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Statement by Jennifer L. Levi, Esq.
Before the Joint Committee on Judiciary in Support of Raised Bill No. 5723
An Act Concerning Discrimination

Honorable Co-Chairs and Members of the Committee:

I am grateful for the opportunity to testify in strong support of Raised Bill No. 5723, An Act Concerning Discrimination, which would add the phrase "gender identity and expression" to all provisions of Connecticut laws that prohibit sex discrimination. I would especially like to thank Representative Michael Lawlor and Senator Andrew MacDonald for sponsoring this important and much-needed legislation. I am a Senior Staff Attorney at Gay & Lesbian Advocates & Defenders in addition to being on the full-time faculty at the Western New England College School of Law. As an attorney at New England's leading legal rights organization dedicated to ensuring legal equality for lesbians, gay men, bisexuals, transgender people, and those living with HIV or AIDS, a key focus of my work has been addressing the pervasive discrimination faced by transgender people in housing, employment, public accommodations, access to benefits, education, and other areas. My goal today is to explain why it is so crucial that the legislature add the phrase "gender identity and expression" to Connecticut's non-discrimination statutes.

I. Gender Non-Conforming People Desperately Need Legal Protection from Discrimination

The need to protect people from discrimination on the basis of gender identity and expression is great.

A number of high profile recent incidents during which transgender people have faced serious discrimination and violence highlight this point. Because of the success of the movie "Boys Don't Cry" many people now know about the violence a transgender young man named Brandon Teena faced when others learned that he was a biological female with a masculine gender identity. Upon learning this, two friends of Brandon's girlfriend brutally raped and assaulted him. Rather than appropriately responding to his criminal complaint, local Nebraska police officers treated Brandon like the criminal and delayed in arresting his attackers. As a result, his attackers hunted down Brandon and murdered him.

In a second example of horrifying discrimination experienced by a transgender person, Tyra Hunter was without emergency medical care for a lengthy time because of the bigoted response of the Washington, DC, EMTs who stopped treating Tyra when they learned that she had male genitals. Rather than caring for her, they stood back and made comments such as "This ain't no bitch" and "Look, it's got a cock and balls."

Two other cases of employment discrimination that have received some public attention include those of Lynn Conway, a pioneer of microelectronic chip design, and Dana Rivers, an award-winning teacher in the California public schools. In both of these cases, otherwise well-respected and admired employees lost their jobs when their employers learned that they were transgender. Otherwise exemplary employees were terminated simply because of outdated notions of appropriate expressions of masculinity and femininity.

Unfortunately, these cases represent just the tip of the iceberg. Transgender people throughout Connecticut, in cases which have not received the attention of those just mentioned, face serious discrimination every day in jobs, housing, lending, and public accommodations. Unfortunately because of pervasive prejudice, discrimination and misunderstanding, transgender people need a law to allow them to do that which most people take for granted – work, take out loans, seek and find housing, and use public accommodations without being subjected to prejudice and discrimination.

II. Connecticut Will Join Other State and Local Jurisdictions That Ensure Freedom from Discrimination Based on Gender Identity and Expression

Connecticut need not fear that by prohibiting discrimination based on gender identity and expression it will be entering into uncharted territory. Instead, Connecticut will join the growing number of state and local governments that have already recognized that preventing discrimination based on gender identity and expression is both necessary and desired and therefore should be addressed explicitly in law. In passing Raised Bill 5723, Connecticut would become the 14th state to explicitly prohibit discrimination against transgender people joining California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.

Over 30 years ago, Minneapolis became the first municipality to adopt transgender-specific non-discrimination language. Since then, the number of additional jurisdictions that have adopted similar measures has grown at a dramatic rate. One study estimates that nearly one-third of the country's population live in a jurisdiction that has in place some form of explicit protection for transgender people.[1] In addition, there are hundreds of employers and dozens of universities with non-discrimination policies protecting transgender people.[2]

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[1] National Gay and Lesbian Task Force, 2005: The Year in Review, available at http://www.thetaskforce.org/downloads/reports/fact_sheets/transgender_year_in_review.pdf [last visited, March 4, 2008].

