gender-nonconforming people have been refused use of a bathroom due to their gender identity or expression.<sup>21</sup> This pervasive discrimination prevents transgender and gender-nonconforming New Yorkers from fully participating in the economic, cultural, and intellectual life of New York City.

Disturbingly, 18% of transgender and gender-nonconforming people in New York have been denied equal treatment by a government agency or official and 11% have been denied equal treatment or harassed by judges or court officials.<sup>22</sup> Indeed, Lambda Legal's *Protected and Served?* national community survey found that 33% of transgender and gender-nonconforming people who responded to the survey and had been involved with the court system heard discriminatory comments about sexual orientation or gender identity/expression in the courts, a number that increased to 53% if the transgender or gender-nonconforming person was a person of color.<sup>23</sup>

### Criminal Justice

The discrimination faced by transgender and gender-nonconforming people is further compounded by their victimization in our criminal justice system. The unconscionable and disproportionate rate at which transgender and gender-nonconforming are exposed to violence and other bias-motivated crime<sup>24</sup> is exacerbated by the additional victimization they suffer at the hands of law enforcement, as evidenced by the 61% of New York survey respondents who experienced some form of mistreatment at the hands of law enforcement over the previous year. This included

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*Survey* (2015), at 4, 9-10, available at <https://www.scribd.com/document/290840986/Transgender-Health-and-Economic-Insecurity-Report> (last visited Sept. 24, 2018).

<sup>20</sup> Nat'l Ctr. for Transgender Equal. and Nat'l LGBTQ Task Force, *Findings of the National Transgender Discrimination Survey: New York Results* (May 2010), at 1, available at [http://www.transequality.org/sites/default/files/docs/resources/ntds\\_state\\_ny.pdf](http://www.transequality.org/sites/default/files/docs/resources/ntds_state_ny.pdf) (last visited Sept. 24, 2018) (hereinafter "2010 NCTE NY Survey"); NYC Office of the Comptroller Survey, *supra*, at 4.

<sup>21</sup> See Frazer and Howe, *supra* note 19, at 10.

<sup>22</sup> 2010 NCTE NY Survey, *supra* note 20, at 2.

<sup>23</sup> Lambda Legal, *Protected and Served? Courts* (2015), available at <http://www.lambdalegal.org/protected-and-served/courts> (last visited Sept. 24, 2018).

<sup>24</sup> See Waters, Emily et.al, National Coalition of AntiViolence Programs (NCAVP) *A Crisis of Hate: A Report on Homicides Against Lesbian, Gay, Bisexual and Transgender People* (2018), available at <http://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf> (last visited Sept. 24, 2018).

being verbally harassed, repeatedly referred to as the wrong gender, physically assaulted, or sexually assaulted, including being forced by officers to engage in sexual activity to avoid arrest.<sup>25</sup>

In the five-year span covered by Lambda Legal's *Protect and Served?* national community survey, 32% of transgender and gender-nonconforming respondents who had contact with police reported that police officers' attitudes toward them had been hostile.<sup>26</sup> More than one in five transgender and gender-nonconforming survey respondents also reported being verbally assaulted, physically assaulted, and/or sexually harassed by police.<sup>27</sup> Thirty-four percent (34%) of transgender and gender-nonconforming respondents reported being falsely accused by police.<sup>28</sup> The experiences of discriminatory and violent policing suffered by transgender and gender-nonconforming people serve as a barrier to accessing critical support and protection from law enforcement when transgender and gender-nonconforming people are victims of violence and other criminal activity.

In addition, 58% of transgender and gender-nonconforming respondents to the national community survey reported police indifference or lack of proper response to reports of property crime.<sup>29</sup> Forty-nine percent (49%) of transgender and gender-nonconforming people (56% of transfeminine and 46% of transmasculine respondents) reported inadequate responses and neglect by police to their complaint of intimate partner violence.<sup>30</sup> And a staggering 52% of transgender and gender-nonconforming survey respondents—a rate that increased to 65% of transgender and gender-nonconforming people of color—reported inadequate police responses to their reports of sexual assault.<sup>31</sup>

**The Proposed Rules are necessary to remedy the alarming rates of discrimination against transgender and gender-nonconforming New Yorkers.**

The alarming and disproportionate rates of continued discrimination against transgender and gender-nonconforming New Yorkers illustrate clearly that the Commission's Proposed Rules are a necessary step towards remedying the untenable circumstances faced by transgender and gender-nonconforming New Yorkers. And while the NYCHRL already prohibits such discrimination, the Proposed Rules clarify and make unequivocally clear what constitutes discrimination on the basis of gender identity, gender expression, and transgender status.

Moreover, clarifying how the NYCHRL protects transgender and gender-nonconforming people from discrimination serves to affirm the equal dignity of transgender and gender-

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<sup>25</sup> 2015 NCTE NY Survey, *supra* note 15, at 2.

<sup>26</sup> Lambda Legal, *Protected and Served? Police* (2015), available at <http://www.lambdalegal.org/protected-and-served/police> (last visited Sept. 24, 2018).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

nonconforming New Yorkers. The City's imprimatur through the adoption of the Proposed Rules would send a powerful message that invidious discrimination will not be tolerated.

## **B. THE PROPOSED RULES ARE IN KEEPING WITH THE TEXT AND PURPOSE OF THE NEW YORK CITY HUMAN RIGHTS LAW.**

The Proposed Rules are in harmony with the text and purpose of the NYCHRL and in keeping with the interpretations of similar provisions by New York's courts and agencies, as well as an ever-growing number of federal and other state agencies and courts across the country.

### **The Commission has the Authority and Power to Promulgate the Proposed Rules.**

Sections 905(e)(9) and 1043 of the New York City Charter provide the Commission with the power to adopt rules to carry out the provisions of the NYCHRL, as well as the Commission's own policies and procedures. In 2002, the NYCHRL was amended by New York City Council through the passage of the Transgender Rights Bill.<sup>32</sup> The intent of the City Council in amending the law was to make explicit that the law prohibits discrimination against transgender people.<sup>33</sup> City Council amended the definition of "gender" to include "actual or perceived sex" as well as "person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth."<sup>34</sup>

In 2005, City Council made clear that the NYCHRL must be construed broadly and "independently from similar or identical provisions of New York state or federal statutes," such that "similarly worded provisions of federal and state civil rights laws [are] a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise."<sup>35</sup> The Proposed Rules will ensure that the interpretation of the NYCHRL provides the expansive protections for transgender and gender non-conforming people that the New York City Council intended.

### **The Proposed Rules Are Consistent with Court and Agency Interpretation of the NYCHRL and Similar Provisions.**

#### **Deliberate Misuse of an Individual's Chosen Name, Pronoun or Title**

Courts and agencies have found that intentional misgendering of transgender people can be unlawful discriminatory treatment. In *Doe v. City of New York*, the Court denied the City's motion to dismiss plaintiff's claim that she was denied access to benefits by HASA in violation of

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<sup>32</sup> New York City Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression: Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23), available at <https://www1.nyc.gov/site/cchr/law/legal-guidances-gender-identity-expression.page#1> (last visited Sept. 24, 2018).

<sup>33</sup> Report of the Governmental Affairs Division, Committee on General Welfare, Intro. No. 24, to amend the administrative code of the city of New York in relation to gender-based discrimination (April 24, 2002), accessible through <http://legistar.council.nyc.gov/Legislation.aspx>.

<sup>34</sup> Local Law No. 3 (2002); see also N.Y.C. Admin. Code § 8-102(23).

<sup>35</sup> Local Law No. 85 (2005); see also N.Y.C. Admin. Code § 8-130.

New York City and New York State Human Rights Laws when it refused to change the name and gender marker on her benefits card and intentionally referred to her by her former name and male pronouns.<sup>36</sup> The U.S. Equal Employment Opportunity Commission (“EEOC”) has also found that “[p]ersistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment when ‘judged from the perspective of a reasonable person in the employee’s position.’”<sup>37</sup> The Commission’s Proposed Rule is consistent with the interpretation of the NYCHRL as well as other anti-discrimination laws. It is also consistent with the City Council’s intent to ensure that the NYCHRL’s protections do not fall below those of other anti-discrimination laws.

#### Refusing to Allow Individuals to Use Single-Sex Facilities or Participate in Single-Sex Programs Consistent with their Gender Identity

Numerous courts and agencies have found that individuals must be allowed to use single-sex facilities that are consistent with their gender identity. For example, in a recent Lambda Legal case, the Federal District Court for the Western District of Pennsylvania found that the enforcement of a policy which prevented transgender students from using the restrooms that were consistent with their gender identity was a violation of the Equal Protection Clause.<sup>38</sup> The EEOC has likewise determined that employees must be given access to restrooms in the workplace in accordance to their gender identity.<sup>39</sup> Similarly, the Department of Housing and Urban Development (“HUD”) has issued guidance and regulations ensuring that single-sex facilities in federally-funded housing programs place people in accordance to their gender identity.<sup>40</sup> Additionally, the private biases of others or generalized or speculative privacy concerns cannot be used to justify discriminatory policies and practices that would prevent transgender people from accessing the single-sex facilities consistent with their gender identity.<sup>41</sup>

#### Covered Entities Must Provide Equal Employee Benefits Regardless of Gender

State and Federal law require employers to provide equal benefits regardless of gender. In 2014, the State of New York issued an insurance bulletin which clarified that any fully-insured health insurance plans in the state must provide coverage for medically necessary transition-related

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<sup>36</sup> *Doe v. City of New York*, 976 N.Y.S.2d 360 (Sup. Ct. 2013).

