



ROOM FOR CHANGE

AN INVESTIGATION EXPLORING THE LEVELS OF DISCRIMINATION IN RETAIL STORES BASED ON GENDER IDENTITY AND RACE

THE EQUAL RIGHTS CENTER

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Originally formed in 1983, the Equal Rights Center is a national non-profit civil rights organization dedicated to promoting equal opportunity in housing, employment and access to public accommodations and government services. With members located in all 50 states, the District of Columbia and Puerto Rico, the ERC works to identify, address and remedy both individual instances of discrimination, as well as large-scale, systematic discrimination nationwide.

At the core of ERC’s success in promoting civil rights is its three decades of experience in civil rights testing. Through a variety of innovative testing techniques, the ERC is a national leader in identifying and documenting differences in the quality, quantity, and content of information and services provided to individuals based on individual factors and characteristics. Through this testing process, the nature and extent of illegal discrimination can be ascertained. The ERC conducts hundreds of civil rights tests each year to educate the public and government officials about the discrimination still faced by many individuals across America.

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ACKNOWLEDGMENTS

The ERC would like to thank Arcus Foundation for their generous financial support to make this report possible. The Arcus Foundation is a leading global foundation dedicated to the idea that people can live in harmony with one another and the natural world. The foundation’s commitment to push boundaries and make change within the world, aligns with the mission of the ERC, and helps to ensure that social and environmental justice is a reality. To learn more about Arcus Foundation, visit www.arcusfoundation.org.

The ERC would also like to extend thanks to our committed members and testers who participated in this project, without whose insights, dedication, and perseverance, the testing and this report could not have occurred.



EXECUTIVE SUMMARY

The lesbian, gay, bisexual, and transgender (LGBT) community has made significant progress in advancing civil rights, and reaching goals on the national level in 2015 such as marriage equality. Despite the progress made in the LGBT community as a whole, transgender and gender non-conforming individuals still face high rates of discrimination and transphobic violence, particularly in places of public accommodations such as retail stores.

A survey of transgender individuals conducted in 2011 found that more than half of the respondents had experienced verbal harassment or disrespect in a place of public accommodation.ⁱ Of the 15 types of public accommodations included in the survey, retail stores were the setting of the highest rate of denial of equal treatment or service.ⁱⁱ Transgender individuals facing this type of discrimination have very little recourse as there is currently no federal law in place that prohibits discrimination in places of public accommodations based on gender identity, and, transgender and gender non-conforming individuals lack basic anti-discrimination protections in most states. Furthermore, at the time of this writing, there are currently 44 anti-transgender pieces of legislation pending on the state level, with 29 of those bills targeting sex segregated spaces such as dressing rooms, bathrooms, and locker rooms.ⁱⁱⁱ

This report presents the findings from the first civil rights testing project designed specifically to evaluate the level of discrimination transgender individuals face in the retail environment. Denial of services, transphobic verbal harassment, and even physical assault are anecdotally known to occur; however, there is remarkably little quantitative, objective research documenting the discrimination faced by transgender individuals. There is even less data addressing the intersection of gender identity discrimination and racial discrimination.

The ERC undertook *Room for Change* as a pilot study to establish objective data to supplement the anecdotal information known about gender identity discrimination in large retail chains. In this investigation, the ERC conducted 60 tests across 3 jurisdictions (Virginia, Maryland and the District of Columbia) to measure the extent of adverse differential treatment experienced by transgender individuals in the retail setting. The findings show that transgender individuals experience significant discrimination and verbal harassment in the retail setting. These results align with the existing research and known anecdotal information and provide further evidence for the need for federal anti-discrimination protections as well as stronger enforcement on the state level of anti-discrimination protections already in place.

KEY FINDINGS

- In 75% of the tests conducted, the transgender tester experienced at least one type of adverse differential treatment while their cis¹ gender match-pair tester received more favorable treatment and service. The adverse differential treatment included differences in the quality, quantity and content of the service provided to the testers.
- In 38% of the tests the transgender tester experienced more than two types of adverse differential treatment when compared to the cis gender tester.
- In 40% of the tests conducted, the transgender tester experienced some form of negative interaction. The negative interactions observed ranged from verbal harassment, rude service, refusal to assist, and being followed or observed by an employee or security.
- In Virginia, the jurisdiction lacking nondiscrimination protections, there was a higher rate of adverse differential treatment favoring the cis gender tester (43%) relative to the rate seen in the jurisdictions with nondiscrimination protections Maryland and the District of Columbia (34%).
- African American transgender testers faced higher rates of verbal harassment and other forms of negative interactions than their white peers in both jurisdictions with and without nondiscrimination protections. In the jurisdictions with nondiscrimination protections the white transgender tester experienced significantly less negative interactions (19%) than the African American transgender tester (81%). In the jurisdiction lacking nondiscrimination protections the African American transgender tester experienced a negative interaction in 57% of the tests, while the white transgender testers experienced negative interactions in 43% of the tests.

¹ Cis Gender is the term used to describe someone whose gender identity matches the gender they were assigned at birth.

BACKGROUND

Public awareness surrounding transgender individuals and the barriers they face has increased with public figures such as Laverne Cox and Caitlyn Jenner bringing transgender individuals to the forefront of the mainstream media. Despite the increased media attention and the progress made in the LGBT community as a whole, transgender and gender non-conforming individuals still face high rates of discrimination and transphobic violence. Indeed, this past year marked the highest reported rates of murders of transgender individuals in recent years with 21 transgender individuals being murdered.^{iv} Transgender woman of color in particular faced increased reports of transphobic violence.

Transgender individuals encounter discrimination in every realm of their life, including applying for jobs, filing out applications, background checks, obtaining medical care, and accessing gender segregated facilities such as dressing rooms or bathrooms.^v The bias they confront on a daily basis impacts their ability to fully participate in the market place and can lead to a domino effect of insurmountable challenges.^{vi}

In a 2011 national survey conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, over 53% of respondents reported being verbally harassed or disrespected in a place of public accommodation. Respondents to the survey also reported the highest rate of denial of equal treatment or service at retail stores.^{vii} Transgender individuals have reported verbal harassment and disrespect such as being asked to leave stores to avoid upsetting other customers or being ignored by employees.^{viii} The survey further found that transgender people of color generally experience higher rates of abuse in public accommodations than their white peers, with African Americans reporting much higher rates of physical assault than their non-black peers.^{ix}

