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The Need for Social Work Advocacy to Create Social Justice for Transgender People: A Call to Action

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Transgender people in the United States experience high levels of employment discrimination. The Employment Nondiscrimination Act (ENDA) is one mechanism that would provide basic workplace protections for this population. We argue, however, that passage of ENDA is only one of many preliminary steps to help transgender people experience an essential basic version of social justice. Using Bonnycastle's (2011) social justice relational illustrative model, we develop a conceptual framework that argues that social workers need to advocate for transgender people on a policy level in order to move them from their current nonexistent version of social justice to a basic version of social justice. Recommendations are provided on how social work advocacy can help create this this basic version of social justice.

Key words: Employment discrimination, LGBT, social justice, social work advocacy, transgender

Employment discrimination against transgender people is a significant social welfare concern. In the U.S., employment discrimination costs employers \$64 billion annually in covering expenses related to the cost associated with losing and replacing over 2 million professionals and managers who decide to leave their employers due to unfairness in the workplace (Level Playing Field Institute [LPFI], 2007). Employment discrimination also burdens employees and taxpayers. In a recent study that examined a side-by-side comparison of transgender

and non-transgender workers over a 5-year period, an estimated \$132,577 in extra financial burdens per person was discovered as a result of lost income, out-of-pocket medical expenses, denied promotions, and unfair terminations (Movement Advancement Project [MAP], 2013). Finally, employment discrimination practices cost taxpayers millions of dollars in settlements each year, as well as additional social welfare expenditures, such as unemployment insurance, SSI, etc. (MAP, 2013). Hence, legislation protecting transgender individuals is sorely needed.

Employment discrimination protection policies have been shown to impact labor and workforce productivity as a result of sexual orientation and gender identity discrimination (Burns, 2012). Martell (2013) demonstrated that state employment nondiscrimination policies decreased wage differentials by 20% for men who have sex with men (MSM) as compared to heterosexual men. Additionally, the lack of employment protection has shown to increase employer costs stemming from a lower level of employee commitment, a higher employee absenteeism rate, a less motivated employee workforce, and a decreased level of employee productivity (Burns, 2012). These costs become particularly important when examining the reality that when lesbian, gay, bisexual, and transgender (LGBT) people work in a discriminatory environment, the productivity of their non-LGBT peers tends to also suffer (Everly, Shih, & Ho, 2012). Thus, the purpose of this paper is to examine the role that social workers can play to reduce economic disparities for transgender and other gender non-conforming individuals through advocacy efforts focused on the passage of the federal Employment Nondiscrimination Act (ENDA) and through mobilization of the profession to create stronger employment protections.

State Employment Protections

While the social work profession needs to advocate for several social welfare issues affecting transgender people (such as access to health care, homelessness, and access to correct identity documents), employment discrimination should be one of the top priorities due to well-established research on the

correlation of employment and social well-being (Helliwell & Putnam, 2004; McKee-Ryan, Song, Wanberg, & Kinicki, 2005; Warr & Parry, 1982). For example, lack of access to employment often leads to a lack of access to an affordable employee-sponsored health care plan, poor health, and poor psychosocial well-being. Income instability has also been consistently shown to have an association with psychosocial issues, including homelessness (Kushel, Gupta, Gee, & Haas, 2006; Scott, Edin, London, & Kissane, 2004). Furthermore, without the benefit of marriage equality until recently, transgender people fired from their jobs have often been unable to join their partner's health care plans or access hundreds of other economic benefits that marriage provides.

Some progress has been made for lesbian, gay, and bisexual (LGB) people. LGB people have seen slightly more workplace protections in the United States than transgender people. Specifically, 21 states offer workplace protections for LGB people, whereas only 18 states offer these same protections based on gender identity (Human Rights Campaign [HRC], 2014). Although the public sector has yet to address workplace discrimination on the basis of sexual orientation and gender identity, the private sector has responded more aggressively to the need to implement workplace protections. For example, 88% of Fortune 500 Companies provide workplace protections for LGB people, while 57% have policies that include gender identity, potentially positively impacting the lives and social well-being of transgender individuals (HRC, 2014).

