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### **Transcending Prejudice: Gender Identity and Expression- Based Discrimination in the Metro Boston Rental Housing Market**

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# Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market

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**ABSTRACT:** Surveys of transgender people reveal high levels of discrimination in housing. Surveys are helpful; however, in the housing context discriminatory actions are often subtle and occur without a person's knowledge. Very little empirical evidence in the form of statistic measures of discrimination exists regarding the actual level of gender identity-based discrimination that occurs in the rental housing market.

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This article presents estimates of discrimination from a series of matched paired housing discrimination tests. This method of gathering objective data from the rental housing market provided a comparison of the treatment of transgender and gender-nonconforming people with that of the gender-conforming cisgender people with whom they were paired. This study found that transgender and gender-nonconforming people received discriminatory differential treatment 61% of the time. In addition, they were 27% less likely to be shown additional areas of the apartment complex, 21% less likely to be offered a financial incentive to rent, 12% more likely to be told negative comments about the apartment and the neighborhood, and 9% more likely to be quoted a higher rental price than people who were not transgender and conformed to gender stereotypes. The study also analyzed data separately for transgender and gender-nonconforming people, with similar findings. The type of discrimination this study reveals is similar to the harder to detect forms found in recent studies of race discrimination, but it appears at higher rates than discrimination against other protected classes (i.e. higher rental quotes versus overt discriminatory statements). Gender identity is not a protected class under the Fair Housing Act and is included in only nineteen state housing anti-discrimination laws. In 2016, more than 200 anti-LGBT bills were introduced, and since 2013 the FBI reports that hate crimes against transgender and gender-nonconforming people increased 300%. In light of the lack of full protection against discrimination for transgender and gender-nonconforming people and the extent of discrimination revealed in this study, policy makers should add gender identity as a protected class in anti-discrimination laws.

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## INTRODUCTION

Transgender<sup>1</sup> and gender-nonconforming<sup>2</sup> people are among the most vulnerable to discrimination and prejudice in our society.<sup>3</sup> Two reports released in 2015 detailed widespread discrimination against and challenges faced by this community, including harassment, high poverty rates, poor health, limited job opportunities, and violence.<sup>4</sup> Data collected by the Federal Bureau of Investigation (FBI) report a 300% increase in hate crimes against transgender and gender-nonconforming individuals between 2013 and 2016.<sup>5</sup> Yet those who do not conform to the binary conceptions of gender so entrenched in our culture remain largely unprotected under civil rights statutes such as the Fair Housing Act (FHA).<sup>6</sup>

Where a person lives matters in every aspect of their life. Housing lies at the heart of a person’s ability to lead a stable, productive life with access to

1. “Transgender” is an adjective used to describe “people whose gender identity is different from the gender they were thought to be when they were born.” *Understanding Transgender People: The Basics*, NAT’L CENTER FOR TRANSGENDER EQUALITY, July 9, 2016, <https://transequality.org/issues/resources/understanding-transgender-people-the-basics> [<https://perma.cc/D9QD-TMYR>].
2. “Gender nonconformity” describes “a state in which a person has physical and behavioral characteristics that do not correspond with those typically associated with the person’s sex.” *Gender Nonconformity*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/gender%20nonconforming> [<https://perma.cc/XWS4-VF6X>] (last visited Jan. 22, 2018).
3. *See, e.g., Issues, Housing & Homelessness*, NAT’L CENTER FOR TRANSGENDER EQUALITY, <http://www.transequality.org/issues/housing-homelessness> [<https://perma.cc/UB9C-6LQC>] (last visited Jan. 30, 2018). (“One in five transgender people in the United States has been discriminated [against] when seeking a home, and more than one in ten have been evicted from their homes, because of their gender identity.”); Zach Ford, *STUDY: Transgender People Experience Discrimination Trying to Use Bathrooms*, THE WILLIAMS INST., UCLA SCH. OF L., June 26, 2013, <http://williamsinstitute.law.ucla.edu/press/study-transgender-people-experience-discrimination-trying-to-use-bathrooms/> [<https://perma.cc/VC6J-PZS9>] (discussing a study finding significant levels of discrimination against transgender and gender-nonconforming people in the form of denial of access, verbal harassment, and physical assault).
4. Press Release, Nat’l Center for Transgender Equality, *Transgender Americans Face Staggering Rates of Poverty, Violence* (Feb. 18, 2015), <http://www.transequality.org/press/releases/transgender-americans-face-staggering-rates-of-poverty-violence> [<https://perma.cc/LW8J-YJ33>].
5. Criminal Justice Info. Servs. Div., Fed. Bureau of Investigation, U.S. Dep’t of Justice, *Hate Crime*, <https://ucr.fbi.gov/hate-crime> (last visited Jan. 22, 2018) (finding a total of 31 incidents reported against trans and gender-nonconforming people in 2013 and 124 such incidents reported in 2016).
6. Fair Housing Act [hereinafter FHA], Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73, 81-89 (1968), codified as amended at 42 U.S.C. §§ 3601–19 (2000).

education, healthcare, economic opportunities, and social networks.<sup>7</sup> Free access to housing without discrimination is a civil right,<sup>8</sup> but many people are still denied the opportunity to choose where to live because of who they are, not based on whether they can afford the housing. The Fair Housing Act provides some protection, but only on the basis of race, color, national origin, religion, disability, familial status, and sex.<sup>9</sup>