In recent years the issue of gender segregated spaces has focused on access to bathrooms. However, discrimination against transgender individuals in public gender segregated spaces extends beyond bathrooms. Transgender individuals seeking to use a gender segregated space, such as dressing rooms, face a number of barriers, one the greatest of which is safety. Transgender people are at greater risk of physical violence and abuse, this risk increases when a transgender individual is forced to use a dressing room that does not correspond to their gender identity.^x Further, when forced to use a dressing room that corresponds with their birth gender they are being denied the right to privacy and the choice of revealing their gender.^{xi} Even when able to access dressing rooms that correspond to their gender identity, a transgender person faces verbal harassment, the trauma of which can have lasting effects.^{xii}

A frequent argument made against allowing transgender individuals to access dressing rooms of their corresponding gender identity, is that transgender individuals would jeopardize the safety of cis gender individuals utilizing the same space. There is no evidence of this having been found to be true in jurisdictions that have nondiscrimination protections in places of public accommodations for gender identity.^{xiii} This argument assumes that a law allowing transgender individuals to use the dressing room of their choice, in some way would compel an increase in crime. This assumption is offensive and discriminatory. Transgender individuals are not seeking to access the sex segregated facility that corresponds with their gender identity to harm cis gender individuals. Rather, they are merely trying to participate in the public market place and utilize the dressing room, bathroom, or locker room that corresponds to the gender they identify with in a way that maintains their safety and privacy.

STATE OF THE LAW

At the time of this writing there are 18 states plus the District of Columbia that have laws protecting transgender individuals from discrimination in places of public accommodations.^{xiv} Federal law currently does not prohibit discrimination based on sex, gender identity or sexual orientation in places of public accommodations. Some federal anti-discrimination laws such as in housing and employment have protections based on sex which has been interpreted at times to cover gender identity, however no such cause of action exists in places of public accommodation.

Furthermore, as of February 2016 there are 44 anti-transgender bills pending across 16 states.^{xv} These proposed laws include bills that would impede school districts from implementing policies to protect transgender students and athletes, limit access to gender-segregated public facilities, prevent transgender people from amending their birth certificates, define sex so as to exclude transgender people from state legal protections in employment and education, and require transgender people to disclose their surgical history when obtaining a marriage license.^{xvi}

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In 2015, a comprehensive nondiscrimination bill, the Equality Act was introduced into the House and Senate.^{xvii} If passed, the Equality Act would update the Civil Rights Act of 1964 to include sex, sexual orientation, and gender identity among the protected classes that discrimination is prohibited against in places of public accommodations.^{xviii} This would mean that LGBT individuals would finally have fully inclusive permanent protections against discrimination. Comprehensive nondiscrimination protections on a federal level based on gender identity would provide a basic layer of protection and indicate transgender people

should be treated with dignity.^{xi} This report aims to produce evidence in a pilot study that illustrates the need for federal protections in public accommodations, such as the Equality Act.

The three jurisdictions included in this investigation, the District of Columbia (DC), Maryland and Virginia, have a range of nondiscrimination protections in public accommodations from strong protections to no protections. Together, these jurisdictions mirror the state of the laws around the country.

District of Columbia

The District of Columbia passed comprehensive transgender inclusive antidiscrimination protections in public accommodations in 2006 with amendments to the Human Rights Act of 1977.^x The DC Office of Human Rights has made efforts in the last few years to educate the public on the need for safe gender neutral spaces in public accommodations with their safe bathrooms campaign and the transgender respect campaign.^{xi}

Maryland

Maryland is the most recent state to have passed transgender inclusive anti-discrimination protections. In 2014, the Fairness for All Marylanders Act of 2014 passed the state legislature and was signed into law by Governor O'Malley.^{xii} This bill updated the state's nondiscrimination laws to include transgender individuals. At the time of the bills passing a number of local jurisdictions already had transgender inclusive nondiscrimination laws in place. The Montgomery County Council modified its county code to include nondiscrimination protections for transgender people in 2007; Howard County followed in 2011; and Baltimore County amended its Code to include gender identity as a protected status in 2012.^{xiii}

Virginia

Under existing Virginia state law, sexual orientation and gender identity are not covered under the Virginia Human Rights Act.^{xiv} Unlike Maryland, Virginia has no local nondiscrimination protections for transgender individuals who are discriminated against due to their gender identity. At the time of this writing there are a number of anti-transgender bills pending in the Virginia legislation that would further exclude transgender individuals from day to day life.^{xv} These bills include laws that would create broad exemptions allowing people and business to discriminate against transgender individuals on the basis of religious or moral beliefs and bills that would require students to use the gender segregated facility that corresponds to their gender assigned at birth in the school setting.^{xvi}

METHODOLOGY

In order to examine whether transgender women were treated less favorably by retailers in the three jurisdictions, the ERC conducted 60 matched pair public accommodations civil rights tests to quantify the extent of adverse differential treatment.² Civil Rights testing refers to an investigative process that measures similarities and differences in the quality, quantity, and content of information and service given to customers by a business as part of normal transaction. In match pair testing, two testers are matched so that they have the same characteristics except one. The match pair seeks similar services such as shopping in a retail store or applying for a job. The information gathered by the testers is then used to determine whether differences in treatment, information, and service are provided to the testers because of a particular characteristic. Civil Rights testing can uncover and document patterns of subtle forms of unlawful discrimination which may be difficult for ordinary individuals to detect, but which may be just as effective in restricting access to services. Testing of retail stores can indicate whether businesses are complying with public accommodations and/or anti-discrimination laws and measure the standards of equal customer service at particular test sites.

The ERC identified large national retail chains to be the most difficult spaces for transgender individuals to access based on anecdotal information from interviews with transgender individuals, LGBT advocates, and research of the retail industry. In selecting sites, the goal was to attain some measure of geographic, economic, and racial diversity. To identify the sites to be tested within each jurisdiction, the ERC conducted research into large retailers to determine if there were gender specific store policies in place at the retailers and to select stores along a stratum of price ranges.

Finally, the locations were visited by an ERC staff member to ensure that the selected locations had gender specific dressing rooms and dressing rooms generally attended by an employee. This visit also ensured that the test assignment included specific directions to the targeted department to avoid testers visiting different departments.

² In August 2015, prior to conducting the 3 state investigations underlying this report, the ERC conducted 5 exploratory tests in Virginia and the District of Columbia. These two jurisdictions represented two of the three jurisdictions ultimately investigated and include jurisdictions with and without nondiscrimination protections for gender identity and gender expression. The exploratory tests were conducted to refine the methodology, establish its effectiveness in obtaining valid, reliable data, while preventing detection and ensuring the safety of the testers.

