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## **Families United Against Hate is deeply troubled that transgendered people are not explicitly protected by the Local Law Enforcement Enhancement Act (LLEEA)**

**To: Leadership Conference on Civil Rights Hate Crimes Task Force**  
**From: Families United Against Hate (FUAH) – Carolyn Wagner and Gabi Clayton**  
**March 4, 2002**

When we cradled our children's bloody, battered and broken bodies, our worst fear had come to fruition. The trauma that bias-motivated violence brought into our lives was compounded by the failure to achieve justice for our loved ones. The reasons our judicial system failed are many, but the primary reason was the absence of laws with explicit language that such violence is unacceptable and will be fully prosecuted. We come from all corners of this nation and live in states whose hate crime statutes vary from no statute to statutes inclusive of sexual orientation and gender identity.

Now, when we come into the homes and hearts of families who are walking the path we once walked alone, they also face this overwhelming obstacle of seeking justice. We find that with or without a state hate crime statute, legal representation for the family and or survivor is always necessary to navigate the legal system, to ensure full and proper investigations as a prelude to the arrest of perpetrators, and to assist or watchdog the prosecution by District Attorneys who may not be doing all they could because of their own biases. From our personal experiences and in our work with other families, we have learned that it is virtually impossible to locate attorneys willing to represent people dealing with this. Many of us are people of color and or poor, which only adds to the burden of locating legal representation in the pursuit of justice for our transgender, gay, lesbian or bisexual children.

We believe that the language in LLEEA should explicitly protect all groups who are targets for such violence and are deeply troubled that transgendered people are not explicitly protected by LLEEA.

The current language is vague and weak. It has been said that we need an enhanced legislative history to increase the likelihood for a favorable interpretation that "gender" includes gender identity and expression. We anticipate that reliance upon judicial or administrative interpretation of LLEEA will create huge problems. We have worked with organizations that are

involved in litigation efforts for members of the GLBT community. Because these groups are among those we assume would be most likely to represent transgendered people and their families, their advice, as recorded in statements and literature is very clear. They argue for explicit protection in our laws, as explained in the attached, a section of page 8 from Lambda Legal Defense and Education Fund's recent publication, "A Guide to Effective Statewide Laws and Policies." The statement explains the need for explicit language in laws for transgender students.

Matt Cole, Director of the ACLU Lesbian and Gay Rights Project published an editorial on transgender inclusion in ENDA in April 2001. It directly addresses the issue regarding the need for explicit protections in the law.

*With the likelihood that court appointments will tilt more conservatively in the foreseeable future, it is unwise to rely completely on a litigation strategy based on sex discrimination. Perhaps more critical, civil rights laws are important not just because they allow people to sue, but because of what they say to and about society. Civil rights laws are supposed to prevent discrimination, not just remedy it. This is far more effective when the people protected are described explicitly. Moreover, civil rights laws embody our ideals about what it is that civilized people don't do to each other. Transgendered Americans deserve to be a part of those ideals, and not just through the back door.*

We know from experience that with explicit language, another positive aspect will be the growth of public education and inclusion of the terms gender identity or expression in government publications, including our public education system. This will transcend into many other arenas that will have a direct and positive impact on the lives of transgender people of all ages.

FUAH's position is not based on fear or on political expediency. The integrity of our organization's work with families who are directly impacted by bias-motivated violence is challenged by this exclusion. All of our work is based upon valuing the worth and dignity of every person. We cannot compromise our integrity and our work by compromising on this core issue. Transgendered people are an integral part of our family and an integral part of the diverse fabric of our society.

Failure to amend LLEEA to include gender identity or expression will only compound the trauma felt by families and survivors of bias-motivated violence. Therefore, Families United Against Hate requests that the LCCR Hate Crimes Task Force seek an amendment to the LLEEA to provide explicit protections for individuals who may be victims of bias-motivated violence because of their gender identity or expression. We believe that this issue goes to the very core of our work and should be the core of all civil rights groups. The value of each person must be recognized and honored with equal rights explicitly provided in legislation.

We ask the Task Force to join us in providing leadership on this very important civil rights issue. Equal rights does not mean that one group will be provided a legal standard which is different from other groups. We can accept no less as we can leave no person or family behind. We cannot justify the actions of any group that promotes legislation if it does not provide clear, explicit and indisputable inclusion of all people targeted for bias motivated violence, especially transgender people.

We leave you not with our words, but with the words of Rev. Martin Luther King, Jr. We hope that these words will remain with you during your deliberations on this issue. These words, spoken many years ago, provided us with clarity and guidance. It is our fervent hope they will do the same for you.

**"There comes a time when one must take the position that is neither safe nor politic nor popular, but he must do it because his conscience tells him that it is right."**

A section of page 8 from the recent publication, "A Guide to Effective Statewide Laws and Policies" by Lambda Legal Defense and Education Fund

### **Transgender Students**

Transgender Students often suffer discrimination because of their gender identities, which is reflected in a growing trend of laws and policies around the country that explicitly address this form of harmful discrimination. Generally, there are three approaches to addressing the discrimination through statutory reform:

- separately enumerating the factor of "gender identity" either as a completely separate category or as an expressly stated subset of sex discrimination;
- explicitly clarifying that the definition of "sex" and/or "gender" includes "gender identity"; or
- amending the definition of "sexual orientation" to include "gender identity."

The first approach makes a law's coverage of gender identity discrimination most clear. Readers who look at a civil rights statute usually look first at the provision that enumerates the types of discrimination forbidden by the law, and that is the provision that is most often quoted in materials, like a school's employee manual or student handbook. Many local anti-discrimination laws have used this approach of adding gender identity to the list of factors that are an impermissible basis for discrimination.

The second and third approaches would include gender identity discrimination by explicitly folding it into the definition of sex (or gender) or sexual orientation in the definitional section of the statute. One example at the state level is California's "education" statute, which prohibits discrimination on any basis enumerated in the state's hate crimes statute. The hate crimes statute includes "gender," defining it broadly (though somewhat convolutedly). The definition of sex or gender in a statute could, more straightforwardly, be made to include one's gender identity, whether or not that identity corresponds to the designation made at birth.

In Minnesota's general "civil rights" law, the definition of sexual orientation includes "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Although this approach achieves the goal of gaining anti-discrimination protection for those targeted on the basis of gender identity, it also confuses that identity "a matter of one's self-definition) with sexual orientation (a relational characteristic defined by one's orientation, sexually, toward others).

Sincerely,  
Families United Against Hate Co-Founders



Gabi Clayton



Carolyn Wagner

**FAMILIES UNITED AGAINST HATE (FUAH)** is a grassroots organization created by and for families and survivors of hate motivated violence, in collaboration with other individuals and organizations. We offer support, guidance and assistance to families\* and individuals dealing with incidents based on bias; and to the people, organizations and agencies who serve and support them. \* We define family broadly to include biological, extended and chosen family.