Although sex is a protected class, it was originally understood to protect only cisgender women (women whose assigned sex at birth was female).<sup>10</sup> Various federal and state laws have slowly started to add protections based on gender identity, but some jurisdictions are rolling back or attempting to roll back those protections.<sup>11</sup> In Massachusetts, discrimination in the rental housing market based on gender identity is prohibited due to a 2012 amendment to the Commonwealth's anti-discrimination statute to include gender identity as a protected class.<sup>12</sup>

Protection under the law does not inoculate against discriminatory action, but it does provide those experiencing discrimination with a means of stopping it, and with the potential for compensation for the damages caused. During this tempestuous time, therefore, policymakers need evidence that accurately describes the experiences of transgender and gender-nonconforming people in the housing market. However, few data sources are available that can be used to estimate the extent of discrimination against this population.<sup>13</sup> This study

7. NAT'L FAIR HOUSING ALLIANCE, WHERE YOU LIVE MATTERS: 2015 FAIR HOUSING TRENDS REPORT 1 (2015), available at <http://nationalfairhousing.org/wp-content/uploads/2017/04/2015-04-30-NFHA-Trends-Report-2015.pdf> [<https://perma.cc/W5WF-CQWP>] ("Where you live determines whether or not you have access to a high-performing school, fresh foods, reliable transportation, good job, quality health care, and recreation in a green space. It often determines even how long you will live.").
8. A "civil right" is defined as "[a]ny of the individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act. Civil rights include esp. the right to vote, the right of due process, and the right of equal protection under the law." BLACK'S LAW DICTIONARY 263 (8th ed. 2004). See also Civil Rights Act of 1866, 42 U.S.C. § 1982 (1978) ("All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by White citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.").
9. FHA, 42 U.S.C. § 3604. Although the FHA includes "sex" as a protected class, claims based on gender identity have not historically been held to be cognizable under the Act. This is further examined *infra* Section I.
10. See *infra* Section I.
11. See Katy Steinmetz, *Why So Many States Are Fighting Over LGBT Rights in 2016*, TIME, Mar. 31, 2016, <http://time.com/4277247/north-carolina-georgia-lgbt-rights-religious-liberty-bills/> [<https://perma.cc/4ZB9-QZKN>]; see also *LGBT Nondiscrimination and Anti-LGBT Bills Across the Country*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/other/lgbt-nondiscrimination-and-anti-lgbt-bills-across-country#harmfulbills> [<https://perma.cc/59ZN-XQWU>] (last visited Jan. 30, 2018) ("Several types of harmful bills were introduced in state legislatures in 2016 that either eroded existing protections for LGBT people or opened the door for greater discrimination.").
12. MASS. GEN. LAWS ch. 151B, § 4(7) (2012).
13. "Too often, policy makers, service providers, the media and society at large have dismissed or discounted the needs of transgender and gender-nonconforming people in their communities, and a paucity of hard data on the scope of anti-transgender discrimination has hampered the struggle for

measures the extent of discrimination based on gender identity and expression that is occurring in the Metropolitan Boston rental market.

Section I of this article briefly describes the history of the treatment of gender identity under civil rights laws. Section II describes the design and statistical parameters of the study. Sections III, IV, and V describe the results of the study and show that there is statistically significant evidence of discrimination against transgender and gender-nonconforming people in the rental market in Boston—a jurisdiction where such discrimination is illegal.<sup>14</sup> Section VI contains the authors' recommendations based on the results of the study.

### I. EVOLUTION OF THE LAW RELATED TO “SEX”

Discrimination because of a person's gender identity is inherently discrimination related to a person's sex, but it has not consistently been recognized as such under the law. Although sex is a protected class in the contexts of both employment and housing,<sup>15</sup> early claims of discrimination by transgender people failed in court.<sup>16</sup> This was due to a narrow judicial interpretation of what “sex” meant under the law.<sup>17</sup> Because the formal

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basic fairness.” Kellan Baker, *Health Disparities Report Highlights Transgender Concerns*, THINK PROGRESS, Apr. 23, 2012, <https://thinkprogress.org/health-disparities-report-highlights-transgender-concerns-a4d003c2d70b/> [<https://perma.cc/GW7X-UFDN>].

14. At least one study has used a similar paired-testing method to compare the prevalence of housing discrimination based on sexual orientation across jurisdictions with and without protection under the law. SAMANTHA FRIEDMAN ET AL., OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP'T OF HOUS. AND URBAN DEV., AN ESTIMATE OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES *vi* (2013), available at [http://www.huduser.gov/portal/Publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](http://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf) [<https://perma.cc/Z6N5-JHC3>]. That study found lower rates of discrimination in jurisdictions in which sexual orientation was *not* protected as compared to jurisdictions that offered legislative protection. *Id.* This question of how rates of discrimination vary across jurisdictions with and without legal protections of gender identity merits further study.
15. Employment discrimination based on sex was outlawed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and sex was made a protected class in the context of housing by a 1974 amendment to the FHA, Pub. L. No. 93-383, § 808; 88 Stat. 633, 729 (1974). Employment law is relevant to housing law as “most of the legal principles in [housing cases] have been derived from employment discrimination cases.” ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW AND LITIGATION § 11C(2) (2017).
16. See *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659 (9th Cir. 1977) (holding that Title VII did not include a prohibition against transgender discrimination); *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081 (7th Cir. 1984), *cert. denied*, 471 U.S. 1017 (1985) (finding that Ms. Ulane, a transgender woman, had “not [been] discriminated against as a female” and that there is no record of legislative intent to create an “all-encompassing interpretation” of the law).
17. For deeper discussion of the evolution of the law in this area, see ERIC S. DREIBAND & BRETT SWEARINGEN, JONES DAY, THE EVOLUTION OF TITLE VII—SEXUAL ORIENTATION, GENDER IDENTITY, AND THE CIVIL RIGHTS ACT OF 1964 2 (2015), available at [http://www.jonesday.com/files/Publication/07f7db13-4b8c-44c3-a89b-6dcfe4a9e2a1/Presentation/PublicationAttachment/74a116bc-2cfe-42d2-92a5-787b40ee0567/dreiband\\_lgbt.authcheckdam.pdf](http://www.jonesday.com/files/Publication/07f7db13-4b8c-44c3-a89b-6dcfe4a9e2a1/Presentation/PublicationAttachment/74a116bc-2cfe-42d2-92a5-787b40ee0567/dreiband_lgbt.authcheckdam.pdf) [<https://perma.cc/YX8Y-UDBQ>]; Daniella L. Esses, *Afraid to be Myself, Even at Home: A Transgender Cause of Action Under the Fair Housing Act*, 42 COLUM. J.L. & SOC. PROBS. 465 (2009).