<sup>37</sup> *Lusardi v. Dep’t of the Army*, E.E.O.C. No. 0120133395, 2015 WL 1607756, at \*15 (Apr. 1, 2015).

<sup>38</sup> See *Evancho v. Pine-Richland Sch. Dist.*, No. CV 2:16-01537, 2017 WL 770619 (W.D. Pa. Feb. 27, 2017).

<sup>39</sup> *Lusardi*, 2015 WL 1607756, at \*7.

<sup>40</sup> Dep’t of Housing & Urban Dev., Office of Cmty. Planning & Dev., *Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities*, Notice CPD-15-02 (Feb. 20, 2015), available at <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf> (last visited Sept. 24, 2018).

<sup>41</sup> See *Cruzan v. Special Sch. Dist. # 1*, 294 F.3d 981 (8th Cir. 2002); *Doe v. Boyertown Area School Dist.*, 897 F.3d 518 (3rd Cir. 2018).

care.<sup>42</sup> In a recent case brought by Lambda Legal in New York State, the EEOC found that an employer's failure to provide coverage for medically necessary care that would be covered by the employer's health insurance policy if not for an employee's transgender status is a violation of Title VII of the Civil Rights Act of 1964.<sup>43</sup> Here, the Commission is making very clear that the NYCHRL requires, at minimum, the same level of anti-discrimination protections for access to benefits as State and Federal law.

#### Gender May Not Be the Basis for Refusing a Request for Accommodation

The Proposed Rules are consistent with the interpretation of similar disability nondiscrimination provisions by agencies and courts across the country.<sup>44</sup> In *Doe v. Bell*, a New York case, the court held that a state foster care facility violated the New York State Human Rights Law by not reasonably accommodating the plaintiff's needs related to gender dysphoria by preventing her from wearing female clothing.<sup>45</sup> The Commission is clearly within its authority to ensure that the NYCHRL provides as much protection for transgender and gender-nonconforming peoples as the New York State Human Right Law provides.

### C. LAMBDA LEGAL'S RECOMMENDATIONS

Lambda Legal recommends the following clarifications to the definitions contained within the Proposed Rules. Additions are in *italics*. Deletion are stricken.

- a) Lambda Legal recommends a clarification of the definition of "Sex" in the Proposed Rules.

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<sup>42</sup> N.Y. Dep't. of Fin. Serv., Insurance Circular Letter No. 7 on Health Insurance Coverage for the Treatment of Gender Dysphoria (Dec. 2014), available at [https://www.dfs.ny.gov/insurance/circltr/2014/cl2014\\_07.pdf](https://www.dfs.ny.gov/insurance/circltr/2014/cl2014_07.pdf) (last visited Sept. 24, 2018).

<sup>43</sup> See Letter of Determination from the EEOC available at, [https://www.lambdalegal.org/in-court/legal-docs/simonson\\_ny\\_20170626\\_eeoc-letter-of-determination](https://www.lambdalegal.org/in-court/legal-docs/simonson_ny_20170626_eeoc-letter-of-determination)

<sup>44</sup> In keeping with the Proposed Rule, state courts in Connecticut, Massachusetts, New Hampshire, New Jersey, and Washington have held that gender dysphoria (formerly known, gender identity disorder or transsexualism) qualify as a disability under their nondiscrimination laws. See *Comm'n on Human Rights & Opp. v. City of Hartford*, No. CV094019485S, 2010 WL 4612700, at \*13 (Conn. Super. Ct. Oct. 27, 2010); *Lie v. Sky Publishing Corp.*, No. 013117J, 2002 WL 31492397, at \*6 (Mass. Super. Ct. 7, 2002); *Doe v. Yunits*, No. 001060A, 2000 WL 33162199 (Mass. Super. Ct. Oct. 11, 2000); *Doe v. Electro-Craft Corp.*, 1988 WL 1091932, at \*5 (N.H. Super. Ct. Apr. 8, 1988); *Enriquez v. West Jersey Health Systems*, 777 A.2d 365, 367 (N.J. Super. Ct. App. Div. 2001); *Doe v. Boeing Co.*, 846 P.2d 531 (Wash. 1993). Similarly, agencies tasked with enforcing the nondiscrimination laws of their respective jurisdictions in Connecticut, Florida, Illinois, Chicago, and Massachusetts have also found gender dysphoria to be a disability under their nondiscrimination laws. See *Dwyer v. Yale University*, *Comm'n on Human Rights & Opp.*, Op. Nos. 0130315 and 0230323 (Conn. Comm'n on Human Rights & Opp. Nov. 29, 2005), available at <http://www.ct.gov/chro/cwp/view.asp?a=2528&Q=316044> (last visited Dec. 17, 2015); *Smith v. City of Jacksonville Corr. Inst.*, No. 88-5451, 1991 WL 833882, at \*11, \*12 (Fla. Div. Admin. Hearings Oct. 2, 1991); *Evans v. Illinois Dept. of Human Rights*, No. 1994CF0270, 1999 IL HUM LEXIS 260 (Ill. Hum. Rights Com. Nov. 18, 1999); *Evans v. Hamburger Hamlet*, No. 93-E-177, 1996 WL 941676, at \*8, \*9 (Chicago Comm'n Human Rel. May 8, 1996); *Jette v. Honey Farms Mini Market*, No. 95 SEM 0421, 2001 WL 1602799 (M.C.A.D. Oct. 10, 2001).

<sup>45</sup> *Doe v. Bell*, 754 N.Y.S.2d 846, 853 (Sup. Ct. 2003).



Sex: “Sex” is a combination of ~~primary~~-sex characteristics such as chromosomes, hormones, and internal and external reproductive organs, and ~~other secondary~~-sex characteristics which appear at puberty (such as the presence of facial hair, vocal pitch, and development of breasts), and gender identity. *Gender identity is the primary determinant of a person’s sex.*

Lambda Legal recommends these changes to the proposed definition of “sex” in order to ensure clarity and that the proposed definition of “sex” is consonant with the scientific, medical, and legal understanding of the same.<sup>46</sup> Moreover, while there are several characteristics that comprise a person’s sex, any proposed definition should make clear that gender identity is the primary determinant of a person’s sex.<sup>47</sup>

- b) Lambda Legal recommends including a definition of “sex assigned at birth.”

*Sex Assigned at Birth: sex assigned at birth refers to the sex recorded on a person’s birth certificate at the time of birth.*

Lambda Legal recommends including the definition because the phrase is used throughout the Proposed Rules. Defining it clearly for covered entities will help ensure that they are able to follow the law with respect to transgender, non-binary, and gender-nonconforming people.

- c) Lambda Legal recommends a clarification of the definition of the term “Transgender” in the Proposed Rules.

Transgender. “Transgender” – sometimes shortened to “trans” – is an adjective used to describe an individual whose gender identity ~~or expression~~ is not typically associated with the sex assigned to the individual at birth. The term “transgender” is sometimes used to describe people with a broad range of gender identities and expressions and may include individuals who identify their gender as, for example, androgynous, gender queer, nonbinary, gender nonconforming, male, female, MTF (male to female), or FTM (female to male). “Transgender” is not indicative of gender expression, sexual orientation, hormonal makeup or physical anatomy.

The inclusion of gender expression in the first sentence of this definition seems to conflict with the last sentence which states that the term “transgender” is not indicative of gender expression.” Moreover, removing “or expression” from the first sentence allows the definition to more closely parallel the definition of “cisgender” within these Proposed Rules, and avoids conflation of the distinct concepts of “gender identity” and “gender expression.” To the extent the Commission seeks to clarify that some people who identify as androgynous, gender queer, nonbinary, gender nonconforming, or other gender identities describe themselves as transgender

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<sup>46</sup> See *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, 318 F. Supp. 3d 1293, 1298 (M.D. Fla. 2018).

<sup>47</sup> See *Adams*, 318 F. Supp. 3d at 1298 (finding that “neurological sex and related gender identity are the most important and determinative factors”); *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 329 (D.P.R. 2018) (finding that a “persons’ sex” is “determined by their gender identity”).

and others do not, such goal is accomplished through the second sentence in the proposed definition.

## CONCLUSION

We greatly appreciate the Commission's efforts to clarify the scope of the NYCHRL through the Proposed Rules. We strongly support the adoption of the Proposed Rules and ask the Commission to consider Lambda Legal's recommendations when formulating the final rules for adoption. We thank you for considering these comments and for your work to implement the crucial civil rights protections of the NYCHRL so that transgender and gender-nonconforming people are afforded an equal opportunity to enjoy a full and productive life in New York City.