The single most important factor in site selection was safety of the testers. Both Virginia and Maryland saw transwomen of color murdered in 2015. Indeed, while this investigation was underway, one of the sites selected in Maryland was the location of a murder of a transwoman known to more than one of the testers involved in this study. For this reason, the site was removed from the investigation decreasing the overall number of Maryland sites included in the investigation.³

The testing, designed and conducted by the ERC, consisted of 60 matched in person public accommodations tests conducted between September 2015 and January 2016 and targeted 30 retail stores. The matched pairs consisted of a White transgender woman matched with a White cis gender woman, and an African American transgender woman matched with an African American cis gender woman. Two tests were conducted at each location, once by a white testing pair, and once by an African American testing pair. This allowed for an additional comparison of treatment on the basis of race at each test site.⁴ In the case of each matched pair the testers were matched as similarly as possible in all characteristics except gender identity.^{5 6}

Each test consisted of an in-person component, in which two testers (one transgender individual and one cisgender individual) visited the assigned location and interacted with a store employee. The matched pair testers visited each site at reasonably spaced intervals. Testers visited the same department and selected the same items in an attempt to receive the same service. Each tester followed an assigned protocol to request similar services in a similar manner at similar time intervals including accessing the dressing room and the availability of a new size. For example, tester A would enter the department shop for 5 minutes, select two dresses and then attempt to access the dressing room and request a different size.⁷ Tester B

³ There were 10 District of Columbia, 6 Maryland, and 14 Virginia site locations overall.

⁴ Testers were sent an assignment form before each test detailing the time, date, location, department, items to select to try on.

⁵ Testers were recruited from the ERC's tester pool, through outreach and referral to local LGBT advocates, and via advertisement in the metro District of Columbia, Maryland, Virginia region. All testers utilized for this project were screened, and completed training in both the classroom and the field. The training covered all aspects of public accommodations testing specific to the retail setting.

⁶ For the purpose of this study, taking into account the limited sample size, we utilized testers whose gender identity and expression was transgender women. The testers included in this project were transgender women who were comfortable accessing woman's dressing rooms, and had been living full-time as trans women for longer than a year.

⁷ The safety of the testers was of the greatest priority to the ERC during the testing project and the testers were told in the training and reminded on each assignment form, that if at any point they felt unsafe or felt their personal wellbeing required it, they may end the test immediately by say "Thank you for your time." In this scenario, testers were told not to wait until they have left the department but to contact the test coordinator immediately via phone and move to a location they no longer felt threatened.

would follow and repeat the same protocol. After each test testers created a written narrative to capture their experiences including things such as verbal harassment, and interaction with employees and customers.

Testing data was compiled and analyzed by ERC staff, and involved reviewing the results of each matched-pair test to determine whether one tester received different information, or was treated differently from the matched tester. A number of variables were defined to indicate differences in quality and quantity of information, and services provided. Indicators of differential treatment included:

- Were they greeted
- Time between entering department to time greeted
- Was the tester asked if they needed assistance or help
- Time between entering department and offer of assistance
- Able to access women’s dressing room
- Wait time differential to access dressing room
- Number of check-backs⁸
- Check-back time differentials
- Were other customers assisted by employees and not the tester
- Ability to get an employee to assist with new a size request
- Encounters or problems with security
- Was tester directed to the women’s restroom
- Was the tester verbally harassed
- Was the tester shown disrespect or ignored by employees
- Did the tester feel unsafe
- Testers overall impression of customer service experience

The findings for each of the 60 paired tests were classified into the following 4 categories:

1. Equal Service
2. Inconsistent Service
3. Differential Treatment Favoring Cis Gender Tester
4. Differential Treatment Favoring Transgender Tester

⁸ A check-back is the act of an employee returning to the dressing room to ask the customer how they are progressing and if they need further assistance.

Equal Service means that similar treatment was provided to both the transgender and cis gender tester. There may have been minor inconsistencies or differences, but overall service was equal. This finding includes tests that illustrate unfavorable service to both testers or favorable service to both testers.

Inconsistent Service means that equal service was not provided. Service to both testers was dissimilar but did not indicate significant unfavorable service to the transgender tester. This finding includes tests in which the transgender tester experienced at least one adverse difference in treatment and service.⁹

Differential Treatment Favoring Cis Gender Tester means that test results indicated that less favorable service and treatment was provided to the transgender tester than to their cis gender matched pair tester. This finding includes tests in which more than three adverse differences in service and treatment occurred, indicating significant unfavorable service and treatment of the transgender tester.

Differential Treatment Favoring Transgender Tester means that test results indicate that less favorable service and treatment was provided to the cis gender tester than to the transgender tester.

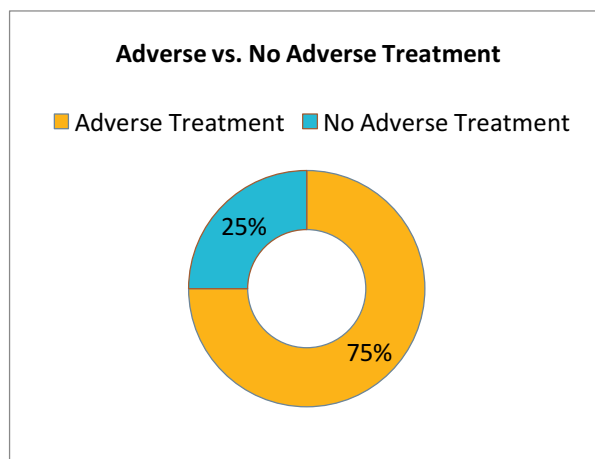
The test results were also analyzed for any instances where the tester may have been the subject of verbal harassment, disrespect, rude or inappropriate comments, employees ignoring the tester, the tester being followed or observed by store employees or security, and any physical violence or threats. For this reports purposes this category of results is presented separately as instances of negative interactions experienced by the transgender tester. Findings of negative interactions include experiences with employees, any type of security, and other customers, while the above four findings related to differential treatment and service only include data points relating to the testers interaction with store employees and store security. A transgender tester may have experienced equal service and treatment from the store employee, but within the same test also experienced verbal harassment from a customer or mall security. For this reason, it was necessary to present the findings for negative interaction separately.

⁹ Factors such as significant differences in the number of customers and employees present in the department during the test were weighed to determine if the differential treatment was adverse.