legislative history regarding the amendment that added sex to Title VII is sparse—the amendment was added just one day before the House approved the bill, possibly as a ploy to cause the whole bill to fail,<sup>18</sup>—courts were free to develop their own interpretations. At first, they interpreted the legislative intent behind adding sex as a class as a specific protection of cisgender women, rather than as a protection of all people from differential treatment based on their sex.<sup>19</sup>

But starting in the 1970s, when the Fifth Circuit held that Title VII protections extended to men, courts began to interpret the definition of “sex” under the law more broadly, though still in the context of cisgender persons only.<sup>20</sup> In 1986, the Supreme Court ruled that sexual harassment was always discrimination “because of sex.”<sup>21</sup> Three years later in *Price Waterhouse*, the Supreme Court extended the definition of “sex” to cover women who were not perceived as stereotypically feminine enough.<sup>22</sup> The Supreme Court further expanded the scope of sex discrimination in 1998, when the Court held in *Oncale v. Sundowner* that Title VII prohibited same-sex sexual harassment.<sup>23</sup> Justice Scalia wrote:

[M]ale-on-male sexual harassment in the workplace was assuredly not the principal evil that Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonable comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislator by which we are governed.<sup>24</sup>

The Court assessed whether “members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.”<sup>25</sup> Although *Oncale v. Sundowner* expanded the

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18. Shannon H. Tan, *When Steve is Fired for Becoming Susan: Why Courts and Legislators Need to Protect Transgender Employees from Discrimination*, 37 STETSON L. REV. 579, 584 (2008).

19. See DREIBAND & SWEARINGEN, *supra* note 17, at 2. Even more specifically, there is evidence that the addition was intended to protect white women. *Id.* (“[D]uring the debate [the Representative offering the amendment] and several other representatives spoke about their concern that, if the underlying bill were to pass, the “sex” provision would be needed to protect White women competing with Black women in employment.”); see also TRACEY MCCARTNEY & SARA PRATT, THE FAIR HOUSING ACT: 35 YEARS OF EVOLUTION 3 (2002), <http://fairhousing.biz/include/media/pdf/35years.pdf> [<https://perma.cc/4K24-JKZD>].

20. *Diaz v. Pan Am. World Airways*, 442 F.2d 385, 388 (5th Cir. 1971) (rejecting being female, rather than male, as a bona fide occupational qualification that was “reasonably necessary” to work as a flight cabin attendant).

21. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65 (1986) (finding that sexual harassment, even if it does not lead to economic injury, is impermissible sex discrimination under Title VII).

22. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (cisgender female senior manager was denied partnership because she was viewed as masculine).

23. *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998).

24. *Id.* at 79.

25. *Id.* at 80 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 25 (1993) (Ginsburg, J., concurring)).

definition of sex, its language of “one sex” and “the other sex” indicated that the Court still recognized sex as a straightforward binary of male or female.<sup>26</sup>

Post-*Price Waterhouse*, transgender plaintiffs unsuccessfully raised the sex stereotyping theory.<sup>27</sup> Generally lower courts have agreed that Title VII prohibits discrimination based on non-conformance to gender stereotypes, but they have found that Title VII does not apply when plaintiffs’ claims are related to sexual orientation or gender identity.<sup>28</sup>

The circuit courts are split as to how sex is interpreted under Title VII regarding claims related to gender identity. Among the circuits that have heard cases since the *Price Waterhouse* expansion of the definition of sex under the law, some have relied on sex-stereotyping theory to accept claims of discrimination based on gender identity; others have dismissed them based on a competing precedent that suggests the law was not intended to be interpreted so broadly.<sup>29</sup>

In the face of judicial disagreement and legislative inaction, the executive branch during the Obama Administration extended protections to transgender and gender-nonconforming people. The Departments of Labor and Justice issued guidance prohibiting employment discrimination based on gender identity and gender expression.<sup>30</sup> In 2012, the Equal Employment Opportunity Commission (EEOC) ruled, in a decision that was binding on all federal agencies, that “discrimination based on gender identity, change of sex, and/or transgender status” is discrimination “because of sex” under Title VII...<sup>31</sup> This decision made the connection that some courts had not – the sex stereotyping theory of

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26. Tan, *supra* note 18, at 588.

27. *Id.* at 589.