Most respectfully submitted,

**LAMBDA LEGAL DEFENSE AND  
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### WRITTEN COMMENT

New York City Commission on Human Rights ("CCHR")  
Public Hearing on Proposed Rule to amend title 47 of the Rules of the City of New York to  
establish definitions for "cisgender," "gender identity," "gender expression," "gender," "gender  
non-conforming," "intersex," "sex," and "transgender" and to describe and explain covered  
entities' non-discrimination obligations.

September 25, 2018

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## Basis for Comments and Recommendations from the Sylvia Rivera Law Project

The Sylvia Rivera Law Project (“SRLP”) works with transgender, gender non-conforming, and intersex people (“TGNCI”) who are of color or low-income. We offer direct legal services to people in the New York City area, addressing needs including assistance in obtaining gender-affirming identification and access to sex-segregated programs or benefits. We also provide technical assistance for governmental agencies, hospitals, and other institutions to promote gender-affirming policies and to ensure there are adequate systems in place for review and compliance.

Over the course of any given year, we work on over 300 cases involving TGNCI individuals in New York City and New York State. More than just providing direct services, though, we also work with the TGNCI community to advocate for policies and laws that actively advance the goal of self-determination of gender identity and expression. Self-determination of gender identity includes both being able to self-attest as to who we are, like any cisgender (non-transgender) person is allowed to do, and to recognize gender diversity by recognizing intersex and gender non-conforming identities (“GNC”).<sup>1</sup>

Our comment intends to issue our support for the proposed amendments.

### Proposal to establish definitions for “cisgender,” “gender identity,” “gender expression,” “gender,” “gender non-conforming,” “intersex,” “sex,” and “transgender.”

SRLP believes that every individual should be free to self-determine their gender identity and gender expression and that this first requires acknowledging gender diversity by recognizing transgender, intersex, and gender non-conforming identities. SRLP joins other advocates’ testimonies encouraging the CCHR to modify the following definitions, with suggests as to better expand and word those definitions.

#### a. Cisgender

To keep consistency with definitions across genders, SRLP suggests that “cisgender” follow the same word pattern as “transgender.” The term currently reads “an adjective sometimes used to describe a person.” SRLP suggests the definition for “cisgender” should read “is a term used to describe a person.”

#### b. Gender Identity

SRLP encourages the CCHR to replace the last “not” with “may or may not” in order to expand the definition. Gender identity is fluid and deeply individualized. As such, it is important that the definition be broad to reflect this fact.

#### c. Gender Non-Conforming

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<sup>1</sup> Because GNC is the term that has been used to broadly encompassing individuals who do not identify as either male or female, we will also use this term. It is important to note that GNC is an umbrella identity that covers myriad of different non-binary identities.

SRLP further urges the CCHR to eliminate the word “traditional” from its proposed definition of “gender non-conforming.” Instead, it should be replaced with “other people’s gender expectations.”

d. Sex

As other advocates have raised, SRLP suggests the arbitrary term “assigned at birth” be replaced with terminology that reflects the fluid nature of gender identity and expression. Although SRLP supports the increased awareness of TGNCI identities, we also urge the CCHR to move away from language that focuses on biological determinism. Because gender identity and expression are not biological, the term “assigned at birth” should be changed to “most people are perceived as male or female at birth.”

e. Transgender

SRLP further encourages the CCHR to move away from the close association of “transgender” and transition-related language. The CCHR’s focus on FTM and MTF places an undue focus on the process of transition—a process that is unique to every individual. To decrease the emphasis on physical anatomy, SRLP suggests that the definition focus on the experience of trans individuals, and may read as a “trans woman” or “trans man.”

Furthermore, SRLP strongly encourages the CCHR create a separate definition for “non-binary” to distinguish it as separate and apart from the category of “transgender.”

SRLP fully supports the proposed definitions for “gender expression,” “gender,” and “intersex.”

**Proposal to describe and explain covered entities’ non-discrimination obligations.**

The current “Gender Identity/Gender Expression: Legal Enforcement Guidance” (“the Guidance”) is useful for those covered entities that have questions about what constitutes gender discrimination. However, the Guidance is merely that—guidance. The proposed codification of explicit violations—along with specific examples of discriminatory behavior based on gender expression and identity—sends a powerful message to employers, landlords, business owners, and other covered entities. These covered entities are provided with more than sufficient notice of illegal conduct, and the explicit violations make clear that such conduct will be met with appropriate legal action.

SRLP is acutely aware that TGNCI people frequently face discrimination. This discrimination comes in many forms, including misgendering an individual after that person has made clear their preferred name and pronouns, asking intrusive and inappropriate questions about a person’s medical history, and denying an individual access to single-sex facilities.

As many of our community members engage with city agencies on a daily basis, it is critically important that all governmental and covered entities abide by New York City’s broad anti-

discrimination law. To ensure compliance with the law there must be a strong and enforceable legal remedy for discrimination based on gender identity or expression. As such, SRLP supports the codification of both specific language prohibiting unlawful discriminatory practices based on gender and examples of behaviors that violate the covered entities' obligations with the following caveats.

a. Deliberate Misgendering

While SRLP supports the codification of explicit violations under the proposed rule change, we wish to raise a point of concern regarding the limiting language in § 2-06(a). The proposed text of § 2-06(a) currently indicates that the deliberate misuse of an individual's chosen name, pronoun, or title is unlawful discriminatory behavior only "...where the refusal is motivated by such individual's gender." This language creates an undue hurdle that we believe runs counter to the goal of the proposed amendment. We suggest § 2-06(a) read, in pertinent part, as follows:

§ 2-06(a). *Deliberate Misuse of an Individual's Chosen Name, Pronoun or Title.* A covered entity's deliberate misuse or refusal to use an individual's chosen name, pronoun and gendered title constitutes a violation of §8-107 of the Administrative Code.

Too frequently, claims of discrimination and harassment based on gender identity are difficult for plaintiffs to prove. Discriminatory intent should be inferred by any deliberate misuse or refusal to address someone by their preferred name and pronouns.

b. Employment and Healthcare

We know intimately from our work with TGNCI people that our community often faces discrimination in employment related to gender identity or gender expression. According to the New York State Report of the U.S. Transgender Survey ("USTS"), the largest survey examining the experiences of transgender people in the United States, 26% of respondents who held or applied for a job in the recorded year reported being fired, denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.<sup>2</sup> Additionally, 24% of respondents who had a job in the recorded year reported other forms of mistreatment based on their gender identity or expression during the year. This mistreatment included being forced to use a restroom that did not match their gender identity, being told they must present in the wrong gender or risk termination, or having a boss or coworker share private information about their transgender status with others without their permission.

SRLP affirms the proposed language which makes clear that asking an employee in good faith if they have a chosen name or which pronoun they use is not a violation of the New York City anti-discrimination law. SRLP also adds that asking an employee in good faith if they have a chosen name or which pronoun they use is a best practice that should be done with all employees of all gender identities, regardless of gender expression.

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<sup>2</sup> 2015 U.S. Transgender Survey: New York State Report. (2017). Washington, DC: National Center for Transgender Equality.

SRLP further wishes to bring attention to the importance of employers providing equal employee benefits regardless of gender identity or expression. Healthcare should be non-discriminatory with respect to gender. Transition-related care or gender-affirming care should not be viewed as any different or less necessary than other forms of healthcare. SRLP supports the proposed amendment clearly stating that disparate treatment in employee healthcare constitutes discrimination, with one caveat.

Under the CCHR's proposed category "Failing to provide equal employee benefits regardless of gender," it states that "[c]overed entities offering benefit plans not subject to the Employee Retirement Income Security Act ("ERISA") would be required to offer benefits equally to all employees regardless of gender and may not provide health benefit plans that deny, limit or exclude services based on gender." SRLP proposes the sentence read as follows: "Covered entities offering benefit plans not subject to the Employee Retirement Income Security Act ("ERISA") would be required to offer benefits equally to all employees regardless of *gender expression and gender identity* and may not provide health benefit plans that deny, limit or exclude services based on *gender expression and gender identity*."

### c. Public Accommodations

Discrimination based on gender identity or gender expression is not limited to the workplace. Of the USTS respondents who visited a place of public accommodation where staff or employees thought or knew they were transgender, 35% experienced at least one form of mistreatment in the recorded year. This included being denied equal treatment or service, verbal harassment, and physical attacks.<sup>3</sup>

TGNCI individuals also confront discrimination and violence in housing. In May 2017, the Office of New York City Comptroller Scott M. Stringer engaged in a survey to capture the challenges of daily life for LGBTQ New Yorkers. 38% of respondents identifying as transgender or gender non-conforming indicated that they have experienced homelessness in their lifetime. Of the 30% of respondents who utilized New York City's shelter system, 79% indicated that they felt very unsafe, 11% that they felt unsafe, and 11% that they felt safe.<sup>4</sup>

The New York City Charter grants CCHR the power to eliminate and prevent unlawful discrimination, as described above, by regulating conduct in governmental and covered entities, such as shelters and places of public accommodation. Under the proposed amendment, objections from people, including customers, employees, or other program participants, to sharing a facility or participating in a program with a transgender or gender non-conforming person would not be a defense to a charge of discrimination under the NYCHRL. SRLP acknowledges that the codification of the elimination of this defense will benefit TGNCI people. Too frequently entities relied on reframing discriminatory actions as actions taken to accommodate other individuals, and SRLP supports the exclusion of this defense to discriminatory behavior.