RESULTS

Overall the investigation results demonstrated that in 75% of the tests the transgender tester experience at least one instance of adverse differential treatment.¹⁰ Adverse treatment encompasses tests where the treatment and service provided was found to be inconsistent or differential to the cis gender tester. Among these tests, the ERC documented instances of:

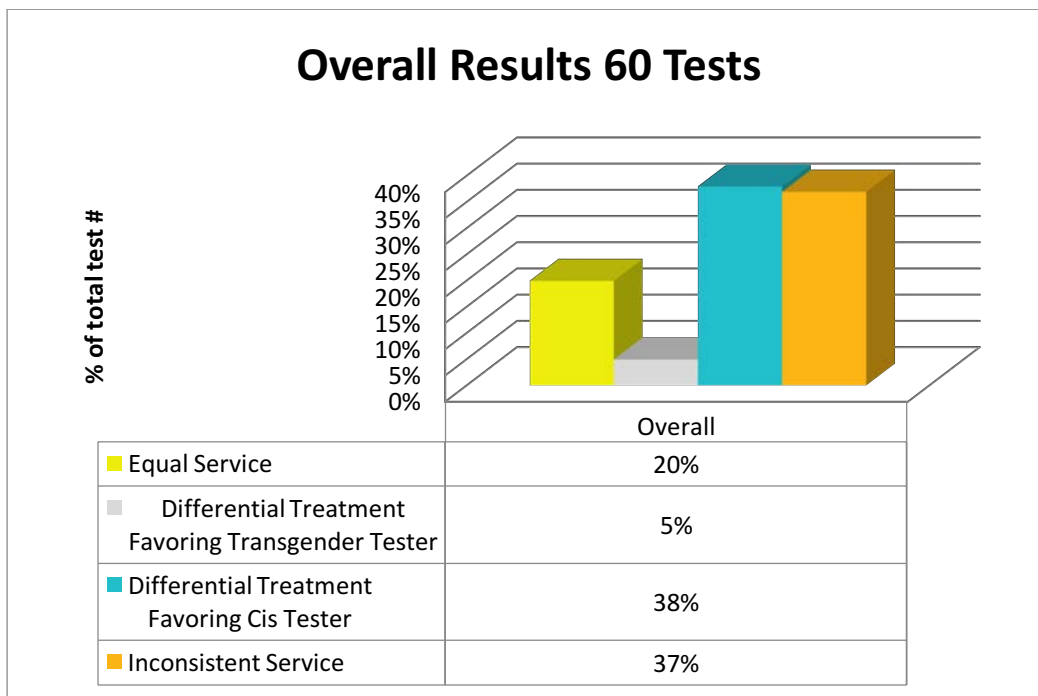
- The transgender tester being ignored by employees upon entering the department, while the cis gender tester was greeted and/or asked if they needed assistance.
- The employee checking back on the cis gender tester or other customers while in the dressing room but not the transgender tester.
- The transgender tester being told to wait in line at the register to ask for a new size, while the cis gender tester was assisted with no wait.
- The employee going to find the new size upon request for the cis gender tester, while the transgender tester was told to go look for the new size herself.



In only 25% of the tests did the transgender tester received equal or favorable customer service when compared to their cis counterpart. Out of 60 tests, 12 showed equal service

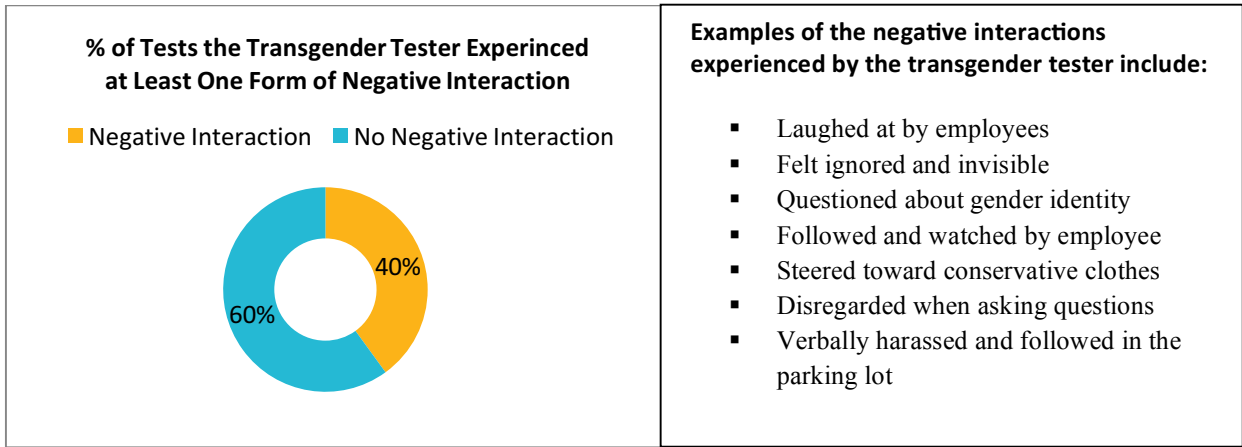
¹⁰ Our findings are presented in the form of percentages. Due to the small sample size of 60 tests the analysis did not include the use of statistical testing. Open ended answers and the narrative were reconciled with the report form during the debriefing process. Where appropriate the open responses and further qualitative data found in the narrative were coded and tabulated.

(20%), 22 showed inconsistent service (37%), 23 showed adverse differential treatment favoring the cis gender tester (38%) and 3 showed differential treatment favoring the transgender tester (5%).¹¹



In 24 of 60 (40%) of the tests, the transgender tester experienced an adverse interaction, while their match did not experience the same negative treatment and service. Negative interactions included instances of verbal harassment, disrespectful or rude service, inappropriate comments, and the tester being ignored, followed or watched by security or store employees. The testers report multiple instances of being ignored and treated rudely. In one test the tester was felt pressed for information about her gender identity, while in another test an employee told the tester that her “body build” did not work for the dress she was trying on.

¹¹ See Table 1 in the Appendix for the tabulation of results of treatment and corresponding percentage.



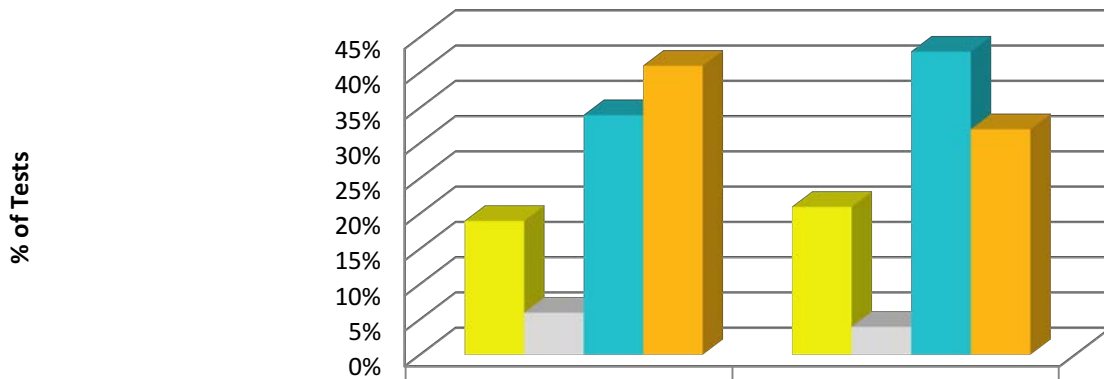
RESULTS BY TYPE OF LEGAL PROTECTIONS

In both the jurisdiction types, two with nondiscrimination protections and one without, the transgender tester experienced at least one type of adverse differential treatment in 75% of the tests. However, in jurisdictions with protections there was a higher rate of tests where the transgender tester experienced inconsistent service (41% relative to 34% adverse differential treatment), while in the jurisdictions without protections there was a higher rate of the transgender tester experiencing adverse differential treatment (43% relative to 32% inconsistent) where the cis gender tester was treated more favorably.