28. *Id.*

29. *Compare* Schwenk v. Hartford, 204 F.3d 1187, 1201 (9th Cir. 2000) (“The initial judicial approach taken in cases such as *Holloway* [see *supra* note 16 and accompanying text] has been overruled by the logic and language of *Price Waterhouse*.”), and *Smith v. City of Salem*, 378 F.3d 566, 572 (6th Cir. 2004) (holding that Smith stated a valid claim under Title VII for discrimination “because of sex” as a result of Smith’s gender nonconformity), with *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1220 (10th Cir. 2007) (affirming lower court’s ruling that “transsexuals are not a protected class under Title VII”) and *Sweet v. Mulberry Lutheran Home*, 2003 WL 21525058 at \*3 (“Sweet’s intent to change sex does not support a claim of sex discrimination under Title VII because that intended behavior did not place him within the class of person’s protected under Title VII from discrimination based on sex.”).

30. Employment and Training Admin. Advisory Sys., U.S. Dep’t of Labor, Training and Employment Guidance Letter No. 37-14, Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System (2015), available at [https://wdr.doleta.gov/directives/attach/TEGL/TEGL\\_37-14.pdf](https://wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf) [<https://perma.cc/V33S-VQUL>]; U.S. Dep’t of Justice, Memorandum from the Attorney Gen., Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (2014), available at [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf) [<https://perma.cc/54EB-9DFH>].

31. DREIBAND & SWEARINGEN, *supra* note 17, at 9 (citing *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995, at \*1 (Apr. 20, 2012)).



*Price Waterhouse* applies to discrimination related to gender identity.<sup>32</sup> That same year, HUD issued the Equal Access Rule, which required HUD-assisted housing to be made available to people regardless of their gender identity.<sup>33</sup> This included all housing insured by the Federal Housing Administration and all housing funded by Community Planning and Development funds.<sup>34</sup>

However, protection of transgender and gender-nonconforming people is still lacking. First, HUD's Equal Access Rule did not expand the definition of "sex" under the Fair Housing Act to include gender identity or specifically add "gender identity" as a protected class. As such, under current federal fair housing law, private housing providers are potentially able to legally continue to discriminate against prospective tenants because they are transgender and/or gender-nonconforming.<sup>35</sup> Not all attempts by the executive branch to expand protection of transgender and gender-nonconforming people have been successful. On the last day of 2016, a federal judge in Texas issued a preliminary injunction against a federal rule set to take effect on January 1, 2017.<sup>36</sup> That rule would have extended anti-discrimination protections under the Affordable Care Act to services related to transgender health. And third, not all executive branch expansions of protection have persisted under the new Administration. On February 22, 2017, the Trump Administration rescinded<sup>37</sup> guidance by the Obama Administration's Departments of Justice and Education<sup>38</sup> that required public schools, as a condition of receipt of federal funds, to treat a child's gender identity as their sex for purposes of Title IX.

Like the federal government, some state governments have begun to address discrimination based on gender identity. Nineteen states and the District of Columbia have explicitly protected gender identity in housing anti-discrimination laws.<sup>39</sup> By adding "gender identity" as a protected class, rather

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32. *Id.*

33. 24 C.F.R. § 5.403 (2012).

34. Press Release, Brian Sullivan, U.S. Dep't of Hous. and Urban Dev., HUD Issues Final Rule to Ensure Equal Access to Housing and Services Regardless of Gender Identity (Sept. 20, 2016), *available at* <https://archives.hud.gov/news/2016/pr16-137.cfm>.

35. The current circuit split in relevant Title VII cases may also enable private landlords to legally discriminate on the basis of gender identity.

36. Steve Gorman, *U.S. Judge Blocks Transgender, Abortion-Related Obamacare Protections*, REUTERS, Dec. 31, 2016, <http://www.reuters.com/article/us-usa-obamacare-idUSKBN14L0OP> [<https://perma.cc/TD8E-AM8J>].

37. Sandra Battle, Acting Assistant Sec'y for Civil Rights, U.S. Dep't. of Educ., & T.E. Wheeler, II, Acting Asst. Attorney Gen. for Civil Rights, U.S. Dept. of Justice, Dear Colleague Letter (Feb. 22, 2017), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>.

38. Catherine E. Lhamon, Assistant Sec'y for Civil Rights, U.S. Dep't of Educ., & Vanita Gupta, Principal Deputy Assistant Attorney Gen. for Civil Rights, U.S. Dep't of Justice, Dear Colleague Letter: Transgender Students (May 13, 2016), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf> [<https://perma.cc/Y8NZ-AEWL>].

39. MOVEMENT ADVANCEMENT PROJECT, NON-DISCRIMINATION LAWS AND POLICIES, <https://www.lgbtmap.org/file/mapping-trans-equality-infographic-non-discrimination.png> [<https://perma.cc/CSX5-FTTZ>] (last visited Jan. 31, 2018). The states with housing non-discrimination laws

than waiting for courts to expand the protection under “sex,” such jurisdictions have taken a stand against discrimination based on gender identity and declared it unacceptable under the law. This proactivity is particularly important in the housing context, when anyone can become a landlord, and when federal and state laws offer different levels of protection.