[2] A small sampling of universities and employers with non-discrimination policies protecting transgender people includes: Aetna Inc., Xerox Corp., Yale University, Wesleyan University, Hartford Financial Services Co., UBS AG, Pitney Bowes Inc., Boehringer Ingelheim Pharmaceuticals Inc., Diageo North America, FuelCell Energy Inc., Connecticut College, and Hubbell Inc.. For a complete list see http://www.transgenderlaw.org/college/index.htm#policies and http://www.transgenderlaw.org/employer/index.htm [sites last visited, March 18, 2008].

III. This Bill is a Clarification, Not a Change in Law

It bears mention that the proposed bill is a clarification of law, not a change. As the Connecticut Commission on Human Rights and Opportunities ("CHRO") correctly explained in the Declaratory Ruling on Behalf of John/Jane Doe (November 9, 2000), transgender people[3] are already covered under existing state sex discrimination prohibitions. http://www.state.ct.us/chro/metapages/HearingOffice/HODecisions/declaratoryrulings/DRDoe.htm. In response to a request for a declaratory ruling articulating the scope of Connecticut law, the CHRO explained that the statutory prohibitions against discrimination on the basis of sex in Conn. Gen. Stat. §§ 46a-60(a)(1), 46a-64(a)(1), 46a-64c(a)(a) and 46a-66(a) (prohibiting discrimination in employment, public accommodations, housing, and credit practices) include discrimination against transgender persons.

The CHRO's analysis is well-established by current state and federal precedent despite some earlier case law to the contrary. As the Commission explained, a number of cases from the 1970s and early 1980s had suggested that there was some sort of "transgender exception" from existing sex discrimination laws. See, e.g., Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984); Holloway v. Arthur Andersen & Co., 566 F.2d 659 (9th Cir. 1977); Powell v. Read's, Inc., 436 F.Supp 369 (D.Md. 1977); Voyles v. Ralph K. Davies Medical Center, 403 F.Supp 456 (N.D.Cal., 1975); Sommers v. Iowa Civil Rights Comm'n, 337 N.W.2d 470 (Iowa, 1983).

In those early cases, federal and state courts heard claims brought by transgender individuals who had been terminated from their jobs after notifying employers of their intention to undergo sex-reassignment surgery ("SRS") or when employers learned that an employee had undergone sex-reassignment in the past. The claims brought were straightforward sex discrimination claims. For example, a highly regarded airline pilot (hired as male) was terminated when her employer Eastern Airlines learned that she intended to undergo SRS. Ulane, 742 F.2d at 1084. Karen Ulane argued that because she was qualified when employed as a male and fired when intending to work as a female, the basis of her claim was clearly rooted in sex discrimination. The Seventh Circuit Court of Appeals disagreed. Based on reasoning that many other courts have now rejected as discriminatory, the court created an unprincipled exclusion from existing sex discrimination law for transgender persons. Ulane, 742 F.2d at 1084. For a period of time, several other jurisdictions replicated this analysis. Holloway, 566 F.2d 659; Powell, 436 F.Supp 369; Voyles, 403 F.Supp 456; Sommers, 337 N.W.2d 470.

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[3] The language in the raised bill is drawn from the Connecticut Hate Crimes Law. "Gender identity and expression" is defined in the raised bill, as it is in the Connecticut Hate Crimes Law, to mean "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's assigned sex at birth" C.G.S.A. § 53a-181i.