<sup>3</sup> 2015 U.S. Transgender Survey; *New York State Report*. (2017). Washington, DC: National Center for Transgender Equality.

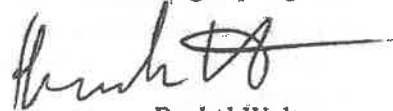
<sup>4</sup> *Results of a Survey of LGBTQ New Yorkers*. (2017). New York, NY, the Office of New York City Comptroller Scott M. Stringer

The proposed amendments would serve to deter discriminatory behaviors against TGNCI individuals, as well as to provide an enforceable legal remedy should such discrimination occur. Therefore, SRLP supports the added definitions and the inclusion of descriptions and explanations of covered entities' non-discrimination obligations.

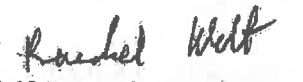
SRLP thanks the NYC Commission on Human Rights for the opportunity to submit this comment and participate in this process.

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nyu.outlaw@nyu.edu

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September 24, 2018

New York City Commission on Human Rights  
22 Reade Street  
New York, NY 10007  
policy@cchr.nyc.gov

Re: Prevention of Gender Identity-Based Discrimination, 2018 RG 022

To Whom It May Concern:

OUTLaw represents students and alumni of New York University School of Law who identify as members, friends, or supporters of the LGBTQ community.<sup>1</sup> We are writing to express our support for the amendments proposed by the New York City Commission on Human Rights to Local Law No. 3 of 2002 and Local Law No. 38 of 2018, amending the Administrative Code of the City of New York (“Administrative Code”), titled, “Prevention of Gender Identity-Based Discrimination,” which will bring added clarity to the chapter of the City’s rules and regulations covering unlawful discriminatory practices.

The Commission proposes to amend the City’s rules to include new gender-related definitions and to clarify the scope of protections against gender-based discrimination under City law. These proposed additions are not only consistent with the text of the New York City Human Rights Law, which bars discrimination in employment, public accommodations, and housing based on gender identity,<sup>2</sup> but also in keeping with the intent of the City’s democratically elected representatives to make New York City’s anti-discrimination ordinance “the most progressive in the nation.”<sup>3</sup>

The proposed amendments recognize and seek to address a pervasive problem: the physical and psychological harm experienced by transgender and gender-nonconforming people who are refused equal treatment, or have their identities attacked or questioned, because others cannot or will not accept who they are. The rules target some of the more obvious examples of this harm, such as the denial of concrete benefits, including parental leave and health insurance coverage, on equal terms. Importantly, however, the rules also prohibit conduct that the public may not immediately recognize as unlawful discrimination, such as intentional misgendering and imposition of gendered dress or grooming standards. These acts are more than fleeting indignities.

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<sup>1</sup> These comments have been prepared by a student organization affiliated with New York University School of Law. We do not purport to present the School’s institutional views, if any.

<sup>2</sup> See N.Y.C. Admin. Code §§ 8-107(1), (4)-(5) (2018) (each barring discrimination based on “actual or perceived . . . gender . . .”).

<sup>3</sup> See *Makinen v. City of N.Y.*, 86 N.E.3d 514, 520 (N.Y. 2017) (citing *Bumpus v. N.Y.C. Trans. Auth.*, 859 N.Y.S.2d 893 (Table) (Sup. Ct. 2008)).



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Even a single incident can inflict lasting harm, and for the transgender and gender-nonconforming people who experience these acts, they are often constant, traumatic, and even dangerous.

NYU OUTLaw applauds the Commission's efforts to call attention to and prohibit conduct that devalues and endangers the lives of transgender and gender-nonconforming people in New York City. As students who attend an institution, and plan to enter a field, with appallingly low rates of transgender representation, we understand the importance of policies that aim to eliminate such barriers to basic survival, which severely impact both professional development and academic success. We urge the Commission to adopt the proposed rules and to continue working toward building a City where "all New Yorkers [can] work and live free from invidious discrimination based on gender."<sup>4</sup>

Respectfully submitted,

NYU OUTLaw

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<sup>4</sup> See N.Y.C. Local Law No. 3, § 1 (2002).

sage

Advocacy &  
Services for  
LGBT Elders

**We refuse to be invisible**



September 25, 2018

Michael Silverman  
New York City Commission on Human Rights  
22 Reade Street  
New York, New York 10007

VIA EMAIL: [policy@cchr.nyc.gov](mailto:policy@cchr.nyc.gov)

RE: The New York City Commission on Human Rights' proposal to amend its rules to establish certain definitions and clarify the scope of protections with respect to gender in the New York City Human Rights Law

Dear Mr. Silverman,

SAGE is writing to support the New York City Commission on Human Rights' proposal to amend its rules to establish certain definitions and to clarify the scope of protections with respect to gender in the New York City Human Rights Law.

Lesbian, gay, bisexual, and transgender (LGBT) older people face pronounced disparities that create a multitude of challenges to successful aging. Furthermore, based on what limited data we have, we know that transgender older people are even more likely than other LGBT older people to: suffer from physical disabilities and poor mental health; face cultural, social or geographic isolation; and have an income level at or below the poverty line. At the same time, the shortage of culturally competent providers and fear of discrimination are especially acute for transgender older people. As a result, transgender older New Yorkers are at a particularly high risk of not receiving the services and supports that they need to live independently and not getting the healthcare they need and deserve.

As the country's oldest and largest organization dedicated to improving the lives of LGBT older people, SAGE is uniquely situated to understand these issues. In conjunction with 30 affiliates in 22 states and Puerto Rico, SAGE offers supportive services and consumer resources to LGBT older people and their caregivers, advocates for public policy changes that address the needs of LGBT older people, and provides training for agencies and organizations that serve LGBT older people.

Pursuant to a grant from the Department of Health and Human Services' Administration for Community Living (ACL), SAGE – in collaboration with 18 leading organizations nationwide – operates the National Resource Center on LGBT Aging (NRC), which is the country's first and only technical assistance resource center aimed at improving the quality of services and supports offered to LGBT older people. The NRC provides training, technical assistance, and educational resources to aging providers, LGBT organizations, and LGBT older people. To date, the NRC has trained more than 15,745 professionals, representing more than 1,968 aging organizations located in every State and the District of Columbia. In addition, the NRC has published, and makes widely available, best practice guides, including, "Inclusive Services for LGBT Older Adults, A Practical Guide to Creating Welcoming Agencies."

Since its founding in 1978, SAGE has had deep roots in New York City. Togetherness, friendship, community, and pride characterize SAGE's five New York City innovative senior centers. Each location—the Bronx, Brooklyn, Harlem, Midtown, and Staten Island—shows off a distinct style, and each presents a unique way to experience all SAGE has to offer, including: free or low-cost meals; daily cultural and social events; support groups; health, financial, and social services; friendly home visiting; assistance for military veterans through SAGEVets; SAGEPositive program for elders living with HIV/AIDS; and computer and internet access at CyberCenters. In fact, SAGE served more than 40,000 meals across New York City in 2017. Fellow New Yorkers donated more than 27,000 hours to help our elders. And SAGE is in the process of building 227 housing units for older LGBT New Yorkers in the Bronx and Brooklyn.

As a New York City-based, LGBT-focused non-profit, we believe that having the most up-to-date, clear, and precise rules with respect to protecting gender is critical, not only for the constituents we serve, but for all New Yorkers. How people define and perceive gender, and treat people based on actual or perceived gender, can impact both trans and cisgender individuals. We feel it is important, however, to lift-up and highlight the particular importance this proposed rule will have for the day-to-day lives of transgender older New Yorkers.

### **Transgender Older People are Even More Likely than Other LGBT Older People to Have Physical and Mental Health Challenges**

**Poorer physical health.** While LGBT older people writ large face pronounced health disparities, transgender older people have an even higher risk than other LGBT older people of poor physical health and disability.<sup>1</sup> Transgender women, in particular, have a high prevalence of HIV, which not only presents health challenges, but also increases their difficulty in finding social support, and creates additional barriers to care.<sup>2</sup>

<sup>1</sup> Soon Kyu Choi and Ilan H. Meyer, *LGBT Aging: A Review of Research Finds, Needs, and Policy Implications* 3 (Williams Inst. Aug. 2016), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Aging-White-Paper.pdf> ("Williams LGBT Aging Report") (citing Administration on Aging, U.S. Department of Health and Human Services, Administration for Community Living, *Lesbian, Gay, Bisexual and Transgender (LGBT) (2014)*, available at [www.aoa.acl.gov/AoA\\_Programs/Tools\\_Resources/diversity.aspx#LGBT](http://www.aoa.acl.gov/AoA_Programs/Tools_Resources/diversity.aspx#LGBT))

<sup>2</sup> *Id.* at 27-28; Movement Advancement Project (MAP) and Services and Advocacy for LGBT Elders (SAGE), *Understanding Issues Facing LGBT Older Adults*, at 15 (2017), available at <http://www.lgbtmap.org/file/understanding-issues-facing-lgbt-older-adults.pdf>.