In stark contrast, some states have actively sought to allow private citizens to discriminate against others based on gender identity. While North Carolina’s “bathroom bill” (a colloquial nickname; the law in fact regulated access to many more public facilities than just bathrooms) might be the most well-known,<sup>40</sup> hundreds of bills considered by LGBTQ<sup>41</sup> advocates to be anti-LGBT have been introduced across the country over the last few years.<sup>42</sup> In early 2017, eight states introduced or pre-filed bills similar to North Carolina’s law that seek to restrict access to facilities.<sup>43</sup>

In March 2017, the Supreme Court decided a case involving a child who was not allowed to use the bathroom at school that matched his gender identity.<sup>44</sup> The Fourth Circuit had sidestepped the question of whether Title IX regulations permitted transgender public school students to use restrooms consistent with their gender identity by choosing to give deference to the guidance from the Departments of Education and Justice that adhered to such an interpretation.<sup>45</sup> The Supreme Court granted certiorari on two questions: (1) whether the lower court’s deference to the agency interpretation of the law was appropriate, and (2) whether Title IX indeed provides the same protections to transgender students as it does to cisgender students.<sup>46</sup> Due to a change in the position of the Department of Education under the new Administration, however, the Court then vacated the

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that cover gender identity are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Massachusetts, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, and Washington. *Id.*

40. Public Facilities Privacy & Security Act (H.B. 2), 2016 Sess. Laws 3 (N.C. 2016), *repealed by* An Act to Reset S.L. 2016-3 (H.B. 142), 2017 N.C. Sess. Laws 4. HB2 states that “designating multiple or single occupancy bathrooms or changing facilities according to biological sex . . . shall not be deemed to constitute discrimination.” *Id.* at § 143-422.11.
41. A common acronym referring to people who are lesbian, gay, bisexual, transgender, and/or queer.
42. Human Rights Campaign, *State Equality Index* 10 (2017), [https://assets2.hrc.org/files/assets/resources/HRC-2017-report-FINAL-2.pdf?\\_ga=2.84447129.1881710651.1518553859-291488109.1518553859](https://assets2.hrc.org/files/assets/resources/HRC-2017-report-FINAL-2.pdf?_ga=2.84447129.1881710651.1518553859-291488109.1518553859); *see* Steinmetz, *supra* note 11.
43. Tom Dart, ‘Bathroom Bills’ Planned in Eight States Despite Furor in North Carolina, *GUARDIAN*, Jan. 6, 2017, <https://www.theguardian.com/world/2017/jan/06/bathroom-bills-planned-north-carolina-texas-lgbt-transgender> [<https://perma.cc/HJ2V-MQ4E>]. These eight states are Alabama, Kentucky, Minnesota, Missouri, South Carolina, Texas, Virginia, and Washington. *Id.*
44. Gloucester Cty. Sch. Bd. V. G.G. ex rel. Grimm, 137 S. Ct. 1239 (2017).
45. G.G. ex rel. Deirdre Grimm v. Gloucester County Sch. Bd., 822 F.3d 709 (2016) (finding the Department’s interpretation entitled to *Auer* deference—i.e., deference to an agency’s interpretation of their own regulations—because Title IX language was ambiguous as applied to transgender individuals); *see generally* Catherine E. Lhamon & Vanita Gupta, Dear Colleague Letter, *supra* note 38.
46. Gloucester County Sch. Bd. v. G.G. ex rel. Grimm, 137 S. Ct. 369 (2016).

judgement and remanded the case for further consideration.<sup>47</sup> The Fourth Circuit must now decide for themselves, without relying on federal guidance, the question of how the term “sex” in Title IX applies to transgender students.

Unlike the Fourth Circuit, the Seventh Circuit has not sidestepped the Title IX question. *Whitaker v. Kenosha Unified School Dist.* unanimously affirmed a district court’s preliminary injunction allowing a trans Wisconsin student to use the boys’ restroom at his school.<sup>48</sup> The decision, which held that both Title IX and the Equal Protection Clause protect transgender students from discrimination at school, is the first time a federal appeals court has ruled based on statutory interpretation that Title IX protects transgender students.

From this summary of the law’s evolving conceptualization of “sex” as a protected class, it should be clear that transgender and gender-nonconforming people are among the most vulnerable to discrimination in our society.<sup>49</sup> Such discrimination can severely limit a person’s housing choices and have a negative impact on all areas of a person’s life.<sup>50</sup> This study therefore aimed to investigate whether transgender and gender-nonconforming individuals are currently experiencing discrimination in the Metropolitan Boston rental housing market.

## II. METHODOLOGY

The Suffolk University Law School Housing Discrimination Testing Program (HDTP) conducted this study between December 2015 and June 2016. The HDTP is a Housing and Urban Development (HUD)-funded program that seeks to eliminate housing discrimination through testing, enforcement, education and outreach, and academic study. The HDTP engaged Analysis Group (AG), a firm specializing in economic and financial analysis, to assist in designing the study protocols and conducting the statistical analyses.<sup>51</sup>

### A. Objective and Hypothesis

The objective of this study was to investigate possible gender identity discrimination in the housing market in the Greater Boston area. The authors

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47. *G.G.*, 137 S. Ct. at 1239.

48. 858 F.3d 1034 (2017).

49. For an extensive review of the many ways that transgender and gender-nonconforming people are subjected to discrimination, visit the National Center for Transgender Equality (NCTE) website at <http://transequality.org> [<https://perma.cc/RJ2J-87L7>]. The NCTE released a survey in 2011 that included interviews with over 6,400 transgender and gender-nonconforming people about their experiences of discrimination and violence.

50. See NAT’L FAIR HOUSING ALLIANCE, *supra* note 7.

51. Analysis Group (AG) is one of the largest private economics consulting firms in North America. AG, contributing to this study on a pro bono basis, independently evaluated the outcome of each test.

executed a carefully designed, controlled experiment in order to obtain results that could inform future policy decisions. Our hypothesis was that we would find measurable preferential treatment toward the control (cisgender and gender-conforming) testers. Specifically, based on similar studies that have shown such discrimination in various rental markets based on disability,<sup>52</sup> sexual orientation,<sup>53</sup> and race,<sup>54</sup> we expected to find discrimination based on gender identity at similar or higher rates.

