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June 7, 2011

Senator Cynthia Stone Creem
Joint Committee on the Judiciary
State House Room 405
Boston, MA 02133

Representative Eugene L. O'Flaherty
Joint Committee on the Judiciary
State House Room 136
Boston, MA 02133

Re: An Act Relative to Transgender Equal Rights

Dear Senator Creem, Representative O'Flaherty, and Members of the Committee:

Thirty-eight years ago, in one of the first instances of testifying before a legislative committee, I spoke as a freshman member of the House about legislation I had introduced to protect gay men and lesbians from discrimination. While I was not successful in helping passing that legislation during my eight years here, it did pass in 1989 and has been the law in Massachusetts for over 20 years. I begin with reference to that because the arguments that I have heard against the legislation to extend that protection to people who are transgender have many similarities with those that were made against the legislation I offered in 1973.

I think there is general agreement in the Commonwealth that the passage of any discrimination legislation based on sexual orientation has had no negative effect on the majority of the population, and has in fact been a benefit to some victims of discrimination—one of the first to win a case under the new law, Michael Carney has served for years with great distinction as police officer in Springfield, and I have been very proud to arrange to be a witness before the U.S. House as an example of the good that can be done by an anti-discrimination law.

But while it is now clear that no harm came from the passage of that bill to anyone, and a good deal of benefit resulted, the fact is that it took sixteen years from the day I introduced it until it became law despite the fact that there were strong arguments made against it and many of them are similar to the arguments made these days against the inclusion of people who are transgender.

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Some, of course, objected because they thought those of us who are gay and lesbian deserved more to be punished for that fact of our existence than to be protected against unfair treatment. But many others who professed to have no such feelings argued that passing a law that gave people the right to be hired, promoted, retained etc. regardless of their sexual orientation would be socially disruptive. People predicted that it would be too awkward with conflict-ridden social interactions. People argued that business people would be forced to hire people who were not competent because of the threat of being sued. People argued that it would introduce confusion into the minds of many young people, and that heterosexuals would be imposed upon by people who regarded them as sexual objects in locker-rooms, shower rooms etc. Indeed, some of the objections to the heterosexual majority being made to share shower facilities with gay men and lesbians surfaced just recently as last December when Congress repealed the Don't Ask, Don't Tell policy.

As I have noted, none of those fears have been borne out by experience. The gay and lesbian people who were the beneficiary of the anti-discrimination law have not caused disruption, or scandal, or even inconvenience. And in fact, if there is any criticism to be made of this law, it is that it has not succeeded in ending all discrimination—and in a free society, where the burden of proof is on those alleging that people have failed to follow the law, that is a fact of all anti-discrimination laws. They tend very much to be under enforced and we have no history of them being over enforced here in Massachusetts or in much of the rest of the country.

I believe that many of the arguments against protecting people who are transgender against discrimination are similarly well-intentioned in many cases, but not based in fact. Our fellow citizens who are transgender—like those of us who are gay and lesbian—did not decide one day to have a certain set of feelings. They came to recognize strong emotions deeply embedded in their personalities, and seek only the right to be able to act on them without suffering discrimination because of it. I am deeply convinced that the majority will suffer no more embarrassment, or inconvenience, by extending protection against unfairness to this group than it did when it was people like me who were the objects of protection.

There is one other aspect that I believe should be discussed. It is one of those things that people sometimes prefer to ignore, but in my legislative career I have found that trying to ignore the things that have some relevance does not lead to good public policy. In 1972 when I first introduced legislation in the pre-session filing period after my first election to the House, I was still concealing my sexual orientation from others. Consequently, colleagues, commentators and others felt no need to disguise their feelings in dealing with me. There were, as I have noted, many people who sincerely oppose the legislation because they feel it would be disruptive. But there was also clearly an element of discomfort among many who had not previously thought about gay, lesbian and bisexual people in any serious context, and whose reaction to the notion of open association with us was uneasy for some and disturbing to others. That is, there was something new and very different about the notion of legal rights for gay, lesbian and bisexual people, and given the centrality of sexuality in our emotional lives, I believe that was one of the

obstacles to passing legislation. Over time, as more and more gay, lesbian and bisexual people did decide to be honest about who we are and people in the majority learned that their relatives, friends, teammates, customers, teachers, students, doctors, patients—even legislators—etc included people who were gay, lesbian and bisexual, the reality of who we are overcame myths, stereotypes and in some cases prejudice. And that was a necessary process before the legislation could be enacted.

I firmly believe that a similar process is now going on with regard to people who are transgender. Just as the notion of people being open about their homosexuality was an unsettling one to people in the early '70s, so the notion of people who are transgender is similarly unsettling to many today. And I believe very firmly that as people who are transgender have become more open about who they are, and how they feel, and as the overwhelming majority who is not transgender has come to know them, a similar process is taking place. But I hope that it will not take sixteen years. The transgender individuals who seek protection from you today are our friends, relatives, neighbors and fellow citizens. They seek no special privilege; they have no wish to disrupt anybody else's lives; they only want to be able to live their own with a degree of freedom from unfair restrictions or hurtful actions by others. I believe it was a proud moment when Massachusetts became only the second state in the country to pass legislation protecting gay, lesbian and bisexual people against discrimination, as I believe it was a proud moment when we led the way with regard to same-sex marriage. In both cases, fears that were expressed about the consequences of those actions, many of them—although not all—sincerely felt, have been proven to be far too pessimistic. I very much hope that the Commonwealth will once again show its aversion to prejudice and its compassion for people who have been its victims, and extend to people who are transgender the same legal rights that the rest of us now enjoy.

Barney Frank

BARNEY FRANK
Member of Congress
U.S. House of Representatives