Some evidence may suggest that transgender workplace protections can increase the quality of life for transgender people. California's 2008 Transgender Law Center survey uncovered that transgender people within California (a state with transgender employment protections) were about two times as likely as non-transgender (cisgender) people to possess a bachelor's degree (Davis & Wertz, 2009-2010). These respondents, however, were about twice as likely as the cisgender population to live below the poverty line, contradicting the literature that suggests that higher education is associated with increased wages (Davis & Wertz, 2009-2010; Kushel et al., 2006; Scott et al., 2004). These findings suggest that poverty, health, and mental health are often excluded from the conversation

and must be taken into account when considering employment protections.

When compared to the cisgender population, transgender people are four times more likely to live in extreme poverty, meaning a household income of less than \$10,000 per year (Grant et al., 2011). Due to chronic underemployment and unemployment, many transgender people engage in sex work in search of economic opportunities, increasing their risk for adverse health outcomes such as HIV and other STIs. HIV rates among this population, therefore, are twice as high when compared with transgender people who are employed (Grant et al., 2011).

Current state employment antidiscrimination laws often provide inadequate and uneven protections for transgender people, making these laws politically unstable (Aden, 2010; Jasiunas, 2000). Discrimination for gay and lesbian people has been somewhat consistently documented, yet research exploring transgender workplace discrimination tends to rely on anecdotal and self-reporting measures (Colvin, 2007). Nine out of ten transgender workers have reported either directly experiencing workplace discrimination and harassment or hiding their true identities in order to avoid mistreatment (Burns, 2012). In The National Transgender Discrimination Survey, with the largest transgender sample to date, 47% of transgender people indicated that they had been denied a promotion, refused hiring, or were fired because of their transgender identity (Grant et al., 2011). Many transgender people who want to transition genders while at the workplace are often disciplined for this departure from U.S. society's underlying gender norm that a person's biological sex needs to be congruent with that individual's gender identity or gender presentation (Dietert & Dentice, 2009). A closer examination of employment discrimination policies is warranted.

Brief History of the Employment Nondiscrimination Act (ENDA)

Over the last four decades, passing federal legislation that protects gay, lesbian, and bisexual people from workplace discrimination has been a priority for the lesbian, gay, bisexual,

and transgender (LGBT) rights movement. The inclusion of transgender people in antidiscrimination legislation, however, has been a continual source of contention. The Equality Act, introduced on May 14, 1974 by U.S. House Representative Bella Abzug from New York, marked the first time that a "gay rights" focused bill appeared at a federal level (Vitulli, 2010). This act "prohibits, under the Civil Rights Act of 1964, discrimination on account of sex, marital status, or sexual orientation in places of public accommodation, and under color of State law" (GovTrack, n.d.a). This bill, which did not include protections for transgender people, died in committee and never reached the floor of the House or the Senate.

Some version of this bill has been reintroduced in almost every session of Congress since 1974, yet the bill only reached the floor of the House or Senate in 1996, 2007, and 2013 (Congress.gov, n.d.a). On September 10, 1996, the Senate rejected the bill, which did not include gender identity protection, by a 50-49 vote (Congress.gov, n.d.a). On November 7, 2007, another bill passed in the House by a vote of 235-184, but died in the Senate (GovTrack, n.d.b). The original version of the 2007 bill included gender identity protections, but a non-inclusive second bill replaced the original version when Democratic leadership became concerned that they did not have enough votes to pass a gender identity inclusive bill (Vitulli, 2010).

Even though the original bill was never brought to either the House or Senate floor, Representative Barney Frank's introduction of the bill signified the first time in its history that gender identity protections had been added to the sexual orientation protections (Vitulli, 2010). On November 7, 2013, the Senate passed a gender identity-inclusive ENDA bill by a vote of 64-32 (Peters, 2013). This historic vote marked the first time the Senate passed an ENDA bill, as well as the first time that an inclusive ENDA passed the House or Senate. The bill never received a vote on the House floor in the 113th Congress. A subsequent Congress, therefore, will have authority over any future version of ENDA.

Without the inclusion of gender identity protections in ENDA, employers can potentially use sexual stereotypes as a legitimate reason to discriminate against an employee (Weinberg, 2009-2010). For example, individuals can be

terminated for exhibiting behavior that is not traditionally congruent with their biological sex. The legal complexities of this form of discrimination are beyond the scope of this paper. This example, however, reveals how sexual orientation and gender identity often intersect and demonstrates the necessity for gender identity protections within ENDA. Community advocates and other social justice-oriented professionals need to critically consider their role in advocating for inclusionary workplace policies for transgender people. Advocating for the passage of ENDA is an important place to begin.

