The Future of LGBT Civil Rights and Equality in Maryland

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ARTICLE

THE FUTURE OF LGBT CIVIL RIGHTS AND EQUALITY IN MARYLAND

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INTRODUCTION

Maryland is indisputably one of the most LGBT-friendly states in the country. Maryland passed legislation prohibiting discrimination on the basis of sexual orientation in 2001,⁴ added sexual orientation to the state’s hate crime statute in 2005,⁵ and provided domestic partner benefits to state employees in 2009.⁶ Last year, Maryland became the sixth state to pass an unqualified marriage equality bill, the Civil Marriage Protection Act, H.B. 438, 430th Sess. (Md. 2012), which was affirmed by popular vote despite an organized campaign to defeat it. And yet, for low-income LGBT Marylanders, true equality is still often unrealized. Discrimination in education, housing, employment, and government services continue to degrade the health and welfare of LGBT youth and low-income people.

Advocates who spend most of their time in Annapolis may overlook the common problems faced by low-income LGBT people, including: bullying and violence against LGBT students, discrimination against LGBT youth in foster care and housing, bias in police response to LGBT victims of sexual assault and violence (especially in less affluent areas), discrimination and insensitivity in health care, and threats to safety in prison and detention facilities. These problems require moving past the Legislature and engaging the governmental agencies that promulgate regulations, direct public policy, and enforce protocol.

This article focuses on a subset of areas in which existing laws, and prior legislative approaches to address LGBT inequalities, have not been effective,

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and it proposes specific regulatory and policy solutions. First, this article discusses discrimination and bullying in Maryland’s education system. Second, this article addresses the frequent mistreatment of LGBT youth in foster care, as the result of systemic failures to properly train service providers, caseworkers, and foster parents. Third, it discusses the persistent problem of discrimination in employment and housing. These three issues represent a much wider array of issues faced by the LGBT community, particularly low-income LGBT Marylanders, all of which must be addressed in coming years in order for Maryland’s LGBT community to achieve real and lasting equality.

II. Education

Kevin is a gay sixteen year-old attending a public high school in Maryland. For two years, he has been bullied and harassed by other students: called names, punched, tripped, and ostracized. Over that period of time, he has filed more than twenty bullying reports with the school administration, reporting the abuse he suffered, and seeking help. Not one of those reports has been responded to. Kevin was never the subject of any disciplinary action, until one recent afternoon, one of the male students who has been bullying him for years stopped him in the hallway and called him a “faggot.” The two students ended up in a fistfight, which was broken up by a teacher. Almost immediately thereafter, Kevin was recommended for expulsion, while the bully was given a two-day suspension. School staff has never received training on issues of LGBT sensitivity and bullying.7

Kevin’s story represents an epidemic of anti-LGBT abuse within our schools, and of a culture of silence and neglect on the part of school administrators. There is a dearth of Maryland-specific data from which to extrapolate the common experience of an LGBT student in the state. However, national statistics compiled and reported by the Gay, Lesbian and Straight Education Network (GLSEN) suggest that as many as 82 percent of LGBT students are routinely bullied, and as many as 60 percent of bullied LGBT students do not report these incidents because they expect nothing to

7 Each section begins with a scenario. Scenarios contained in this article are based on true stories, which have been the basis for cases handled by the FreeState Legal Project. Certain details and names have been modified in order to protect confidentiality.
be done in response.\textsuperscript{8} Sadly, often nothing is done in response, and teachers and administrators may even foster homophobic school environments.\textsuperscript{9} Federal and state laws and policies exist to protect LGBT students from pervasive harassment in schools. In October, 2010, the United States Department of Education’s Office of Civil Rights released a letter to all schools receiving federal funds, iterating that schools are obligated under 20 U.S.C. § 1681, Title IX (Title IX) to protect LGBT students from pervasive bullying and harassment.\textsuperscript{10} The Department of Education opined that when “such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees,” schools may violate Title IX.\textsuperscript{11} Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal

\begin{itemize}
\item 71.3 percent heard other homophobic remarks (e.g., “dyke” or “faggot”) frequently or often.
\item 81.9 percent were verbally harassed (e.g., called names or threatened) in the past year because of their sexual orientation, and 63.9 percent because of their gender expression.
\item 38.3 percent were physically harassed (e.g., pushed or shoved) in the past year because of their sexual orientation, and 27.1 percent because of their gender expression.
\item 18.3 percent were physically assaulted (e.g., punched, kicked, injured with a weapon) in the past year because of their sexual orientation, and 12.4 percent because of their gender expression.
\item 60.4 percent of students who were harassed or assaulted in school did not report the incident.
\item 36.7 percent of the students who did report an incident said that school staff did nothing in response.
\item 31.8 percent missed at least one entire day of school in the past month because they felt unsafe.
\item Students who experienced higher levels of victimization in school because of their sexual orientation or gender expression had lower GPAs, and were more than twice as likely to report that they did not plan to pursue any post-secondary education (e.g., college or trade school) than those who experienced lower levels (10.7 vs. 5.1 percent).
\end{itemize}

\textsuperscript{8} Some of the most significant statistics are as follows:

\textsuperscript{9} Id.


\textsuperscript{11} Id.
Numerous federal courts have held that Title IX may be violated where pervasive bullying goes ignored and unaddressed by school administrators.  

Maryland has legislated further protections for victims of bullying. Under Md. Code Ann., Educ. § 7-424, school systems are required to report incidents of bullying to the Maryland State Department of Education (MSDE). The statute also requires MSDE to develop a model bullying policy, to serve as a model for the creation and implementation of local policies. The model policy was completed in 2009, and includes many provisions, including requirements that staff receive annual professional training on the causes and consequences of bullying and that schools implement school-wide anti-bullying programs. The problem is that the policy’s language is vague, has not been effectively adopted or implemented at the local, county level, and is not LGBT-specific. Local systems are left to determine for themselves whether to implement the policy and if so, to what extent it should be implemented. This has resulted in a lack of action and has had little effect on the state of bullying in Maryland.

Further, the state’s reporting requirement is not effectively enforced. In Maryland, almost 400,000 students are enrolled in public schools, grades seven through twelve, and approximately the same number are enrolled in grades one through six. If we estimate that four percent of Maryland’s public school population is LGBT, then almost 16,000 students enrolled in grades seven through twelve are LGBT, and based on GLSEN data, a significant number of these students are routinely subjected to anti-LGBT
language, harassment, and bullying. However, in school year 2010-2011 (the most recent year for which we have adequate data), less than 5,000 bullying incidents were reported to the MSDE of any sort, and across all grade levels. These incidents were not disaggregated by students’ race, gender, or LGBT status, and only a small number of these incidents were presumably motivated by a student’s sexual orientation or gender identity. Without having to engage in sophisticated statistical analyses, it is clear that LGBT-based bullying incidents are widely underreported in Maryland. Moreover, incidents of bullying, in which schools have refused or failed to protect LGBT students, have been brought to the attention of the authors of this article in their work connected with the FreeState Legal Project with increasing — not decreasing — frequency.

While well intentioned, these efforts by the Maryland General Assembly have not seemed to significantly affect anti-LGBT bullying in Maryland’s public schools. The effective amelioration of bullying requires that students, teachers, and administrators change their attitudes and behavior. In order to effect such individual changes on a macro level, more specific programs and solutions must be developed that address how staff and students view and handle LGBT issues. Based on statistics calculated and compiled by GLSEN, the following solutions are effective at reducing anti-LGBT bullying:

**Gay-Straight Alliances (GSAs):** GSAs and similar student clubs can provide safe, affirming spaces and critical support for LGBT students. GSAs also contribute to creating a more welcoming school environment. Students with a GSA in their school heard fewer homophobic remarks, and were more likely to report that school personnel intervened when hearing homophobic remarks compared to students without a GSA — 19.8 vs. 12 percent said that staff intervened “most of the time” or “always.” Students with a GSA were less likely to feel unsafe because of their sexual orientation than those without a GSA (54.9 vs. 70.6 percent). Students with a GSA experienced less victimization related to their sexual orientation and gender expression. For example, 23 percent of students with a GSA experienced higher levels of victimization based on their sexual orientation, compared to 38.5 percent of those without a GSA.