In 50% (14 of 28) of the tests conducted in the jurisdiction without nondiscrimination protections the transgender tester experienced some form of negative interaction with an employee, security, or a customer. The transgender tester experienced a lower rate, 31% (10 of 32 tests) of negative interactions in the jurisdictions with nondiscrimination protections.

The below table shows the frequency of treatment overall in the combined jurisdictions with nondiscrimination protections in place and the tests completed in the jurisdiction without protections.

Nondiscrimination Protections Comparison



	Protections (DC, MD)	No Protections (VA)
Equal Service	19%	21%
Differential Treatment Favoring Transgender Tester	6%	4%
Differential Treatment Favoring Cis Tester	34%	43%
Inconsistent Service	41%	32%

FINDINGS BY STATE

District of Columbia

The District of Columbia (DC) is one of two jurisdictions included in this pilot study that has nondiscrimination protections for transgender individuals in places of public accommodations. Of the two jurisdictions, DC has had nondiscrimination protections for gender identity in place of public accommodations for significantly longer than Maryland (nine years compared to 2 years). 20 tests were conducted at 10 site locations in DC.

DC had the highest rate of equal service provided to the transgender testers across the three jurisdictions at 25% (5 of 20 tests). DC was also found to have the lowest rate of adverse differential treatment and service favoring the cis gender tester at 25%. There were no tests in the District of Columbia that found differential treatment favoring the transgender tester. There were, however, significant findings of inconsistent service in DC, with 50% of the tests (10 of the 20) conducted in DC detected inconsistent service. DC had the lowest rate of negative interactions experienced by the transgender testers of the three jurisdictions at 30%.

Maryland

Maryland has had nondiscrimination protections for gender identity in place of public accommodations statewide since 2014, and in some local jurisdictions since 2007. Of the three jurisdictions tested Maryland had the fewest locations. There were 12 tests conducted at 6 sites in Maryland.

While Maryland is one of the two jurisdictions with nondiscrimination protections in place, it was the jurisdictions with the lowest rate of equal service experienced by the transgender tester at 8%. Maryland also had the highest rate of tests where the transgender tester experienced adverse differential treatment and service that favored the cis gender tester (50%). However, Maryland was the jurisdiction with both the highest rate of differential treatment favoring the transgender tester at a rate of 17% (2 of 12 tests) and the lowest rate of inconsistent service at 25% of the pilot tests conducted (3 of 12). Maryland had the second lowest rate of negative interactions experienced by the transgender tester at 33%.

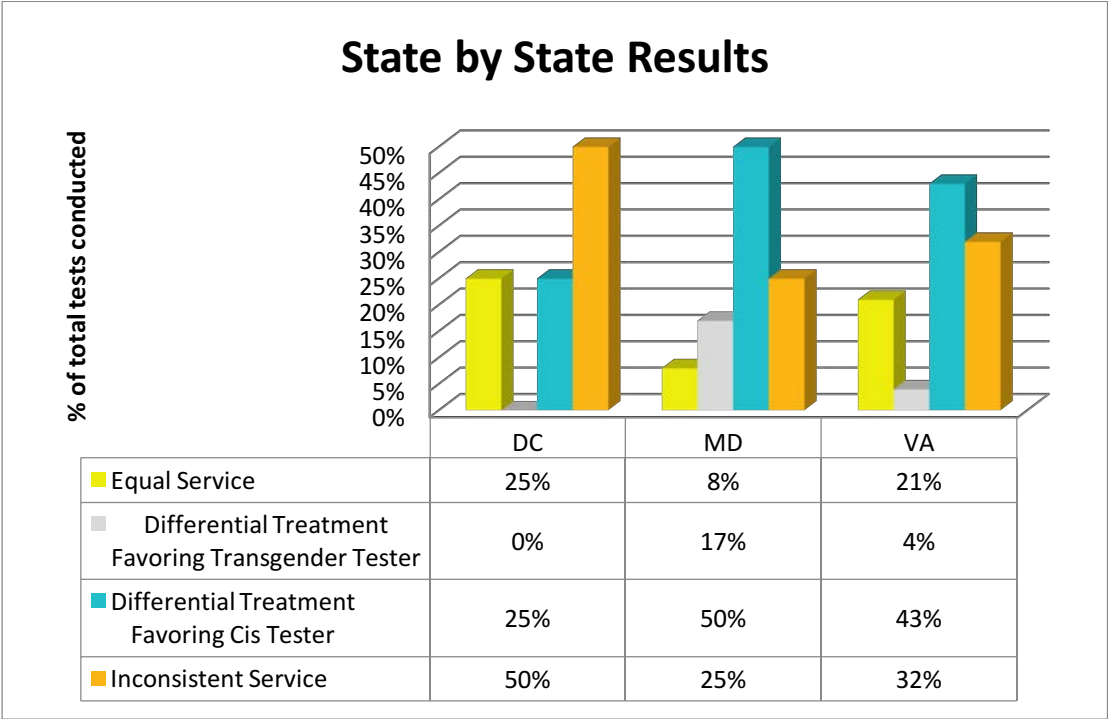
Virginia

Virginia has no statewide or local nondiscrimination protections in places of public accommodation for gender identity. There were 28 tests conducted at 14 test site locations.