Advocating for Transgender Rights

The enactment of ENDA as federal law could potentially have a greater positive and measurable impact on more people in the LGBT community than the repeal of Don't Ask Don't Tell (DADT) and the Defense of Marriage Act (DOMA) (McThomas & Buchanan, 2012). The Human Rights Campaign (HRC), the largest LGBT civil rights organization in the U.S., has often taken a lead on supporting ENDA. The organization has in the past, however, focused less on creating an ENDA that is inclusive of transgender people and has often supported a non-inclusive ENDA because that type of legislation would cover the majority of its constituency. The majority of HRC's membership base has traditionally been white and affluent gay men, so excluding gender identity from ENDA would not jeopardize protection for this population. Sentiments similar to HRC's position have been commonplace within the LGBT rights debate.

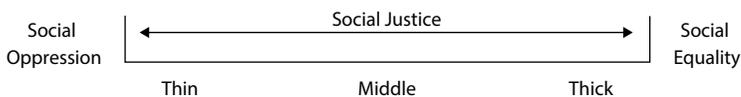
While HRC's plan was likely a sound strategy to cover the majority of its constituents, it was not prioritizing a greater social justice framework. Interestingly, with the exception of a few scholars, social workers have largely remained silent on this issue (e.g., Burdge, 2008; Gates, 2010). This silence is particularly troubling, as social work's roots are based in social justice practice among marginalized groups and populations. The National Gay & Lesbian Task Force (NGLTF), which works to "build the grassroots political power of the LGBT community to win complete equality" currently only supports an ENDA bill that is transgender inclusive (NGLTF, n.d.). True to its mission to "win complete equality," NGLTF decided

to not support the 113th Congress' version of the ENDA bill. Congress added a broad religious exemption that would allow employers to discriminate against LGBT people based on the organization's religious beliefs (Carey, 2014). This addition follows a similar line of logic to the Supreme Court case of *Burwell vs. Hobby Lobby* (2014) that allows organizations to exercise religious freedom by choosing not to cover birth control access for women within employee-sponsored medical plans. Despite the contention on Capitol Hill, the Obama administration enacted an Executive Order that aims to protect individuals from workplace discrimination on the basis of sexual orientation and gender identity with jurisdiction over civilian, federal, and federally-contracted employment sites (Executive Order 13672, 2014).

A Social Work Framework for Advocating for Transgender Individuals

When examining the social work literature, missing are specific strategies on how to implement social justice frameworks at the greater macro level (Moyo, 2010). Bonnycastle (2011), however, suggests the use of an illustrative framework of social justice that builds on a basic continuum in which social justice falls within the range between social oppression (the idea that a social group consciously or unconsciously manipulates another group in order to benefit) and social equality (the idea that everyone has the same innate worth and that this ideal will be underscored in policy decisions) (see Figure 1). He examines several prominent relational aspects of social justice, including relation to distributive justice, relation to identity, relation to human rights, and relation to political ideology. Each of these relational aspects can serve as its own lens through which social justice can be examined. These relational aspects are not exhaustive and can be expanded.

Figure 1. The Social Justice Continuum (Bonnycastle, 2011)



All of the relational aspects are divided into three subcategories—a thin, middle, and thick version (see Table 1), which are located along a continuum between social oppression and social equality. How the aspect is expressed, therefore, determines whether it will be closer to the social oppression or the social equality pole. Each subcategory of a relational aspect closer to social oppression is considered a thin version of social justice, while any subcategory of a relational aspect closer to social equality is considered a thick version of social justice. We believe that a less-than-thin version of social justice has been operating within the social work profession when examining transgender workplace protections. Adapting Bonnycastle's model, we have created a model of how a thin version of social justice would look for transgender individuals. We base our recommendations for social work advocacy on this model.