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20 See Kosciw, supra, note 8 at xiv-xv.
Inclusive Curriculum: A curriculum that includes positive representations of LGBT people, history, and events (i.e., an inclusive curriculum) can promote respect for all and improve LGBT students’ school experiences. Less than half (43.4 percent) of students in schools with an inclusive curriculum felt unsafe because of their sexual orientation, compared to approximately two-thirds (67.5 percent) of other students. Less than a fifth (17.7 percent) of students in schools with an inclusive curriculum had missed school in the past month compared to more than a third (34.8 percent) of other students. Students in schools with an inclusive curriculum were more likely to report that their classmates were somewhat or very accepting of LGBT people than other students (66.7 vs. 33.2 percent).

Supportive Educators: The presence of educators who are supportive of LGBT students can have a positive impact on the school experiences of these students, as well as their psychological well-being. About half (53.1 percent) of students who had many (six or more) supportive staff at their school felt unsafe in school because of their sexual orientation, compared to approximately three fourths (76.9 percent) of students with no supportive staff. Less than a quarter (21.9 percent) of students with many supportive staff had missed school in the past month compared to over half (51.2 percent) with no supportive staff. Students with many supportive staff reported higher grade point averages than other students (3.2 vs. 2.9 percent).

Enumerated Anti-Bullying Policies: Policies and laws that explicitly address bias-based bullying and harassment can create safer learning environments for all students by reducing the prevalence of biased behaviors. Comprehensive policies and laws — those that specifically enumerate personal characteristics including sexual orientation and gender identity/expression, among others — are most effective at combating anti-LGBT bullying and harassment. Six in ten (59.5 percent) students in schools with comprehensive policies heard homophobic remarks (e.g., “faggot” or “dyke”) often or frequently, compared to almost three quarters of students in schools with generic, non-enumerated policies (73.3 percent) or no policy whatsoever (73.8 percent). Students in schools with comprehensive policies were more likely than students in schools with a generic policy or no policy to report that staff intervened when hearing homophobic remarks (28.3 vs. 12.2
The Future of LGBT Civil Rights and Equality

vs. 8.8 percent) or negative remarks about gender expression (19 vs. 10.5 vs. 8.4 percent). 22

Past legislative and regulatory efforts have failed to effectively implement such programs and requirements. Existing policies – primarily Md. Code Ann., Educ., § 7-424 and 7-424.1, and MSDE’s model policy – are too vague, and local school systems are not held accountable for the implementation of effective strategies to combat LGBT bullying and harassment.23 Advocates must focus on amending existing policies, and on developing new policies where necessary, that outline and mandate very specific anti-bullying measures and programs – programs that foster significant behavioral changes on the part of students and staff, (such as those outlined above) and provide the opportunity for ongoing dialogue around issues of sexual orientation, gender identity, and the effect of pervasive harassment on LGBT kids.

III. FOSTER CARE

Jessica is a fifteen year-old transgender girl who grew up in inner-city Baltimore. Jessica was assigned the sex of male at birth, and given the name Max, but ever since she was a young child, has thought of herself as a girl. Because Jessica was raised in a very conservative religious home, she never told her parents about her transgender status. Her father came home one afternoon to find Jessica trying on her mother’s shoes. He hit her across the face, and told her to get out of his home, and not to return until she “manned up.” Jessica told a school counselor the next day what had happened, and social services was called, and she was placed into the foster system. Her foster family was extremely religious, and had not been trained to foster transgender kids. They verbally abused her, dragged her to church, and tried to force her to “repent” at the altar on Sunday. Two weeks later, Jessica ran away from her foster family, and ended up on the streets. She now engages in sex-work in order to support herself, and has been in and out of the juvenile justice system for over a year.