### *B. Experimental Design*

This article reports the results of a series of housing discrimination tests pairing protected class (“PC”) testers who were transgender or gender-nonconforming with cisgender<sup>55</sup> and gender-conforming testers (“controls”). In the current study, the matched pairs visited randomly selected locations in the Boston rental market and submitted reports detailing their treatment by the housing provider with whom they interacted.

Matched-pairs testing is a recognized methodology for research and enforcement and has been used in the housing market context since the 1960s and by the federal government starting in the 1970s.<sup>56</sup> It is a controlled method of determining whether there is a difference in the quality, content, or quantity

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52. OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP’T OF HOUS. AND URBAN DEV., DISCRIMINATION IN THE RENTAL HOUSING MARKET AGAINST PEOPLE WHO ARE DEAF AND PEOPLE WHO USE WHEELCHAIRS: NATIONAL STUDY FINDINGS [hereinafter HUD REPORT ON DISABILITY DISCRIMINATION] 38–55 (2015), available at [https://www.huduser.gov/portal/sites/default/files/pdf/housing\\_discrimination\\_disability.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/housing_discrimination_disability.pdf) [<https://perma.cc/UC3Y-727X>]. The study found that callers who were deaf or hard of hearing were less likely to receive a response. *Id.* at 1. When they did receive a response, they were informed of fewer housing options than hearing callers. *Id.* at 39. The study also found that people using wheelchairs were more likely to be denied the opportunity to tour housing in buildings with accessible units than those who do not use wheelchairs. *Id.* at 47.
53. FRIEDMAN ET AL., *supra* note 14, at 14–21. The study found that more than one in four tests demonstrated disparities in treatment (27%, or 32 tests). *Id.* at 9. Disparities included differences in rental rates, level of encouragement, and rental fees. *Id.*
54. OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP’T OF HOUS. AND URBAN DEV., HOUSING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES [hereinafter HUD REPORT ON RACIAL AND ETHNIC DISCRIMINATION] xi (2012), available at [http://www.huduser.gov/portal/Publications/pdf/HUD-514\\_HDS2012.pdf](http://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf) [<https://perma.cc/B5KC-ZQ5T>]. Among the results, the study found that Black renters learned about 11.4% fewer available units and were shown 4.2% fewer units than equally qualified Whites; Hispanics learned about 12.5% fewer available units and were shown 7.5% fewer units than Whites; and Asians learned about 9.8% fewer available units and were shown 6.6% fewer units than Whites. *Id.* at xi.
55. “Cisgender” is an adjective used to describe a person who is not transgender. “The prefix *cis-* is Latin meaning ‘on this side of,’ whereas *trans-* means ‘on the other side of.’” Katy Steinmetz, *This Is What ‘Cisgender’ Means*, TIME, Dec. 23, 2014, <http://time.com/3636430/cisgender-definition/> [<https://perma.cc/7E76-HST5>].
56. Office of Policy Dev. and Research, U.S. Dep’t of Hous. and Urban Dev., *Paired Testing and the Housing Discrimination Studies*, EVIDENCE MATTERS, Spring/Summer 2014, available at <https://www.huduser.gov/portal/periodicals/em/spring14/highlight2.html> [<https://perma.cc/22XS-XSBF>].

of information and services that providers in the housing industry give to different categories of home seekers.

Courts have recognized that trained objective testers are likely to be the best source of evidence in determining whether there has been discrimination.<sup>57</sup> First, the use of objective testers “both benefits unbiased landlords by quickly dispelling false claims of discrimination and is a major resource in society’s continuing struggle to eliminate the subtle but deadly poison of racial discrimination.”<sup>58</sup> Further, those who act in a discriminatory manner may take pains to disguise their inappropriate actions<sup>59</sup>; testing provides a window into housing providers’ actual practices, beyond the level of advertising.<sup>60</sup>

Generally, the matched-pairs approach to testing for housing discrimination compares individuals who are similar in all relevant aspects except with respect to the variable being tested. Characteristics such as race, age, economic status, and marital status might be matched (or assigned) so that the two testers can present as similarly qualified prospective renters. Testers are not personally interested in the property or properties that are the subject of the tests; however, all testers are trained to appear interested until the test is concluded.

### *C. Recruitment of Testers*

Because exposure to discrimination has a negative impact on physical and mental health,<sup>61</sup> the possibility that this study could result in volunteers experiencing discrimination was not taken lightly. The HDTP engaged an outreach coordinator who devoted months to community outreach, networking, and contacting affinity groups to recruit the testers needed for this study. The test coordinator also recruited control testers that could be matched with each PC tester with respect to age, race, and ethnicity. Sixty-seven people indicated an interest in participating in the study as protected class testers, and ultimately thirty-three people were trained and completed a test.

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57. See, e.g., *Richardson v. Howard*, 712 F.2d 319, 322 (7th Cir. 1983) (noting that tester evidence may receive more weight because testers are “careful and dispassionate observers”).

58. *Id.* at 321.

59. See *Zuch v. Hussey*, 394 F. Supp. 1028, 1051 (E.D. Mich. 1975) (“It is the rare case today where the defendant either admits his illegal conduct or where he sufficiently publicizes it so as to make testers unnecessary.”), *aff’d*, 547 F.2d 1168 (6th Cir. 1977); see also *Gladstone Realtors v. Bellwood*, 441 U.S. 91, 97 (1979); *Hamilton v. Miller*, 477 F.2d 908, 909 n.1 (10th Cir. 1973).