Earlier cases notwithstanding, as the CHRO explained in the 2000 John/Jane Doe Ruling, the 1989 United States Supreme Court case of Price-Waterhouse v. Hopkins, 490 U.S. 228, changed the legal landscape for transgender people and, as recent courts have explained, "eviscerated" the older exclusion. See, e.g., Smith v. City of Salem, Ohio, 378 F.3d 566, 573 (6th Cir. 2004). As the CHRO explained, the high court "ruled [in Price-Waterhouse] that having specific expectations that a person will manifest certain behavior based upon his or her gender is not only conceptually outmoded sexual stereotyping, but also an unlawful form of sex discrimination." CHRO, Declaratory Ruling (November 9, 2000), http://www.state.ct.us/chro/metapages/HearingOffice/HODecisions/declaratoryrulings/DRDoe.htm.

The November 9, 2000 CHRO decision reflects the near-consensus position of contemporary state and federal courts that have considered sex discrimination claims by transgender litigants. See Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005); Smith, 378 F.3d 566; Rosa v. Park West Bank & Trust, Co., 214 F.3d 213 (1st Cir. 2000); Schwenk v. Hartford, 204 F.3d 1187 (9th Cir., 2000); Mitchell v. Axcan Scandipharm, Inc., No. Civ.A. 05-243, 2006 WL 456173 (W.D.Penn. February 17, 2006); Kastl v. Maricopa County Comm. College Dist., No. Civ.02-1531PHX-SRB, 2004 WL 2008954 (D.Ariz., June 3, 2004); Tronetti v. TLC HealthNet Lakeshore Hosp., No. 03-CV-0375E(SC), 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003); Doe v. United Consumer Financial Serv., No. 1:01 CV 112, 2001 WL 34350174 (N.D.Ohio, Nov. 9, 2001); Lie v. Sky Publ'g Corp., 15 Mass. L. Rptr. 412 (Mass.Super. 2002); Enriquez v. West Jersey Health Sys., 777 A.2d 365 (N.J.Super.Ct.App.Div. 2001); Doe v. Yunits, No. 001060A, 2000 WL 33162199 (Mass.Super. 2000); Maffei v. Kolaeton Industry, Inc., 626 N.Y.S.2nd 391 (N.Y.Sup., 1995).

IV. Laws State A Public Policy In Addition to Providing An Enforcement Mechanism

The purpose of non-discrimination laws is at least two-fold. One purpose is to create a vehicle for preventing and redressing discrimination against vulnerable and targeted communities or individuals. Because Raised Bill 5723 codifies existing law, it serves this purpose by clarifying that Connecticut law prohibits discrimination against transgender persons. A second and no less important purpose is to establish a clear statement of public policy in favor of equal treatment of transgender persons. By making this policy clear, the law helps to discourage discrimination and to limit the need for the enforcement mechanisms in place. In other words, part of the goal of adopting clear non-discrimination laws is to give notice to employers, landlords, lenders, and owners of establishments in order to keep discrimination from occurring in the first place.

The supporters of the raised bill ask this Committee and the legislature to add the phrase "gender identity and expression" to Connecticut non-discrimination laws to make clear that existing law protects transgender and gender non-conforming people. While the current scope of "sex" discrimination prohibitions in our laws may be apparent to persons with legal training or background, it may not be clear to ordinary individuals who have no reason to know of the CHRO decision or the courts' interpretation of laws. Raised Bill 5723 will provide this notice and clarity.

V. Conclusion

In closing, and on a personal note, this legislation is very important to me not just because of the work I do but because of the way it would impact my life. As a visibly gender non-conforming person (and one who identifies as transgender), I have often faced discrimination or adverse treatment because I am a woman who does not look like one. It is, for me, a daily experience to be referred to as "he" or be given hostile stares in the women's department of a clothing store. Shopkeepers and people in the service industry who have reflexively called me "Mr. Levi" often make me the object of their derision when they learn my name is "Jennifer." While the proposed legislation will not and need not change people's understandings of who is male and who is female, it will allow transgender people like me to continue to work, find housing, obtain credit, and use public accommodations, despite others' outdated notions of what it means to be a "real man" or a "real woman."

Submitted by:
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