22 See Kosciw, supra, note 8 at xvi-xvii.
23 MD. CODE ANN., EDUC. § 7-424 (West 2008) (requiring school boards to report incidents related to bullying harassment and intimidation of students); MD. CODE ANN., EDUC. § 7-424.1 (West 2008) (requiring the State Board to develop a model policy to serve as the basis for county board policies prohibiting bullying, harassment, or intimidation of students).
Jessica's story represents a common experience of LGBT youth in Maryland's foster care system. LGBT youth who "come out" to their families often face parental disappointment, disapproval, and even outright rejection and violence. This leads to their disproportionate membership in the foster care population. In 2005, nearly half (42 percent) of LGBT youth in out-of-home settings (including foster care and juvenile detention), who participated in a study on family acceptance and rejection of LGBT adolescents, were either removed or ejected from their homes because of conflicts related to their LGBT identity. One study found that LGBT young adults who reported family rejection during adolescence are:

- 8.4 times more likely to have attempted suicide;
- 5.9 times more likely to have high levels of depression;
- 3.4 times more likely to use illegal drugs; and
- 3.4 times more likely to have engaged in unprotected sexual behavior.  

In addition, LGBT adolescents have a higher risk of becoming homeless, either because they leave home to escape violence or because they have been kicked out. Studies estimate that 20 to 40 percent of homeless youth identify as LGBT. When placed in foster care, LGBT youth often face further abuse by foster parents, group home staff, and even caseworkers. If foster parents are particularly religious, faith-based anti-LGBT prejudices may create hostile environments for LGBT foster youth.

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26 CAITLIN RYAN ET AL., Family Rejection as a Predicator of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults, 123 PEDIATRICS 346, 347 (2009).
27 Id. at 346.
28 SHANNAN WILBER ET AL., BEST PRACTICE GUIDELINES: SERVING LGBT YOUTH IN OUT-OF-HOME CARE 1, 3-4 (Julie Gwin ed., 2006). See also Tumaini Coker et al., The Health and Health Care of Lesbian, Gay, and Bisexual Adolescents, 31 ANNUAL REVIEW OF PUBLIC HEALTH 457, 467 (2010).
30 Wilber, supra, note 28 at ix-x.
SHANNAN WILBER ET AL., BEST PRACTICE GUIDELINES: SERVING LGBT YOUTH IN OUT-OF-HOME CARE; James Gilliam, Jr., Toward Providing a Welcoming Home for
Maryland’s existing laws, policies, and protocols are ineffective at protecting LGBT youth in foster care and housing programs. This is a problem not only for LGBT youth, but also for the State itself. States can be held liable for: failing to protect LGBT youth from harassment and violence at the hands of caretakers or other youth, requiring a young person to participate in reparative therapy, failing to help an LGBT young person in finding community support networks and resources in order to ameliorate feelings of isolation and depression, not providing appropriate medical care for transgender youth, punishing LGBT youth for behaviors for which non-LGBT youth are not punished, and placing LGBT youth in humiliating, embarrassing, or dangerous situations.\(^{32}\)

As with Maryland’s education system, there is little from which to extrapolate a common experience of LGBT youth in the system. We know, however, from our experiences representing and working with LGBT youth that anti-LGBT abuse is common. We also know that Maryland, and local counties, are largely without programs and policies aimed specifically at protecting these children.\(^{33}\)

There is a need for LGBT-specific policies, programs, and regulations that confront the unique problems faced by sexual and gender minorities in the foster system. If we continue to fail to think about the experiences of LGBT youth in the foster system, and the religious, social, and other forces that underlie the prejudices harbored by caretakers, we will continue to fail to meet the needs of these youth. Unfortunately, policy makers and regulators often fail to undertake the hard work necessary to effectively address the needs of the most disadvantaged minority populations. Thus, it is important that LGBT and child advocates in Maryland begin to fight for the rights and safety of this population.