Equal service provided to the testers was observed in 21% of the tests conducted in Virginia. The second highest rate of the transgender tester experiencing adverse differential treatment was reported in Virginia with 43% (12 of 28) of the tests detecting differential treatment favoring the cis gender tester. In 1 of 28 tests (4%) conducted in Virginia differential treatment

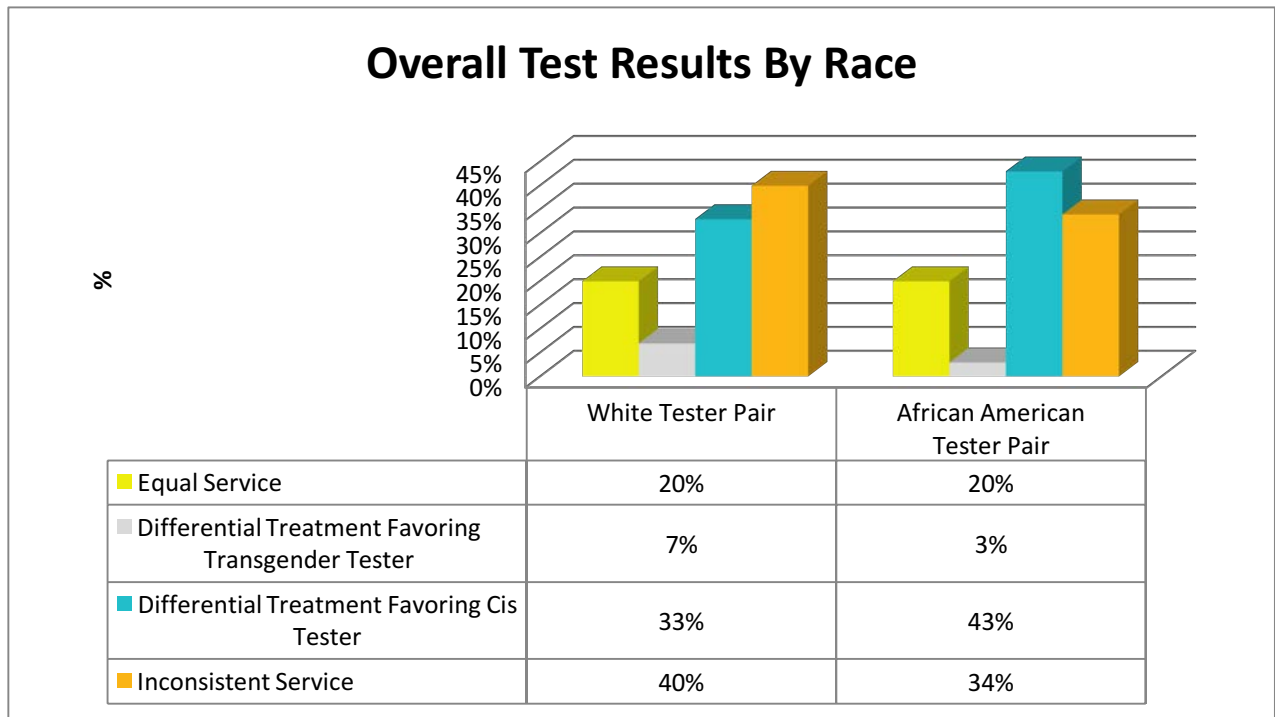
favoring the transgender tester was detected. The second highest rate of inconsistent service was found in Virginia with 9 of 28 tests (32%) finding service that was not consistent and where the transgender tester experienced at least one type of adverse differential treatment. There were significant findings of negative interactions experienced by the transgender tester. In 50% of the tests (14 of 28) conducted in Virginia the transgender tester experienced at least one instance of negative interaction.

The below chart shows the three state breakdown of frequency and percentage of the overall tests within that jurisdiction each category of treatment and service represented.

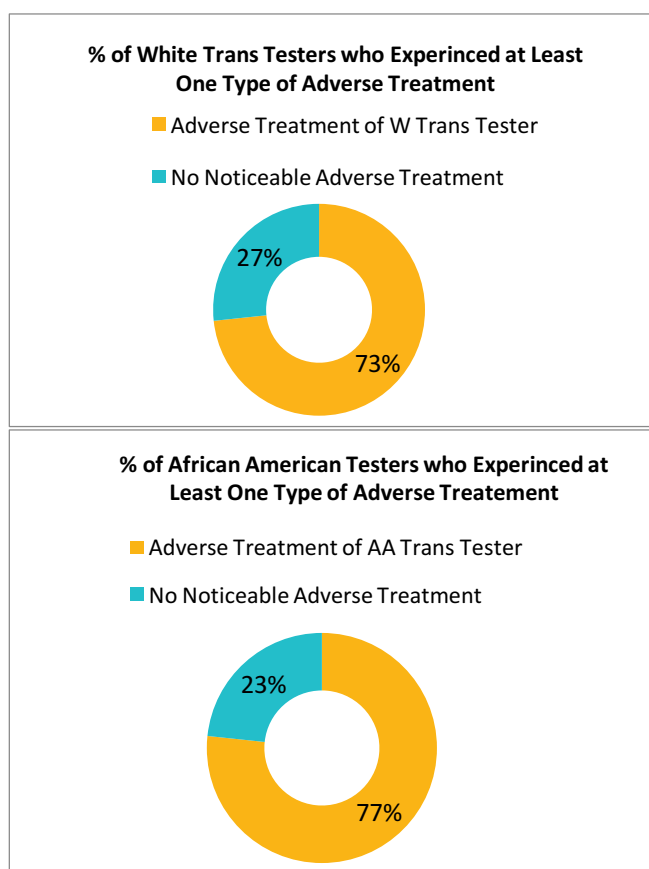


RACIAL COMPARISON

While both testers experienced high rates of adverse treatment and verbal harassment, when comparing the findings of the 30 tests conducted by the white match pair with those of the African American match pair, overall, the African American transgender tester experienced higher rates of less favorable treatment than her cis gender match pair. The African American transgender tester faced a slightly higher rate of adverse differential treatment with 77% of the completed tests showing at least one instances of adverse differential treatment, compared to the White transgender tester at 73%. The African American tester faced significantly higher rates of negative interaction at a rate of 50% of all tests compared to 30% of all tests completed by the white transgender tester. These findings support prior research that illustrates the increased discrimination people of color face due to the coupling of transphobic bias with systemic racism.



Adverse treatment encompasses tests where the treatment and service provided was found to be inconsistent or differential to the cis gender tester. When comparing the 30 tests conducted by the white match pair to the 30 tests conducted by the African American match pair, the African American transgender tester experienced a higher percentage of tests where they experienced differential treatment that favored the cis gender tester, and a lower percentage of tests where service was inconsistent. In comparison the white transgender tester experienced a higher percentage of tests that were inconsistent in service and a lower percentage of tests that showed differential treatment favoring the cis gender tester. These results suggest that while there is a high rate of adverse treatment experienced by transgender individuals of either race, African American transgender individuals experience greater incidents of adverse treatment within a shopping experience than white transgender individuals.