**More pronounced mental health challenges.** Transgender older people also report even higher rates of psychological distress and depression,<sup>3</sup> and are even more likely to have suicidal thoughts,<sup>4</sup> than other LGBT older people. These poor mental health outcomes reflect the victimization, discrimination, lack of support, and stigma associated with gender non-conformity.<sup>5</sup>

**Transgender Older People are Even More Likely than Other  
LGBT Older People to Face Cultural, Social, or Geographic  
Isolation**

While all LGBT older people face a heightened risk of cultural or social isolation, transgender older people are especially at risk. Transgender older people are even less likely than other LGBT older people to have support networks comprised of friends, family, and children – the networks on which many other older people rely on as they age. For instance, only 35 percent of transgender women age 50 and over are married or partnered, compared to 50 percent of lesbians in the same age group.<sup>6</sup>

The process of transitioning one's gender presentation and/or sex characteristics to align with a gender identity that differs from the one assigned at birth often leads to significant social isolation. Twenty percent of transgender older people above the age of 65 report having a spouse or partner end the relationship with them because of their transgender identity.<sup>7</sup> At the same time, many mental health professionals continue to advise married transgender people, as part of their transition plan, to divorce their spouse, move to a new area, and/or construct a new identity that fits with the person's changed gender identity,<sup>8</sup> thereby compounding social isolation.<sup>9</sup>

**Transgender Older People are Even More Likely than Other LGBT  
Older People to Have Incomes at or Below the Poverty Line**

Transgender older people are even more likely than other LGBT older people to have incomes near or below the poverty line. Indeed, while 26 percent of LGBT older people ages 65 and older live at or below 200 percent of the federal poverty level, this percentage rises to 48 percent for transgender older people.<sup>10</sup> Transgender individuals also report high rates of unemployment and low wages.<sup>11</sup> This reflects

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<sup>3</sup> Williams LGBT Aging Report, *supra* n.1, at 3, 15.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 27.

<sup>6</sup> Movement Advancement Project (MAP) and Services and Advocacy for LGBT Elders (SAGE), *Understanding Issues Facing LGBT Older People*, at 12 (2017), available at <http://www.lebtmap.org/file/understanding-issues-facing-lgbt-older-people.pdf>.

<sup>7</sup> National Center for Transgender Equality 2015 U.S. Transgender Survey, available at <http://www.ustranssurvey.org>.

<sup>8</sup> Williams LGBT Aging Report, *supra* n.1, at 6.

<sup>9</sup> Richard Wright, Am. J. of Public Health 103(2), *Same-Sex Legal Marriage and Psychological Well-Being: Findings From the California Health Interview Survey*, 339 (Feb. 2013).

<sup>10</sup> Movement Advancement Project (MAP) and Services and Advocacy for LGBT Elders (SAGE), *Understanding Issues Facing LGBT Older People*, at 10 (2017), available at <http://www.lebtmap.org/file/understanding-issues-facing-lgbt-older-people.pdf>.

<sup>11</sup> Williams LGBT Aging Report, *supra* n.1, at 10.

the particular challenges that many transgender people face in areas of such as employment, housing, and education.<sup>12</sup>

### **Transgender Older People are Even Less Likely than Other LGBT Older People to Receive the Services and Supports that They Need to Live Independently**

Transgender older people not only have an especially high risk of greatest social and economic need, but they also are especially unlikely to receive the services and supports they need to live independently. This reflects both the especially acute shortage of culturally competent providers able to meet the specialized needs of transgender older people and the especially great fear of discrimination faced by this population.

### **Transgender Elders have Especially Great Difficulty Finding Culturally Competent Providers**

Many transgender older people report experiencing “a lack of culturally competent health services.”<sup>13</sup> Transgender people generally face particular challenges because “many health providers ‘may lack knowledge about transgender and intersex anatomy . . .’”<sup>14</sup> Moreover, transgender older people often need different types of support and expertise, such as transition-related medical care, than other LGBT older people.<sup>15</sup> Older people who transition later in life face added health challenges in accessing care and support.<sup>16</sup> For example, because older people have often developed chronic medical conditions, including high blood pressure and cardiovascular disease, gender reassignment surgeries are riskier, and could exacerbate their preexisting conditions.<sup>17</sup>

### **Fear of Discrimination is Especially Likely to Deter Many Transgender Older People from Accessing Healthcare and Using Available Services**

Transgender older people are even more likely than other LGBT older people to be deterred from obtaining the services and supports they need due to fear of discrimination.<sup>18</sup> For example, while 20 percent of LGBT older people between the ages of 45 and 75 fear that their relationships with healthcare providers (including hospital or nursing home staff) would be adversely affected if their sexual orientation

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<sup>12</sup> See Williams Institute, *Best Practices for Asking Questions to Identify Transgender and Other Gender Minorities on Population-based Surveys*, at 1 (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf>

<sup>13</sup> SAGE, *Out and Visible: The Experiences and Attitudes of Lesbian, Gay, Bisexual and Transgender Older People, Ages 45-75*, at 13, available at [www.sageusa.org/files/LGBT\\_OAMarketResearch\\_Rpt.pdf](http://www.sageusa.org/files/LGBT_OAMarketResearch_Rpt.pdf).

<sup>14</sup> Movement Advancement Project (MAP), *Improving the Lives of LGBT Older People*, at 35 (2010) (quoting Public Advocate for the City of New York, *Improving Lesbian, Gay, Bisexual and Transgender Access to Health Care at New York City Health and Hospitals Corporation Facilities* (2008)), available at [www.lgbtmap.org/file/improving-the-lives-of-lgbt-older-people.pdf](http://www.lgbtmap.org/file/improving-the-lives-of-lgbt-older-people.pdf).

<sup>15</sup> Williams LGBT Aging Report, *supra* n.1, at 3.

<sup>16</sup> Movement Advancement Project (MAP) and Services and Advocacy for LGBT Elders (SAGE), *Understanding Issues Facing LGBT Older People*, at 4 (2017), available at <http://www.lgbtmap.org/file/understanding-issues-facing-lgbt-older-people.pdf>.

<sup>17</sup> Carina Storrs, CNN, *Gender transitioning for seniors has unique challenges* (June 3, 2015), available at <http://www.cnn.com/2015/06/03/health/senior-gender-transition/index.html>.

<sup>18</sup> Williams LGBT Aging Report, *supra* n.1, at 1.

were known, 44 percent of transgender older people fear that disclosing their gender identity would impair their relationship with their healthcare providers.<sup>19</sup>

The fear that many transgender older people experience is compounded by the fact that, unlike their other LGBT counterparts, many transgender individuals do not have the option to conceal their sexual minority status from health professionals, as their body may reveal scars or other evidence of their gender identity.<sup>20</sup> Because of this, transgender individuals are more susceptible to discrimination and abuse by health professionals. This is especially true for transgender older people, who seek more frequent and intimate healthcare due to age-related physical conditions and disabilities.<sup>21</sup> The fear of discrimination that many transgender older people experience is often well-founded.<sup>22</sup> Over one-third of transgender older people have reported experiencing discriminatory events such as the denial of healthcare.<sup>23</sup>

### Conclusion

While transgender older people are resilient, they are nonetheless a quite vulnerable population. As outlined above, transgender older people – including many New Yorkers - face numerous barriers to successful aging and access to healthcare. Given the health challenges faced by LGBT older people and especially transgender older people; the great risk of greatest social and economic need; the great risk that LGBT older people and especially transgender older people will not access the services and supports they need to live independently; and most importantly, the paucity of culturally competent healthcare that LGBT older people and transgender older people in particular can access, the New York City Commission on Human Rights must do what it can to improve the lives of transgender older people in the city. Clarifying definitions around gender and providing new protections – including prohibiting the deliberate misuse of an individual’s chosen name, pronoun, or title; and protecting the right of individuals to use single-sex facilities without fear of harassment - are critical. SAGE enthusiastically supports the New York City Commission on Human Rights’ proposal to amend its rules to establish certain definitions and to clarify the scope of protections with respect to gender in the New York City Human Rights Law.

Sincerely,

Aaron Tax  
Director of Advocacy

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<sup>19</sup> Movement Advancement Project (MAP) and Services and Advocacy for LGBT Elders (SAGE), *Understanding Issues Facing LGBT Older People*, at 19 (2017), available at <http://www.lebtmap.org/file/understanding-issues-facing-lgbt-older-people.pdf>.

<sup>20</sup> *Williams LGBT Aging Report*, *supra* n.1, at 8.