In this particular area, rather than engage in litigation or adversarial legislative battles, we believe that success will come most quickly through the effective engagement of the public agencies responsible for overseeing the foster system. Some success has already been achieved, as several agency-leaders from around the state have joined an ad hoc task force that meets regularly, and is charged with addressing these LGBT foster issues.\(^{34}\)

Among the proposed solutions being discussed, it is recognized that


Maryland must adopt and enforce explicit, statewide policies prohibiting discrimination against, harassment of (including the use of slurs), proselytization of, and any other abuse of LGBT youth in social services. Such policies should include mandatory LGBT sensitivity training for all service providers, including foster parents. Effective enforcement of these policies must occur at both the state and local levels, and will require the ongoing commitment and dedication of advocates and officials willing to participate in more than one-off legislative efforts or drafting of regulations, but who are willing to engage in an ongoing dialogue around the effective and continuous implementation of strategies, programs, and protocols aimed at protecting LGBT youth in foster care.

IV. EMPLOYMENT AND HOUSING DISCRIMINATION

Gary is a thirty-five year-old gay male, who is often perceived as flamboyant, and referred to by friends and family as a "queen." He is a hard worker, who until recently held a cashier's position at a major retail chain. Gary worked for his employer for two years, always showed up on time, performed well, and was promoted to assistant manager. A couple months ago, a new general manager was hired for Gary's store. This manager immediately began calling Gary a "faggot" behind his back, made fun of him in front of other employees, and even threw him in a trash can in order to "toughen him up." After complaining about this behavior to regional management, Gary's employment was terminated.

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Lisa and Pam are a same-sex couple who live in Easton, Maryland, on the Eastern Shore. They have been together for fifteen years, and both are employed full-time. Lisa calls a private landlord one afternoon in order to inquire about an apartment that was listed for rent in the local newspaper. Lisa has long blond hair, wears makeup and jewelry, and does not match most people's stereotype or preconception of a lesbian. She meets the landlord at the apartment, and states that she and her "spouse" would like to sign a lease

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as soon as possible. The landlord enthusiastically accepts, and offers to meet them the next morning on site, to sign the papers. When Lisa and Pam show up, the landlord is sitting in the apartment with the papers spread out, apparently ready to be signed. Upon seeing them, however, the landlord appeared uncomfortable and would not look them in the eye. He mumbled that he had other interested tenants, and was going to wait a couple days before deciding which tenants to accept. A couple days later, a straight couple signed a lease and moved in. The landlord told them that he was a Christian, and that he had a lesbian couple try to move in a couple days earlier, but that he'd “found out about them before they signed the lease.”

Anti-LGBT employment and housing discrimination is common, and the consequences of this discrimination can be devastating. Yet, despite the well-documented bias against LGBT individuals and families, federal anti-discrimination laws do not include sexual orientation and gender identity among their protections. To remedy this oversight, LGBT advocates have turned to creative legal theories and local lawmaking to promote equal protections.

While Maryland-specific information is difficult to isolate, recent studies have prominently demonstrated the challenges faced by the LGBT community across the country:

- A national survey in 2011 found that more than one third of lesbian, gay, and bisexual employees had experienced workplace discrimination.

- A task force surveyed thousands of transgender individuals across the country in 2011, and found that 90 percent of respondents reported being harassed or mistreated on the job; 47 percent had been refused a job, fired, or denied a promotion because of their gender identity.