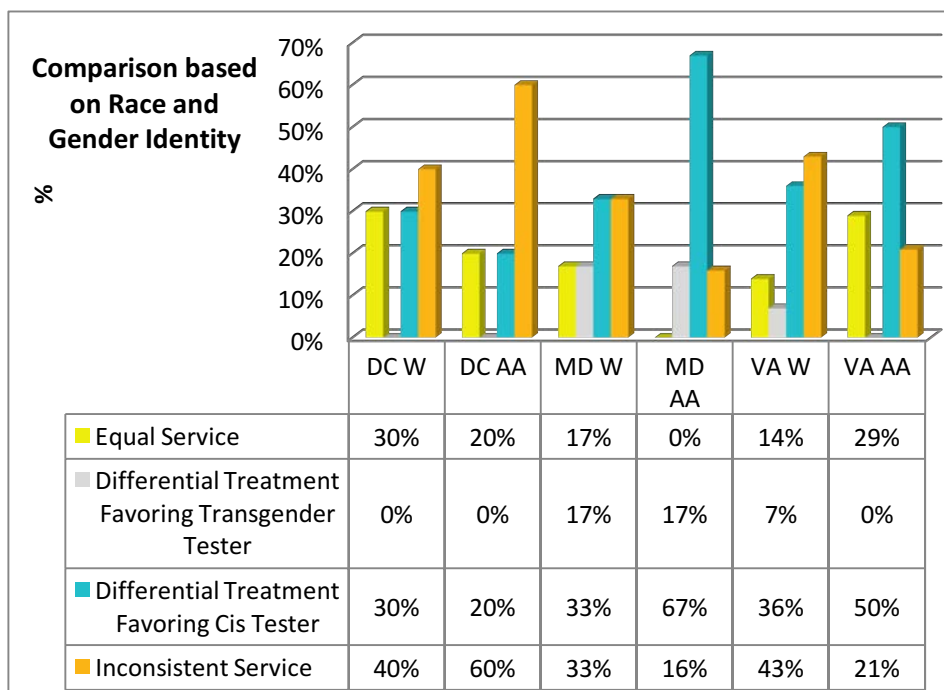
The African American transgender tester faced significantly higher rates of negative interactions in the District of Columbia. The African American transgender tester reported incidents including verbal harassment and inappropriate comments, in 50% of the tests while the white transgender tester only reported negative interactions in 10% of the tests. Both transgender testers experienced at least one form of adverse treatment in the majority of

their tests in DC, with the African American tester experiencing a slightly higher rate at 80% compared to the white tester’s experience of 70%.

In Maryland both transgender testers experienced adverse treatment in more than half of the tests. The African American tester experienced a higher rate of adverse treatment of 83%, while the white transgender tester experienced at least one form of adverse treatment in 67% of the tests conducted in Maryland. Both transgender testers experienced negative interactions in 67% of the tests conducted in Maryland.

In Virginia, the African American transgender tester experienced negative interactions in 57% of the tests conducted, while the white transgender tester experienced negative interactions in 43% of the tests conducted. Both the African American transgender tester and the white transgender tester experienced high rates of adverse treatment in Virginia. The African American tester was treated less favorably than their cis gender match in 71% of the tests conducted in Virginia. The white transgender tester was treated less favorably in 79% of the tests conducted in Virginia.

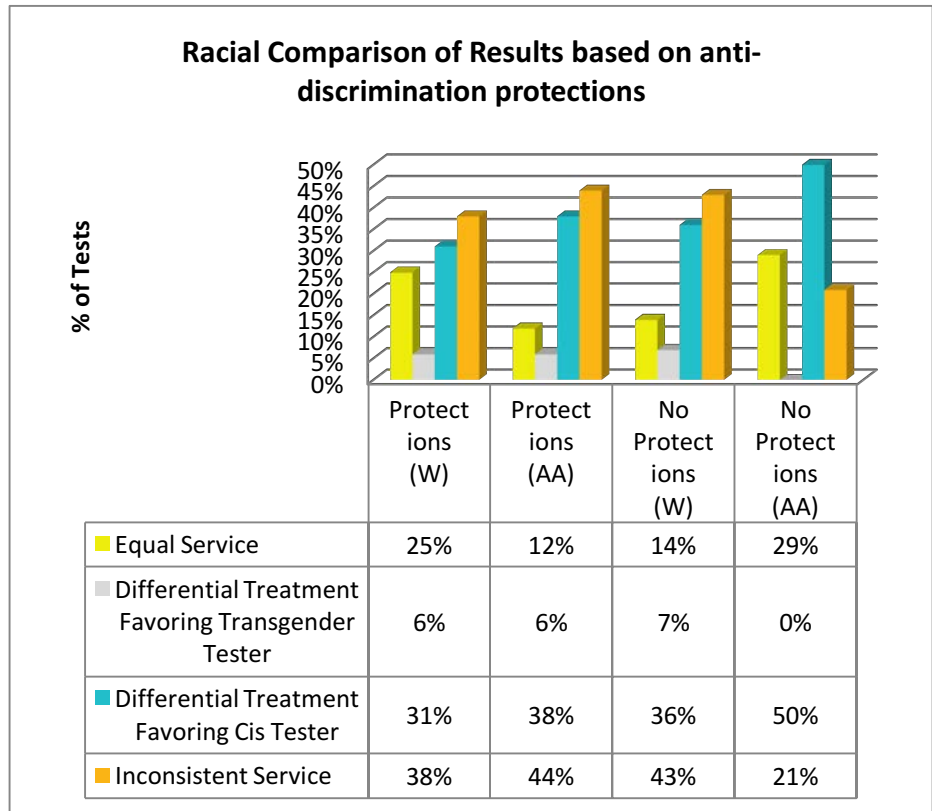
In jurisdictions with protections African Americans faced slightly higher rates of inconsistent service and adverse differential treatment favoring the cis gender tester. In jurisdictions



without protections the white testing pair had a higher rate of inconsistent tests, however the African American pair had a significantly higher rate of differential treatment favoring the transgender tester at 50% compared to the white testing pair 36%. In jurisdictions with nondiscrimination protections the

white transgender tester experienced significantly less negative interactions (19%) than the African American transgender tester (81%). These finding suggest that even in areas with nondiscrimination protections African American transgender individuals face additional barriers of systemic racism.

The chart shows the frequency of treatment by racial make-up in the combined jurisdictions with nondiscrimination protections in place, and the tests completed in the jurisdiction without protections.