60. See HUD REPORT ON RACIAL AND ETHNIC DISCRIMINATION, *supra* note 54, at xii.

61. E.g., Nat’l Ctr. for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, *NCHHSTP Social Determinants of Health* [see entry “Health Disparity”], CTRS. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/nchhstp/socialdeterminants/definitions.html> [https://perma.cc/DT8M-DURK] (last updated Mar. 21, 2014) (scientists generally recognize five factors that have an impact on a person’s mental and physical health; social environment, which can include discrimination, is one of these five factors).

*D. Site Selection: Rental Ad Scraping, Selection, and Randomization*

AG designed a procedure to generate a random sample of listings of studio and one-bedroom apartments in the Greater Boston area. Specifically, AG wrote a script in Python that would randomly scrape 100 of the most recent rental listings from housing rental websites on a weekly basis. The program restricted the search to one-bedroom and studio apartments with monthly rent under \$2,200 in the Greater Boston area. The HDTP and AG included only studio and one-bedroom apartments to avoid possible unintended effects of introducing another protected class such as marital status or sexual orientation into the test.

Once AG identified the set of apartment listings, the HDTP's test coordinator called each housing provider to confirm that the listed apartment was still available. Once the test coordinator verified an apartment's availability, that apartment would become the subject of a test. AG randomly assigned either a PC or control tester to be the first to contact the housing provider in the listing.

*E. Test Assignments*

The test coordinator created a "profile" for each tester based on the apartment listing being tested. To mitigate confounding factors that might impact how a housing provider treats a prospective renter, the test coordinator gave both members (PC and control) of each tester pair similar profiles so that they appeared similarly qualified to rent the apartment. Additionally, testers never met or learned any information about their matched pair. Finally, both members of each tester pair initiated contact with the housing provider through the same medium (e.g., phone, e-mail, text message) and within a short period of time.

A handful of tests were cancelled because one or both of the testers were unable to connect with the housing provider, even after the testing coordinator initially confirmed that the apartment was still available. When this occurred, the pair of testers was assigned a different randomly selected apartment to test.

*F. Site Visits*

The site visits were designed to mimic real apartment search interactions as closely as possible. The test coordinator did not give testers a script to follow; instead, testers were instructed to engage the housing providers as they would in a real housing search. The test coordinator provided PC testers with guidance regarding how to respond to potentially inappropriate comments from housing providers.<sup>62</sup> To eliminate the potential confounding factors of marital status or

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62. However, this guidance was never used, as housing providers did not make overt discriminatory statements related to testers' gender identity or expression.

sexual orientation, the HDTP instructed testers to respond that they were looking for housing for only themselves if they were asked who would be living in the apartment. The HDTP trained the testers to record as much as they could recall about what was said during the site visit, and testers recorded their experiences in detailed test reports as soon as possible after interacting with the housing provider.

The HDTP instructed transgender and gender-nonconforming testers to introduce the test variable (their protected-class status of transgender or gender-nonconforming) as early as possible in the site visit to ensure the awareness of the housing provider. The HDTP specifically trained the testers to reveal their status naturally: for example, testers were trained to ask whether there would be a credit or background check and to say that, if so, the housing provider would find that the tester's legal name was different because they are transgender. Some testers introduced their status by informing the housing provider that they used the pronouns "they" and "them" rather than gender-specific pronouns. Some testers visually introduced their status through their manner of dress.<sup>63</sup>

### *G. Debriefs*

Each tester individually met with the test coordinator to ensure their report was complete, review their answers, and address any questions that the test coordinator had. Each tester wrote their report independently; the test coordinator did not in any way influence the content of the reports other than to ask testers to clarify statements or add additional information.

### *H. Coding the Reports into Variables*

Once the HDTP completed testing, it provided AG with 99 reports: the 66 reports from the 33 sets of paired testers included in the study as well as the test coordinator's assessment of each test. AG coded these 99 reports into 21 outcome variables, including, for example, whether the testers were quoted the same price, whether they were offered different terms, whether they were shown different numbers of apartments or areas of the buildings, and whether they received different levels of service and follow-up. Appendix C describes the full set of variables and how AG constructed them.

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63. For instance, one tester whose assigned sex at birth was female wore a men's suit to the site visit. The tester and the test coordinator worked together to ensure that the tester's gender expression was visually apparent.

## III. FINDINGS

The treatment of protected-class testers was compared to that of controls along a number of dimensions to determine whether there was discrimination based on gender identity or expression in the Greater Boston Area. Although this study used a small sample size—only thirty-three tests—the disparity in treatment was so great among some outcome measures as to still be detectable with a high level of confidence. Data below a 90% confidence level were not noted as statistically significant due to the small sample size.

Overall, the tests found that people are being discriminated against based on gender identity in the Metropolitan Boston rental market in a number of significant ways. Specifically, PC testers were (1) more likely to be quoted a higher rental price, (2) less likely to be offered a financial incentive to rent the apartment, (3) shown fewer areas than their control counterparts (e.g., storage area, laundry facilities, etc.), and (4) shown fewer apartments than their cisgender and gender-conforming counterparts (though this last trend was not statistically significant).

The HDTP conducted two types of analysis for purposes of this study. Both types followed a matched-pairs method—an approach the HDTP regularly uses in enforcement testing.<sup>64</sup>

*A. Rate of Discrimination*

The first type of analysis calculated the incidence rate of discrimination. The HDTP compared the treatment of protected-class and control testers along a number of dimensions to determine whether there was evidence of differential treatment and therefore possible discrimination. The HDTP categorized each individual test as one of the following: (1) showing evidence of discrimination (as a result of adverse differential treatment); (2) inconclusive; or (3) showing no evidence of discrimination.<sup>65</sup> Differential treatment included the statistically significant factors noted above as well as differences in whether the agent followed up after the site visit or offered certain services. Based on these

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64. “Enforcement testing” is testing that is conducted for the purpose of litigation—specifically, to gather evidence that meets the standards used in courts and administrative agencies. See Office of Policy Dev. and Research, U.S. Dep’t of Hous. and Urban Dev., *Fair Housing Enforcement Organizations Use Testing to Expose Discrimination*, EVIDENCE MATTERS, Spring/Summer 2014, available at <https://www.huduser.gov/portal/periodicals/em/spring14/highlight3.html> [<https://perma.cc/WMW6-MVTN>]. HDTP has conducted over 400 such paired tests since its inception in 2012.