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38 Id. at § 2000e-2(d).
40 Grant, supra, note 36, at 3.
In 2007, field researchers in Michigan discovered that, when opposite-sex and same-sex "test couples" inquired about rentals, house sales, and mortgages, 27 percent of the same-sex couples experienced disparate treatment, ranging from higher rental and application rates to outright harassment.\textsuperscript{41} In June 2013, the Housing and Urban Development office released a study confirming that a same-sex couple is "significantly less likely to get a response from a potential landlord than... a heterosexual couple."\textsuperscript{42}

The consequences of such discrimination are far-reaching, particularly when they result in loss of income, difficulty finding affordable housing, or even homelessness. Compared to the general population, for instance, transgender persons are four times more likely to live in extreme poverty (less than $10,000 for a household),\textsuperscript{43} almost twice as likely to be unemployed,\textsuperscript{44} and twice as likely to be homeless.\textsuperscript{45} Individuals who have been unable to acquire work may turn to the underground economy or petty crime for income; 16 percent of transgender people surveyed in a 2011 study said they had engaged in illegal activity to earn income.\textsuperscript{46} This behavior in turn increases individuals' likelihood of arrest and incarceration, exposure to health risks, and mental health issues.\textsuperscript{47}

The federal government has been slow to address the reality of anti-LGBT discrimination. Firing employees, denying housing to potential renters, or turning away potential homebuyers because of their LGBT status is not explicitly prohibited by federal law.\textsuperscript{48} Title VII of the Civil Rights Act, which applies to most public and large private institutions, prohibits discrimination on the basis of an employee's "race, color, religion, sex, or national origin," but not sexual orientation or gender identity.\textsuperscript{49} Similarly, the federal Fair Housing Act (FHA) does not provide specific protections for sexual orientation or gender identity. Specifically, the act extends

\textsuperscript{43} Grant, supra, note 36, at 2.
\textsuperscript{44} Id. at 3.
\textsuperscript{45} Id. at 4.
\textsuperscript{46} Id. at 3.
\textsuperscript{47} Id. at 3.
\textsuperscript{49} Id.
protections only to the following categories of "race, color, religion, national
origin, sex, familial status and disability."50

The obvious – but as-yet unattained – solution to this omission would be
to simply amend the laws. Since 1975, amendments to Title VII to add
sexual orientation and gender identity have been proposed unsuccessfully.51
Separate legislation that would provide Title VII-like LGBT protections has
also been proposed; the most recent incarnation is the Employment Non­
Discrimination Act52 (ENDA), which was approved by the Senate Health,
Education, Labor & Pensions Committee on July 10, 2013 and awaits vote in
the Senate.53

A similar process is underway to change the FHA. In June 2013, the
Housing Opportunities Made Equal Act54 was proposed to add "sexual
orientation" to the list of the FHA’s protected classes.55 Of more immediate
relevance to the LGBT community are recent regulations finalized by the
United States Department of Housing and Urban Development (HUD) which
prohibit discrimination in HUD-funded housing programs on the basis of
LGBT and marital status.56 These regulations have allowed LGBT
individuals and couples to have their discrimination claims investigated by
HUD, such as in a case settled earlier this year that involved a settlement
between HUD and Bank of America, on behalf of a lesbian couple that was
denied mortgage financing on the grounds that they were not married –
something they could not legally do in their home state of Florida.57