Table 1. Relational Aspects of Social Justice (Bonnycastle, 2011)

Relation to:	Social Justice Continuum		
	Thin [Basic] Version	Middle Version	Thick Version
Distributive justice	Basic equality	Equal opportunity	Equality of conditions
Identity	Citizenship rights and obligations	Redistribution and cultural recognition	Redistribution, recognition, and representation
Human rights	Negative rights (civil and political)	Positive rights (economic and social)	Solidarity rights (global rights and indigenism)
Political ideology	Neoliberalism, neoconservatism	Social liberalism	Reconstructed socialism

Adapted from Bonnycastle (2011)

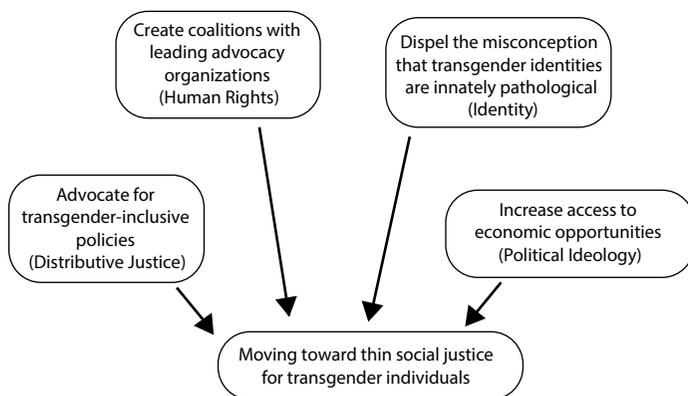
Recommendations for Social Work Advocacy

In the event that Congress passes a future version of ENDA, social workers and allied social justice professionals can still play a critical role in the movement of transgender rights towards a fundamental version of social justice. The below theoretically-informed recommendations, based on Bonnycastle's illustrative model (Figure 2), are suggested for social work practitioners, researchers, and professionals in allied disciplines to work with policymakers to advance transgender protections.

Basic Equality (relation to distributive justice)

Social workers need to advocate for transgender inclusive policies within health and social service agencies. Agencies often operate as social microcosms that focus on providing services with historical roots steeped in charity (i.e., the traditional "Band-Aid" approach) rather than justice (i.e., a systems-level approach) for clients. Social workers can help agencies identify and amend the social injustices that have inhibited transgender workplace protections. Furthermore, within their own agencies, social workers have the ability to advocate for transgender workplace protections.

Figure 2. Thin Version of Social Justice for Transgender Individuals



Social workers can advocate for transgender people by supporting and creating transgender-inclusive workplace development programs (thus helping to increase the number and quality of legal programs that support transgender people in the workplace), promoting housing stability programs for transgender people within agencies, and helping improve internal housing policies and practices within agencies (Davis & Wertz, 2009-2010). In order to move closer to the basic "thin" version of social justice that addresses transgender legal protections, social workers need to continue to advocate that their agencies focus on better education, health, and job training programs that have become more common for gay and lesbian people (Davis & Wertz, 2009-2010). Social workers are prime candidates to lead this cause, due to a dedication to basic

equality stemming from the National Association of Social Workers' (NASW) Code of Ethics.

Civil and Political Rights (relation to human rights)

Social work professionals and other major organizations should create coalitions with leading advocacy organizations to focus on political and civil liberties for transgender people. The social work profession's history of advocacy makes social workers prime candidates to build coalitions with other major advocacy organizations. For example, NASW could join coalitions with other major LGBT civil rights organizations, such as the American Civil Liberties Union (ACLU), the Human Rights Campaign (HRC), and the National Center for Transgender Equality (NCTE). By joining coalitions, social work organizations could stay more informed about the state of policy affecting transgender individuals. Social workers are well suited for building relationships with other organizations and could provide a unique perspective to these organizations on how best to advocate for transgender people. Social workers could serve, in theory, as consultants in much the same way that a corporation might bring in outside consultants to improve outcomes for the organization.

Access to Economic Opportunities (relation to political ideology)

NASW, along with other LGBT organizations, should mobilize their members to become informed and to lobby for ENDA and other important transgender legislation that arises in the federal legislature. Social workers could help communities increase civic participation within already existing programs that train community members on the lobby process with particular attention to legislation that provides equal economic opportunities for transgender individuals. Social workers have the training, skills, and knowledge to take part in the political process, but often do not, due to continuous micro practice-focused demands in their day-to-day work. By stepping out of the consultation room and into the realm of community organizing, social workers could better aid their individual clients to navigate the dynamic context in which they are embedded.