<sup>21</sup> *Id.*

<sup>22</sup> Movement Advancement Project (MAP) and Services and Advocacy for LGBT Elders (SAGE), *Understanding Issues Facing LGBT Older People*, at 18 (2017), available at <http://www.lebtmap.org/file/understanding-issues-facing-lgbt-older-people.pdf>.

<sup>23</sup> *Williams LGBT Aging Report*, *supra* n.1, at 14.





Kaleb Dornheim - page 1

Good morning. My name is Kaleb Dornheim, I use they/them pronouns, and I work at GMHC as an advocacy specialist in the Police Department. I would like to thank ~~the~~ <sup>the Commission</sup> for allowing me & other transgender advocates to testify & listening to us, & the City Comm on Human Rights for making moves to update their language.

GMHC has three general comments. First is that the Commission take steps to define non-bin as its own category, not only under the transgender umbrella. Some nonbinary folks identify as trans, like me, but there are many others who don't claim a trans identity. There have also been many efforts to move to position nonbinary as a separate umbrella term. Second, each of the examples given within the updated definitions should at least include one example for how it would apply to a person who is non-binary. Many of the examples provided do not make sense to use to talk about individuals outside the gender binary, and this further isolates us by giving less visibility to our unique experiences. Third, when this document is translated to other languages, the Comm should ensure that there is cultural sensitivity and proper interpretation.

Kaleb Dornheim - pg 2

GMHC also would like to touch on spec definition language comments. On page 5, under the definition of gender-non conforming we recommend to delete the word "tradition" from the definition and replace it with "people's gender expectations", as many cultures traditions have been affected & changed by colonialism, & may not be the root specific the commission is speaking a. We also suggest that the commission acknowledge that different individuals may or may not be as non binary and or under the definition of gender non-conforming. Additionally on page 8, under the definition of trans we recommend that it is made more clear that the list is not exhaustive & does not include all trans identities. We also propose a change on the terms FTM and MTF to trans man / masculine and or trans woman femme. The terms FTM and MTF have too much emphasis on the transition and the goal of the journey for the trans person. The terms center the sex coercively assigned at birth, & suggest an end point for a transition.

Once again I ~~am~~ thank ~~the~~ the City Commission on Human Rights for their time & willingness to listen to trans folks about language we use & have a role in shaping instead of having it shaped for us, without us.



MATEO GUERRERO  
TABARES

TESTIMONY OF MAKE THE ROAD NEW YORK

New York City Commission on Human Rights

Hearing and Opportunity to Comment on Proposed Rules

September 25th, 2018

My name is Mateo Guerrero-Tabares and I am an organizer at Make the Road NY, an organization that builds power in Latinx and working class communities to achieve dignity and justice through organizing, policy innovation, education, and services. Our Trans Immigrant Project (TriP) in Jackson Heights and GLOBE justice project in Bushwick supports Transgender, gender nonconforming, gender non-binary and queer communities to combat the different forms of violence they face at school, at work, at home, in the streets, and in any aspects of their life. We do so by providing community education, leadership development opportunities, organizing around campaigns to shift towards more progressive policy, rapid response to hate violence and work in conjunction with the legal team to tackle individual and collective cases of discrimination.

As an organization, we commend the New York City Commission on Human Rights for reviewing and clarifying definitions that impact the protections of our communities with respect to gender in the New York City Human Rights Law. There are three main areas of comments, *1 consistency and/or shifting language, 2. Concepts and 3. Diversify the gender examples.*

**For the purposes of consistency and/or shifting language:**

- (a) In terms *cisgender, transgender and gender nonconforming*, the opening sentences utilize the word "adjective" to begin to define how a person who uses the terminology may or may not identify as. We suggest that the Commission uses the word "term" as an opening sentence to remain in consistency with the structures of definitions suggested on Local Law 38 of 2018.
- (b) On the definition for gender identity we consider that is important to replace the last sentence of "Gender identity is not the same as sexual orientation and is not visible to others" to "Gender identity is may or may not be the same as sexual orientation and may or may not be visible to others" in order to expand what gender identity may or may not be, as well as it allows for future nuances on the understanding of gender identity.
- (c) Regarding to the definition of *transgender*, we suggest to move from "FTM" as well as "MTF" to "trans-masculine/trans-man" and "trans-femme/trans-woman" and/or "a woman of trans experience" and "a man of trans experience". The acronyms FTM



used for female to male, and MTF for male to female, have a heavy emphasis on the persons transition and expectation on their goal/outcome of their transition, rather than the current identity of the person.

### Concepts:

- (a) The term sex is used multiple times throughout the proposed rule, it is in the definitions of *cisgender*, *gender identity* and different examples of the impact of discrimination on individuals at single-sex facilities/programs. Additionally, sex as it is described in the proposed rule is consistent with Local Law 38; however, being part of a community group where the definition of sex is more expansive than “assigned at birth” we suggest a defocusing on the usage of the word sex throughout the proposal, and rather use the term gender. We believe that gender is a term that is more representative than sex to the intended definition and impact. We suggest using phrases such as “*using a facility that is more appropriate with their gender identity/expression*” when referring to single-sex facilities. Sex whether *assigned* or perceived at birth is ever changing and evolving through puberty and aging, regarding of whether or not is in hormone treatment.
- (b) Additionally, we are suggesting to replace the wording of *gender non-conforming* to a boarder term *Gender Expansive*. In the past years many of the community members who we work closely with have been identifying with gender non-binary to emphasize their rejection of the current binary gender *expectations*, and moved from non-conforming since non-binary gives more agency and autonomy into owning their gender versus rejecting normative expectations. We suggest that terms such as non-binary, non-nonconforming, gender fluid, agender, and many more<sup>1</sup> are included under *Gender expansive* umbrella, with the understanding that *gender expansive is a term used by individuals to broaden their commonly held definitions of gender, including but not limited to expression, identity, roles and/or other perceived gender norms*. This definition allows to include community members who’s understanding of their identity is not boxed into a particular gender but rather in the spectrum.

### Diversify the gender examples:

- (a) Page 10 and page 11 include examples of the impact that the usage of the terms can have when a case of discrimination emerges. The current examples laid out, although thoughtful and including examples of the impact of trans community members, it does not include an example of a person who identifies with any category of gender expansiveness.

Thank you for your creating the time for comments, and taking this points into consideration.

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<sup>1</sup> Not a limiting list of the different types of genders that exist

September 25, 2018

NYC Commission on Human Rights  
22 Reade Street, First Floor  
New York, New York 10007

*Krone  
Pavel*



**Testimony Re: In relation to amending CHR Rules to establish certain definitions and clarify the scope of protections with respect to gender**

Legal Services NYC (“LSNYC”) is the largest civil legal services provider in the country. LSNYC has been dedicated to serving LGBTQ communities for over 25 years. LSNYC’s LGBTQ/HIV Advocacy Project is the largest direct services provider for low-income LGBTQ communities in the state. Every year, LSNYC’s LGBTQ/HIV Advocacy Project represents hundreds of low-income LGBTQ clients across all of our practice areas. We also litigate extensively under the New York City Human Rights Laws.

LSNYC applauds the efforts of the NYC Commission on Human Rights (“CHR”) to update and clarify protections contained in the one of the most expansive civil rights laws in the nation. The amendments to Title 47 of the Rules of the City of New York to establish definitions for “cisgender,” “gender identity,” “gender expression,” “gender,” “gender non-conforming,” “intersex,” “sex,” and “transgender” will greatly benefit the clients and communities we serve. The amendments also describe and explain covered entities’ non-discrimination obligations, which is an important step towards protecting our clients and the ability of all New Yorkers to work and live free from discrimination based on gender, including gender identity and gender expression.

LSNYC notes that the proposed amendments could benefit from even more clarity and more comprehensive language. Such clarity will further protect New Yorkers, and will also establish important precedence for other jurisdictions that choose to follow NYC’s lead. This is especially important considering that NYC is already a leader in equality for transgender and gender non-binary individuals.

The definition for the term “gender non-conforming” is an important step for the law to be more comprehensive of all identities; however, the language in the subsequent definitions can be made clearer and more inclusive to further support gender non-conforming New Yorkers. Many of our clients find that their identities fall somewhere in between or outside of the gender binary. In 2017 alone, LSNYC has assisted 57 New Yorkers who preferred gender neutral pronouns or neither identified as male or female. Although there is growing awareness about individuals who identify as gender non-conforming, gender non-binary, or genderqueer, society-at-large is still largely ignorant to these individuals’ identities. And every day, their identities are disregarded and disrespected.

First, for the definition of “cisgender,” for the sake of clarity, the definition should omit the word “sometimes.” This is because in contrast, the proposed definition of “transgender” does not include the word “sometimes.” Further, we note to be more inclusive, the clause “i.e., someone who is not transgender” can be

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Raun J. Rasmussen, Executive Director  
Susan J. Kohlmann, Board Chair



changed to “e.g., someone who is not transgender or gender non-binary.” Otherwise the original proposed definition leaves no room for gender non-binary individuals and implies a binary of either transgender or cisgender.

Second, the definition of “gender identity,” to be more inclusive can be modified from “is not visible to others” to “may or may not be visible to others.”