50 42 U.S.C. § 3604(a).
51 JODY FEDER & CYNTHIA BROUGHER, CONG. RESEARCH SERV., R40934, SEXUAL
ORIENTATION AND GENDER IDENTITY DISCRIMINATION IN EMPLOYMENT: A LEGAL
ANALYSIS OF THE EMPLOYMENT NON-DISCRIMINATION ACT (ENDA) CRS REPORT
7-5700, 1 (2013).
53 Steny H. Hoyer, Hoyer Statement on Bipartisan Senate Committee Passage of the
Employment Non-Discrimination Act, THE DEMOCRATIC WHIP (July 10, 2013),
www.democraticwhip.gov/content/hoyer-statement-bipartisan-senate-committee­
55 NAT’L LOW INCOME HOUS. COUNCIL, BILL WOULD ADD SOURCE OF INCOME,
SEXUAL ORIENTATION TO FAIR HOUSING ACT (June 28, 2013),
housing-act.
56 DEPT. OF HOUS. & URBAN DEV., EQUAL ACCESS TO HOUSING IN HUD PROGRAMS
–REGARDLESS OF SEXUAL ORIENTATION OR GENDER IDENTITY,
status discrimination is of relevance to members of the LGBT community living in
states that do not allow same-sex marriage. See id.
57 Alex Ferreras, Bank of America and HUD Reach Settlement in LGBT
Where legislative remedies have been slow to materialize, the LGBT community has turned to the courts to help ensure that the spirit, if not the letter, of the law is upheld. Using the courts to "create" or extend legal protections where previously none existed may not be the most outre example of alternative law-making, but it is an effective remedy that is available to the plaintiffs most disadvantaged by legislative neglect. Initially courts preferred to apply a strict constructionist interpretation to Title VII, arguing that Congress "never considered nor intended that this 1964 legislation apply to anything other than the traditional concept of sex." 58

Beginning with the U.S. Supreme Court case Price Waterhouse v. Hopkins, however, courts have ruled that employers should not discriminate against employees who do not comply with "sex stereotypes," finding this to be an impermissible form of sex discrimination as well. 59 While Price Waterhouse was not an LGBT case per se, LGBT plaintiffs have been able to use the "sex stereotypes" argument in both Title VII and FHA complaints in instances in which an LGBT or gender non-conforming individual experienced discrimination. 60 Price Waterhouse was applied most recently

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59 See Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) ("As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for '[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes'" (quoting L.A. Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n. 13 (1978))).
60 See Nichols v. Azteca Rest. Enters., Inc., 256 F.3d 864, 874-75 (9th Cir. 2001) (stating that harassment based upon the perception that the plaintiff is effeminate is discrimination because of sex). See also Bibby v. Phila. Coca Cola Bottling Co., 260 F.3d 257, 262-65 (3d Cir. 2001) (finding that plaintiff's claim of discrimination simply based on his sexual orientation rather than his gender was not enough but that a plaintiff may be able to prove the harassment as a result of non-conforming gender stereotypes); Higgins v. New Balance Athletic Shoe, Inc., 194 F.3d 252, 261 n.4 (1st Cir. 1999) ("[A] man can ground a claim on evidence that other men discriminated against him because he did not meet stereotyped expectation of masculinity."); Doe v. City of Belleville, 119 F.3d 563, 580 (7th Cir. 1997) ("[A] man who is harassed because his voice is soft, his physique is slight, his hair is long, or because in some other respect he ... does not meet his coworkers' idea of how men are to appear and behave, [sic] is harassed 'because of' his sex."); Centola v. Potter, 183 F. Supp. 2d 403, 410 (D. Mass. 2002) (stating that Title VII prohibited harassment based on plaintiff's coworkers' belief that he did not act or look like a real man). Courts have relied on Title VII precedents to interpret FHA standards. See Traffican v. Metro. Life Ins. Co., 409 U.S. 205, 210 (1972); DiCenso v. Cisneros, 96 F.3d 1004, 1008-09 (7th Cir. 1996); NAACP v. Town of Huntington, 844 F.2d 926, 935 (2d Cir. 1988), aff'd per curiam, 488 U.S. 15 (1988); Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights, 558 F.2d 1283, 1288-89 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978). See also Courtney Joslin, Protection for
and notably in *Schroer v. Billington.* In *Schroer,* a federal district judge in the District of Columbia ruled that revoking a job offer because the applicant is undergoing gender reassignment is an impermissible form of sex discrimination.

It should be noted that despite these successes, the *Price Waterhouse* decision is not a panacea to Title VII and FHA limitations, and courts have made it abundantly clear that not all cases involving discrimination based on sexual orientation fall under “sex stereotyping” or sex-based discrimination. As one judge wrote, the *Price Waterhouse* decision is not a way to bootstrap a claim for sexual orientation discrimination.