NASW has over 130,000 members represented in all

Congressional districts in the U.S. (NASW, n.d.). NASW has not been largely active or effective in lobbying for ENDA or any other major transgender pieces of legislation. NASW has also not led a primary effort to educate its members on major issues that affect transgender people in addition to employment discrimination, such as homelessness, healthcare access, and HIV/AIDS and other sexually transmitted infections (STIs). This piece of legislation could be included as part of NASW's annual lobby day.

Like NASW, most major LGBT civil rights organizations host an annual lobby day. Social workers could assist these organizations with turnout on lobby days. For example, The National Center for Transgender Equality (NCTE) hosts an annual lobby day on Capitol Hill in July. Since NASW often focuses solely on legislation specific to the social work profession, it could potentially expand its current somewhat narrowly focused repertoire to help facilitate organizing social workers to attend these allied organizations' lobby days. NASW might be concerned that sending members to lobby for other organizations' lobby days could compromise its member base. This strategy, however, may actually expand its member base by broadening the social justice issues to which NASW provides attention. Having social workers present at these lobby days could greatly impact their ability to better advocate for transgender clients on a macro policy level in conjunction with the micro practice level in which they are already engaged.

Citizenship Rights and Obligation (relation to identity)

Social workers need to participate in national professional organizations that represent a consortium of interdisciplinary mental health professionals, such as the American Psychiatric Association (APA). In 1973, homosexuality was removed from the Diagnostic and Statistic Manual, which is the APA's manual that all clinical social workers use for billing and reimbursement. DSM-V, the most recent version of the manual that debuted in 2013, continues to include gender dysphoria as a diagnosis. This categorization continues to perpetuate the misconception that transgender identities are innately pathological. We argue that transgender identity is a normal, healthy identity that has been framed as pathological due to societal

prejudice rather than biological dysfunction. Since social work relies heavily on the DSM-V for its clinical practice, social workers need to be well represented within the APA in order to counter the continued pathology assigned to transgender identity. Social workers have the power to educate and to advocate that gender dysphoria follow in the footsteps of the removal of homosexuality as an obsolete diagnosis. Without social work advocacy, the removal of this diagnosis will continue to be a slow moving process.

Limitations

Several limitations need to be considered when addressing the above recommendations to increase social workers' roles in creating a thicker version of social justice for transgender individuals. In this paper we have been discussing gender identity (how people self-identify their gender) but not gender expression (how people present their gender on a continuum from masculine to feminine and everything in between). Much discrimination in the workplace occurs due to a person's gender expression. ENDA, however, would protect a person's gender identity irrespective of the person's gender expression. Social workers will need to become better trained in understanding these concepts so that they can become more effective advocates.

The inclusion of gender identity could always be dropped from a future version of the bill. This scenario is most likely to occur when the Senate and House reach a Republican majority during any election cycle. With a more conservative legislature, the best legal (but not social justice-focused) strategy may be to omit the gender identity protections so that the majority of the bill will pass. Social workers will need to learn how to navigate this type of political process. Lastly, the feasibility of having social workers become involved in advocating for transgender people may be complicated. Since this population is such a small segment of the U.S. population, most social workers may not have any contact with this population. As social workers are already overworked in their full-time jobs, helping them to understand the importance of this issue as a social justice issue may be difficult without any prior exposure or experience working with this population.

Conclusion

The LGBT rights movement has witnessed some extraordinary gains over the last decade. In 2003, Howard Dean was the first viable presidential candidate to openly support civil unions for LGBT people. In 2004, Massachusetts became the first state to legalize same sex marriage. In 2006, an amendment to the Constitution defining marriage as a union between a man and a woman did not gain enough votes to proceed with a roll call vote in the Senate (Congress.gov, n.d.b). In 2011, Congress repealed Don't Ask Don't Tell (DADT). In 2013, the Supreme Court ruled the heart of the Defense of Marriage Act (DOMA) unconstitutional. Our current President supports same sex marriage, and the Supreme Court ruled in favor of marriage equality in all 50 states on June 26, 2015. These measures have created a climate that is more supportive of LGBT people in our country than any other time in history. Providing economic stability and a daily environment free from harassment and discrimination for transgender people needs to become the next priority for the LGBT rights movement. Building a culture that celebrates transgender people through enforceable workplace protections via ENDA and social work advocacy is a beginning step. With social work's historical roots focused on a thick version of social justice, social workers should be the primary players in the 21st century that will advocate for these critical protections for transgender people.

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