Third, in the definition of “gender non-conforming,” the phrase “traditional gender expectations” can be modified to “other people’s expectations.” The definition can also be modified to include alternative terms for “gender non-conforming,” including gender non-binary and genderqueer, as the term “gender non-conforming” does not fully encompass all the relevant terminology. This change will also reflect and respect the fact that people who do not identify within the gender binary often use many different terms to describe themselves.

Fourth, to clarify the definition of “intersex” the following clause can be added: “This term does not reflect a person’s gender identity or sexual orientation.”

Finally, we also note some general observations about the examples used in § 2-06 “Prohibition on Discrimination Based on Gender.” The protections included in this section are useful and illuminative. However, we note examples including gender non-binary individuals are lacking. Specifically, sub-sections (d) and (e) may include some examples. As mentioned earlier, it is important that the protection of gender non-binary individuals is explicit in these Rules. Additionally, including specific examples will help covered entities to understand and clarify their obligations towards gender non-binary individuals.

We thank the CHR for holding this important hearing and for allowing New York City to lead the nation in equality for transgender and gender non-binary people.

Sincerely,  
Legal Services NYC

September 19, 2018

Michael Silverman  
New York City Commission on Human Rights  
22 Reade Street  
New York, New York 10007

José  
Ludman

Re: Public Comment on Changes to Gender Non-Discrimination Policy

Dear Michael Silverman and NY Commission on Human Rights,

Thank you for your leadership in developing regulations and model policy to prevent discrimination in New York City. GLSEN New York City commends the New York City Commission on Human Rights' for their intentional work to create policies that protect all residents from discrimination on the basis of gender identity, gender expression, and sexual orientation. Policies like this are an important step to creating affirming climates for LGBTQ students, educators, and administrators in all our schools.

At GLSEN New York City, we believe that all students deserve a safe and affirming school environment where they can learn and grow. On a national level, GLSEN conducts extensive and original research to inform evidence-based solutions for K-12 education that works for all students. GLSEN's 2015 National School Climate Survey reflected that 66% of transgender students throughout New York state were denied access to a bathroom or locker room that aligned with their gender identity. Further, 46% of transgender students in the state reported that they were prevented from using their name and pronouns in schools.

When school districts and individual schools adopt and implement comprehensive bullying/harassment policies with enumerated categories of sexual orientation, gender identity, and gender expression and with clear and effective systems for reporting, students experience decreased victimization and increased feeling of belonging and additional positive educational outcomes. By enumerating protections for transgender residents, including transgender students, you are working to affirm their right to attend school safely and be included in the classroom.

In reviewing this policy, it is explicit that the Commission was intentional in recognizing the role of fluidity, androgyny, and non-binary identities to the fabric of the experience of transgender and gender nonconforming people throughout the state. This effort should be applauded and works to fully strengthen the policy. We support the changes made to the New York City proposed rule, and have two brief suggestions to ensure that the policy is as effective as possible in creating protections for transgender stakeholders in schools.

First, we suggest that the final policy remove the definitions of "gender" and "sex" as defined in this proposal. The definitions provided under "gender identity" and "gender expression" should suffice. Further, the nature of defining "sex" as encompassing gender identity as it stands in the definition subsection creates confusion about the definition of gender identity itself. For clarity, we suggest removing these two definitions.

Secondly, the policy could be strengthened by adding examples to the “violations” section, subsections a, b, and c (referring to gender markers, sex-segregated facilities, and dress codes, respectively) that refer to the ways that this impacts educational settings. For example, the policy would provide stronger guidance in creating safe and affirming schools if it listed violations such as “refusing to allow a student to use the appropriate name and pronouns in class,” “barring students from accessing locker rooms in schools on the basis of their gender expression or identity,” or “school dress codes may not be enforced based on gender or gender stereotypes.” By specifically tying these violations to the experiences of students in New York City schools, this policy will offer clear direction for schools looking to support transgender youth.

Above all, we support the proposed regulation to further protect transgender students from discrimination and support its adoption in light of suggested revisions.

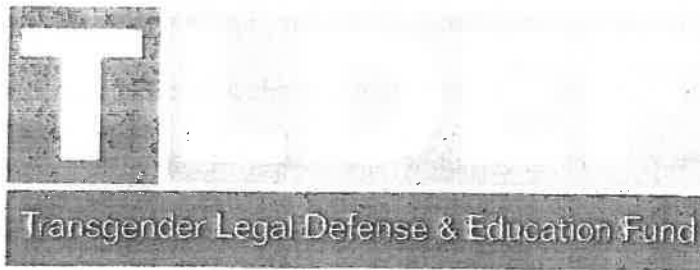
Thank you for your dedication to strengthen anti-discrimination protections in our schools. For additional information, please contact Jose Rodriguez, GLSEN New York City Co-Chair at [jose.glsennyc@chapters.glsen.org](mailto:jose.glsennyc@chapters.glsen.org).

Respectfully,

GLSEN New York City



AC Dumlao.



Testimony before the NYC Commission on Human Rights

Concerning Local Law No. 3 of 2002,

Local Law No. 38 of 2008,

And the proposed amendment to Title 47

Of the Rules of the City of New York

Tuesday, September 25, 2018

Good morning. Thank you to the New York City Commission on Human Rights for holding this public hearing today.

My name is AC Dumlao. I'm a proud transgender non-binary person and I use they/them pronouns. This being so, I am no stranger to NYC public hearings in regards to gender inclusion. A little more on me: I'm also a child of Filipino immigrants and first generation American. 27 years ago, I was born right over the bridge in Brooklyn. Today, I am here on the behalf of the Transgender Legal Defense & Education Fund, also known as TLDEF, where I lead both the Name Change Project and Community Education initiatives as programs manager. I am joined by my colleague, Tabytha Gonzalez.

Two years ago, I came out as trans non-binary. Since then, I have dealt with a bevy of reactions to my gender identity in the workplace. And while I've had my share of uncomfortable moments, misgendering as "she" instead of "they," and becoming the "Token Trans Person/Friend," it's important for me to acknowledge how incredibly privileged I am: I have a college degree, a constant roof over my head, a full-time salaried job at a trans centered organization, and so many more advantages that are not typical of trans, gender non-conforming, non-binary, and intersex communities at large.

And so, what I am here to do today is to speak up for my communities, particularly the participants of TLDEF's name change project: low-income trans, non-binary and intersex individuals. When on intake calls with these name change participants, I've heard countless stories of discrimination, almost all of which are listed as examples of violations in the proposed new material: individuals deliberately being called the wrong pronoun, being forced to use their legal name on HR documentation or for their e-mail handles, being discriminated against when it comes to work provided health insurance coverage, and so much more. Because of this, I am proud to support The Commission's proposed amended rules to explicitly establish definitions in regards to gender.

In addition to the compressive proposed amendments, I respectfully suggest the following: Adding in a definition for the term "non-binary," just as "cisgender," "transgender," "gender non-conforming," and "intersex" are given full definitions. To build off of this, I suggest adding or re-working the "Examples of Violations" to include

more non-binary examples and the use of “they/them” pronouns. The current new material as proposed leans heavily binary and even though these are just examples, language is important and visibility is important. TLDEF appreciates you keeping these considerations top of mind as you finalize these vital rules that will have a profound impact on the lives of New Yorkers.

I thank you so much again for the opportunity to give testimony today.



# CalLEN-LORDE

TESTIMONY BEFORE THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS  
September 25, 2018

Submitted by Kimberleigh Joy Smith, MPA – IN WRITING  
Senior Director for Community Health Planning and Policy

Good Afternoon. Thank you, Commissioner Malalis and New York City Council Members Dromm, Chin, Mendez, Johnson, Vacca, Menchaca, Torres, Rodriguez, Salamanca and Kallos for the opportunity to submit written testimony in support of proposals to amend rules to establish certain definitions and clarify the scope of protections with respect to Local Law No. 3 of 2002 (“Local Law 3”) and Local Law No. 38 of 208 (“Local Law 38”). My name is Kimberleigh Smith, and I am representing Callen-Lorde Community Health Center.

Callen-Lorde Community Health Center is a growing community health center with a mission to reach lesbian, gay, bisexual and transgender communities and people living with HIV in New York City and beyond. As a vital part of the city’s dynamic healthcare infrastructure, Callen-Lorde provided a patient-centered medical home for nearly 18,000 patients in 2017, more than 4,000 of whom identify as transgender or gender non-binary (TG/NB).

To our knowledge, Callen-Lorde is home to the largest outpatient TG/NB clinical practice in the nation. Our health center provides a trans-affirmative environment where patients can receive hormone therapy as well as engage in an ongoing relationship with a primary care provider, behavioral health and/or a dental provider in order to address the full spectrum of health and wellness needs. We also provide tailored Care Coordination services for those who need additional support around benefits and entitlements, insurance, housing and other services.

In addition to our individual clinical work, Callen-Lorde seeks to transform institutions and policies that impact TG/NB communities. For example, our informed consent protocols for transgender health have been widely shared with providers in New York City and across the world and we have been at the forefront of collecting sexual orientation and gender identity data and have developed accessible forms – like electronic health record templates – that include gender pronouns and preferred names.