RECOMMENDATIONS

It is the ERC's intention that the creation of a replicable testing methodology, the collection of relevant data, and the publication of this report will increase and strengthen nondiscrimination legal protections at the national and state levels based on gender identity, ensuring that new and existing protections are sufficiently enforced, and promoting the creation of more inclusive policies and practices at retail stores and other public accommodations.

Recommendation 1: Legislation prohibiting Public Accommodations discrimination based on gender identity is essential on a federal level.

In 32 states, transgender individuals lack statewide nondiscrimination protections in places of public accommodations, allowing business to act with impunity when they deny access to sex segregated facilities or provide adverse differential treatment and service. In the jurisdiction without protections included in the testing here, the rate of adverse differential treatment was 43%. In 75% of the tests conducted in Virginia the transgender tester experienced at least one form of adverse differential treatment. In 50% of the tests conducted the transgender tester experienced some form of negative interaction with an employee, security, or a customer. Even in the two jurisdictions tested that have nondiscrimination protections for gender identity, this investigation documented high levels of both adverse differential treatment and negative interactions. The Equality Act should be passed by Congress in-order to give transgender individuals a remedy to, and protection from, the discrimination evidenced in this investigation.

Recommendation 2: Active enforcement of protections already in place needs to be made a priority.

Government enforcement agencies need to take a more proactive approach to enforcing civil rights laws before an individual has to experience the insult, embarrassment and humiliation resulting from discrimination. It is clear from the results in Maryland, a state with anti-discrimination protections, that greater enforcement of the laws in place would strength them. Governments need to take an active role in educating their constituents and businesses that operate within their jurisdiction about the rights of transgender individuals, such as the safe bathroom campaign run by the District of Columbia Office of Human Rights.

Recommendation 3: Corporations need to take an active role in ensuring their employees are aware of the local protections and implement companywide gender neutral policies.

Transgender individuals should have the ability to access all areas of the public market without fear of verbal harassment or physical assault. To achieve this, corporations should create appropriate policies educating employees and incorporate them into employee trainings. Further, inclusion of transgender individuals in the workforce would foster a more trans inclusive environment.

Recommendation 4: Create gender neutral spaces in places of public accommodations.

Gender segregated spaces within the retail setting and the greater realm of Public Accommodations create a situation where employees are making subjective assessments of an individual's gender in order to permit or deny access. Gender neutral spaces would remove this built in barrier to equal service and treatment for transgender individuals seeking to access spaces within the public market.

Recommendation 5: Continued data collection to identify the existence and scope of discrimination based on gender identity.

There is a lack of data documenting the frequency and severity of discrimination faced by transgender individuals in places of public accommodation. A national research project to document the rates of discrimination faced by subpopulations of the transgender community (e.g. race) should be conducted in order to best address the gaps in protections.

APPENDIX

Table 1: Overall Results

Findings	Number of Tests	Percentage of Total
Equal Service	12	20%
Inconsistent Service	22	37%
Differential Treatment Favoring Cis Tester	23	38%
Differential Treatment Favoring Transgender Tester	3	5%
Total	60	

Table 2: State by State Results

DC Findings	Number of Tests	Percentage of Total
Equal Service	5	25%
Inconsistent Service	10	50%
Differential Treatment Favoring Cis Tester	5	25%
Differential Treatment Favoring Transgender Tester	0	0%
MD Findings	Number of Tests	Percentage of Total
Equal Service	1	8%
Inconsistent Service	3	25%
Differential Treatment Favoring Cis Tester	6	50%
Differential Treatment Favoring Transgender Tester	2	17%
VA Findings	Number of Tests	Percentage of Total
Equal Service	6	21%
Inconsistent Service	9	32%
Differential Treatment Favoring Cis Tester	12	43%
Differential Treatment Favoring Transgender Tester	1	4%
Total	60	

Table 3: Results by Jurisdiction Type

Jurisdictions with Protections Findings (DC, MD)	Number of Tests	Percentage of Total
Equal Service	6	19%
Inconsistent Service	13	41%
Differential Treatment Favoring Cis Tester	11	34%
Differential Treatment Favoring Transgender Tester	2	6%
Jurisdiction without Protections Findings (VA)	Number of Tests	Percentage of Total
Equal Service	6	21%
Inconsistent Service	9	32%
Differential Treatment Favoring Cis Tester	12	43%
Differential Treatment Favoring Transgender Tester	1	4%

Table 4: Results by State and Race

Overall Findings	White Pair Number of Tests	Percentage of Total	African American Pair # of Tests	Percentage of Total
Equal Service	6	20%	6	20%
Inconsistent Service	12	40%	10	34%
Differential Treatment Favoring Cis Tester	10	33%	13	43%
Differential Treatment Favoring Transgender Tester	2	7%	1	3%
Total	30		30	
DC Findings	White Pair Number of Tests	Percentage of Total White DC Paired Tests	African American Pair # of Tests	Percentage of Total
Equal Service	3	30%	2	20%
Inconsistent Service	4	40%	6	60%
Differential Treatment Favoring Cis Tester	3	30%	2	20%
Differential Treatment Favoring Transgender Tester	0	0%	0	0%
Total	10		10	
MD Findings	White Pair Number of Tests	Percentage of Total	African American Pair # of Tests	Percentage of Total
Equal Service	1	17%	0	0%
Inconsistent Service	2	33%	1	16%
Differential Treatment Favoring Cis Tester	2	33%	4	67%
Differential Treatment Favoring Transgender Tester	1	17%	1	17%

Total	6		6	
VA Findings	White Pair Number of Tests	Percentage of Total	African American Pair # of Tests	Percentage of Total
Equal Service	2	14%	4	29%
Inconsistent Service	6	43%	3	21%
Differential Treatment Favoring Cis Tester	5	36%	7	50%
Differential Treatment Favoring Transgender Tester	1	7%	0	0%
Total	14		14	

Table 5: Results by Jurisdiction Type and Race

Jurisdictions with Protections Findings (DC, MD)	White Pair Number of Tests	Percentage of Total	African American Pair # of Tests	Percentage of Total
Equal Service	4	25%	2	12%
Inconsistent Service	6	38%	7	44%
Differential Treatment Favoring Cis Tester	5	31%	6	38%
Differential Treatment Favoring Transgender Tester	1	6%	1	6%
Total	16		16	
Jurisdiction without Protections Findings (VA)	White Pair Number of Tests	Percentage of Total	African American Pair # of Tests	Percentage of Total
Equal Service	2	14%	4	29%
Inconsistent Service	6	43%	3	21%
Differential Treatment Favoring Cis Tester	5	36%	7	50%
Differential Treatment Favoring Transgender Tester	1	7%	0	0%
Total	14		14	

END NOTES

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