States have been instrumental in providing their residents with a cause of action denied to them in federal law. Twenty-one states, including Maryland, have passed measures prohibiting discrimination on the basis of sexual orientation and/or gender identity in employment and housing. Maryland passed its protections in 2001, which prohibit discrimination on the basis of sexual orientation. Between 2004 and 2007, the Maryland Commission on Civil Rights, which investigates alleged violations of state anti-discrimination laws, received ninety-four employment and two housing discrimination complaints based on sexual orientation.

Maryland’s anti-discrimination law provides an example of alternative law-making that can occur without having to set foot in court.
Maryland’s anti-discrimination law protects persons on the basis of sexual orientation, it is silent on gender identity.\textsuperscript{68} Attempts to create new state legislation protecting gender identity and expression have failed – most recently, during the 2013 legislative session, with the Fairness for All Marylanders Act of 2013 (SB0449) failing to make it out of committee.\textsuperscript{69}

LGBT Marylanders have found creative ways to ensure that the rights of transgender persons (those most likely to be affected by gender identity-based discrimination) are not wholly ignored on the state level.\textsuperscript{70} Maryland

\textsuperscript{68} MD. CODE ANN., STATE GOV'T § 20-606 (West):
\begin{enumerate}
\item An employer may not:
\begin{enumerate}
\item fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of:
\begin{enumerate}
\item the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or
\item the individual's refusal to submit to a genetic test or make available the results of a genetic test;
\end{enumerate}
\end{enumerate}
\item limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of:
\begin{enumerate}
\item the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment; or
\item the individual's refusal to submit to a genetic test or make available the results of a genetic test; request or require genetic tests or genetic information as a condition of hiring or determining benefits; or fail or refuse to make a reasonable accommodation for the known disability of an otherwise qualified employee.
\end{enumerate}
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Sexual orientation is defined in MD. CODE ANN., STATE GOV'T § 20-101 (West) as the “identification of an individual as to male or female homosexuality, heterosexuality, or bisexuality.”


\textsuperscript{70} Individual counties in Maryland have also taken it upon themselves to provide protections to the LGBT community. Montgomery County, Howard County, Baltimore City and Baltimore County have laws prohibiting discrimination based on sexual orientation as well as gender identity or expression. Of the twenty counties in
advocates were on the cutting edge in 2001 when they used alternative strategies to fight for the rights of transgender and gender-non-conforming people. When it became clear that the term "gender identity" would be amended out of the Maryland Antidiscrimination Act, members of the political action committee at the Gay and Lesbian Community Center of Baltimore went directly to the Maryland Commission on Human Relations. The argument was made that discrimination against transgender people based on their gender non-conformance should be taken under the auspices of existing law prohibiting sex discrimination – the same Price Waterhouse theory being used in the courts to promote employment equality. The Maryland Commission on Human Relations agreed, and instituted a policy of reviewing transgender discrimination cases as sex discrimination – ten years, it should be noted, before the EEOC and HUD formally acknowledged this legal argument.  

V. CONCLUSION

Undoubtedly significant progress has been made, most notably the passage of MD's Civil Marriage Act, both in the Legislature and at the ballot. But, despite the champagne being popped, Maryland's LGBT community can only claim ultimate victory once all LGBT Marylanders have achieved full equality, free of discrimination and systemic oppression. That equality will come, in part, as a result of advocates thinking critically and creatively about the law-making and law-changing process. We must develop policies, regulations, and protocols that are specific to the LGBT community, that are detailed in their programmatic components, and that offer viable solutions for the problems routinely faced by disadvantaged LGBT people in Maryland. This is the critical next phase in the fight for LGBT rights and equality in Maryland.

Maryland that do not have local protections, nineteen of these counties do not have the authority to pass such laws. See Id.

71 These efforts were spearheaded by The Honorable Shannon Avery, author of this article.