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At Callen-Lorde we believe true liberation will only come when the LGBTQ community and our families can adequately access culturally competent and comprehensive health care in all forms. For this reason, Callen-Lorde supports the proposed amendments to both Local Laws 3 and 38 (and Title 47 of the Rules of the City of New York), and respectfully submits herein recommendations to strengthen these proposals.

Callen-Lorde supports the proposed amendments because we believe the changes will advance health equity, if adopted. Health equity exists when all people have the opportunity to achieve their full health potential regardless of the color of their skin, their birthplace, their level of education or their gender identity or where they live. The proposals will seek to advance health equity by preventing discrimination based on sex, gender identity and gender expression. Callen-Lorde believes that these efforts must extend fully to healthcare access.

The commitment from New York City's elected and appointed decision makers to recognize the full spectrum of gender identities and expressions of our city's inhabitants has been incredible. We applaud the Commission, the New York City Department of Health and Mental Hygiene and the New York City Council for efforts such as Intro. 954, the addition of a new, third category of "X" on birth certificates to reflect a non-binary gender identity as well as the LGBTQ Healthcare Bill of Rights.

If the Commission's proposed changes are adopted and implemented, we urge you to continue to work with community to get the word out and make sure our city's companies, institutions etc. are aware.

In the meantime, Callen-Lorde offers the following recommendations:

First, new definitions should define non-binary as its own category, not under the transgender umbrella. Each example listed should include an example for how it would apply to a person who identifies as non-binary. When translating into other languages, the Commission should ensure that there is cultural sensitivity and proper interpretation on the non-binary identity.

Callen-Lorde recognizes that gender identity is not always binary. The experience associated with so-called 'gender dysphoria' is not limited to a desire to just be of the opposite gender, but may include a desire to be non-binary. A recent legal decision validates this idea. New York State Office of

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Temporary and Disability Assistance overturned an insurance company's decision to deny coverage for a breast reduction procedure to treat gender dysphoria in a Medicaid recipient who did not identify as male or female.

Secondly, Callen-Lorde supports the Commission's proposals to clarify the scope of protections with respect to gender in the New York City Human Rights Law. Even with state-level legal and executive rulings removing restrictions on medically-necessary healthcare for transgender Medicaid and commercial plan recipients (including hormone therapy for those under 18), transgender patients still are being denied coverage for gender affirmation services for reasons not supported by regulation or law. For example, Callen-Lorde is working on 73 active denials with patients. More than 25% of Callen-Lorde's total TG/NB patient population (4,639) receive case management services, the vast majority of which is insurance navigation related to gender-affirming care. Fighting discriminatory denials takes countless hours of provider and staff time and ultimately delays critical care for patients. There have been some very recent actions taken at the state level that we hope will alleviate these issues, thus we are cautiously optimistic that the trend of health insurance denials will move downward.<sup>1</sup> We urge the Commission (and NYC DOHMH) to support the state's efforts.

Specifically, regarding §2-06 Prohibition on Discrimination Based on Gender section (d) Covered Entities Must Provide Equal Employee Benefits Regardless of Gender and health benefit plans, Callen-Lorde recommends that the Commission consider enhancing this section with regulatory language specific to health-related insurance and other health-related coverage. This language could align with the Affordable Care Act's Section 1557 non-discrimination provision, excerpted below.

## § 92.207 Nondiscrimination in health-related insurance and other health-related coverage.

(a) *General.* A covered entity shall not, in providing or administering health-related insurance or other health-related coverage, discriminate on the basis of race, color, national origin, sex, age, or disability.

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<sup>1</sup> In June, Governor Andrew Cuomo announced health care protections for transgender New Yorkers in anticipation of a potential roll back of the Affordable Care Act's key non-discrimination provision, Section 1557 <https://www.governor.ny.gov/news/governor-cuomo-announces-health-care-protections-transgender-new-yorkers>.

In addition, effective September 1, mainstream Medicaid Managed Care plans', HIV SNPs and HARPS policies, procedures and coverage criteria for the authorization and utilization management of hormone therapy and surgery for the treatment of gender dysphoria under 18 NYCRR 505.2(j) must comply with new, clarifying Medicaid guidance. [https://www.health.ny.gov/health\\_care/managed\\_care/plans/treat\\_gender\\_dysphoria.htm](https://www.health.ny.gov/health_care/managed_care/plans/treat_gender_dysphoria.htm).

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**(b) Discriminatory actions prohibited.** A covered entity shall not, in providing or administering health-related insurance or other health-related coverage:

**(1)** Deny, cancel, limit, or refuse to issue or renew a health-related insurance plan or policy or other health-related coverage, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, age, or disability;

**(2)** Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability in a health-related insurance plan or policy, or other health-related coverage;

**(3)** Deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for any health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual, based on the fact that an individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available;

**(4)** Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition; or

**(5)** Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition if such denial, limitation, or restriction results in discrimination against a transgender individual.

**(c)** The enumeration of specific forms of discrimination in paragraph (b) does not limit the general applicability of the prohibition in paragraph (a) of this section.

**(d)** Nothing in this section is intended to determine, or restrict a covered entity from determining, whether a particular health service is medically necessary or otherwise meets applicable coverage requirements in any individual case.

Finally, we offer the following definitional recommendations and edits to the proposal:

**Cisgender:**

- *"an adjective sometimes used to describe a person ..."*
- To keep consistency with the opening of definitions, particularly with the definition for the word "Transgender", the suggestion is to add: *"Is a term used to describe a person ..."*



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## Gender Identity:

- Change the last “not” to “may or may not” to not limit the definition

## Gender non-conforming:

- Delete: the word “traditional” from the definition and replace it with “other people’s gender expectations”
- Create a category of Non-Binary as a separate definition or another option is to clarify that different individuals may or may not identify as “gender non-binary” within the definition of GNC.
- Change the terminology for the definition to “Gender Expansive” and within that name as a definition then lay out the current definition of gender non-conforming.

## Transgender:

- Make more clear that the list is not exhaustive
- Propose a change on the terms FTM and MTF to “trans man/masc” and/or “trans woman/femme”. The terms FTM and MTF have too much emphasis on the transition and the goal/expectation of the journey for trans\* person.
- *Another suggestion: “a woman of trans experience, a man of trans experience”*

## Change to “covered entities must provide equal employee benefits regardless of gender expression and gender identity”

Thank you for the opportunity to submit testimony today. Callen-Lorde is encouraged by the steps the Commission is taking to protect all New Yorkers.



TESTIMONY OF  
AGUDATH ISRAEL OF AMERICA AND  
THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA  
BEFORE THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS  
REGARDING THE PROPOSED AMENDMENTS TO TITLE 47 OF THE RULES OF THE CITY OF NEW YORK  
SEPTEMBER 25, 2018

Agudath Israel of America, a national Orthodox Jewish organization founded in 1922, and the Union of Orthodox Jewish Congregations of America, representing Orthodox Jewish congregations throughout the United States, are concerned that the proposed amendments to Title 47 of the Rules of the City of New York, which would add additional definitions for terms involving gender identity and expand the non-discrimination requirements on all covered entities, could lead to religious organizations, particularly synagogues and schools, being forced to violate their religious beliefs.

Specifically, the amendments as currently worded would require all entities covered by Section 8-107 of the New York City Administrative Code to allow those of different biological genders to have access to single-sex facilities and to participate in single-sex programs. We are concerned the amendments could thus be used to require synagogues, even against the religious rulings of their rabbinic leaders, to allow those born as men to sit with women in the women's section of the synagogue, and those born as women to sit with men in the men's section of the synagogue. The amendments could also be used to require that, even against the religious principles of religious schools, those born as males be allowed to sit in all-female classes and those born as females to sit in all-male classes.

We believe that imposing these requirements on religious organizations would violate the Free Exercise Clause of the First Amendment, which provides for the free exercise of religion, and would also violate the state's anti-discrimination law (Section 296 (11) of New York State Executive Law), which provides explicitly that:

"Nothing contained in this section shall be construed to bar any religious or denominational institution, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from . . . taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained." (emphasis added).

This exemption in the state anti-discrimination law allows religious organizations to "take action" to promote and uphold the religious principles of the organizations, which would include barring those born as men from the women's section of synagogues, those born as males from all-female classes in religious schools, and the like.

We find it difficult to imagine that the New York City Human Rights Commission, which has as one of its mandates the protection of religious freedom, would intend that its new amendments would put houses of worship and religious schools in the position where they could not follow their faith. Therefore, our strong suggestion and recommendation is that the proposed amendments should contain an explicit exemption for religious organizations from having to comply with any aspect of the amendments that

would be a violation of their religious beliefs. One approach would be to adopt the language that already exists in state law, namely, that "Nothing contained herein shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained ."

We believe that such an amendment would protect religious institutions from being compelled to violate their religious beliefs, and protect them from being cited with violations of New York City's anti-discrimination law for upholding their religious beliefs.