65. This more informal analysis was not conducted as a formal statistical test with an accompanying significance level. Rather, to determine incidence rates, three people independently evaluated each test and made an outcome determination. Three out of the 33 tests had outcome determinations that were not unanimous by the independent evaluators. Those three tests were submitted to two additional people for review before being categorized as “evidence of discrimination,” “inconclusive,” or “no evidence of discrimination.”



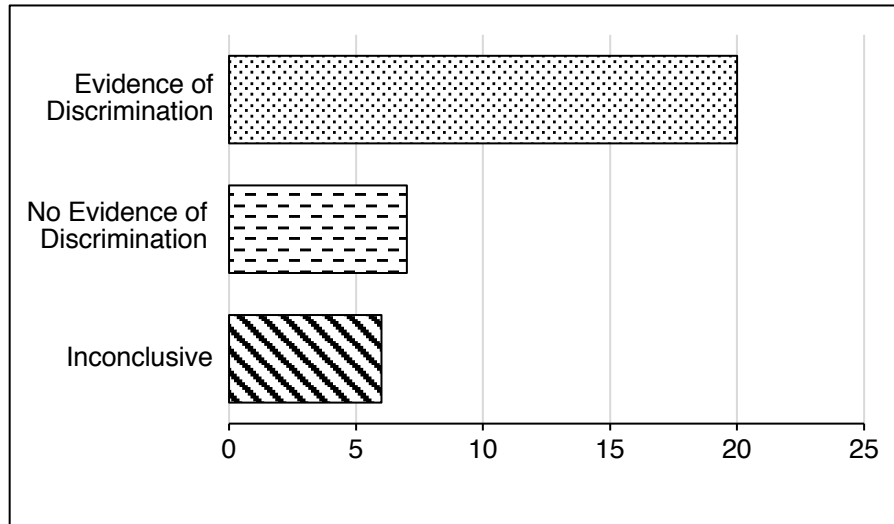


Figure 1. Incidence Rates of Discrimination.

categorizations, the HDTP found discrimination in the form of disparate treatment in more than 60% of the 33 tests. This rate is significantly higher than what was found in the Friedman study, which detected evidence of discrimination based on sexual orientation in 27% of tests.<sup>66</sup>

### B. Statistical Analysis

The second type of analysis involved statistical testing of the data. AG assisted in designing and performing this analysis. This portion of the study revealed a number of statistically significant differences in the treatment between transgender and gender-nonconforming testers compared to their gender-conforming cisgender controls. We will first review these at a high level.

#### 1. High-Level Overview

Transgender and gender-nonconforming individuals were more likely to be quoted a higher rental price and to be shown fewer amenities and housing-related areas (e.g., storage space). Transgender and gender-nonconforming people were less likely to be offered financial incentives to take the apartment. They were also less likely to be asked their name or to be invited to take a seat upon the initial in-person meeting with the housing provider. Transgender and gender-nonconforming individuals were also shown fewer available apartments on average than their gender-conforming cisgender counterparts and heard fewer

66. See FRIEDMAN ET AL., *supra* note 14, at 4.

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positive comments and more negative comments from the agents about the available apartments.

### PROTECTED-CLASS TESTERS WERE...

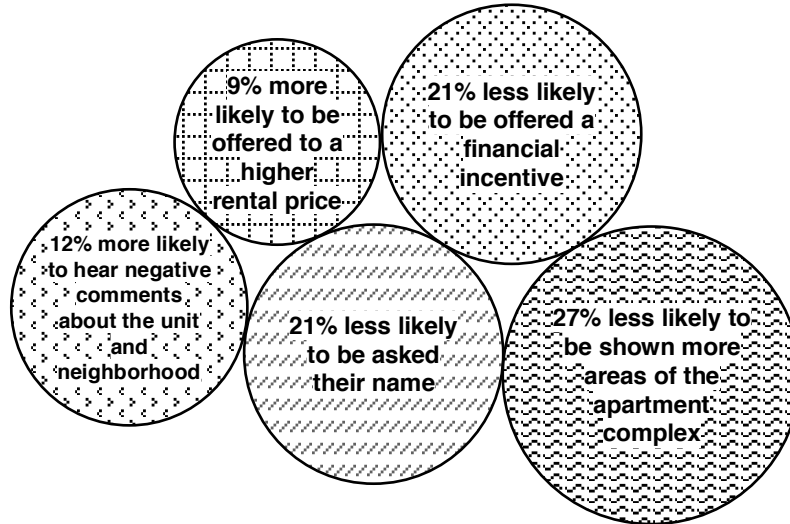


Figure 2. Results for All Pairs with Protected-Class Testers.

The trends are similar when the data for transgender and gender-nonconforming testers are examined separately. Transgender testers were significantly less likely to be asked their name, significantly more likely to be quoted a higher price, and likely to be shown significantly fewer amenities than their cisgender counterparts. Transgender testers were also more likely to be

### TRANSGENDER TESTERS WERE...

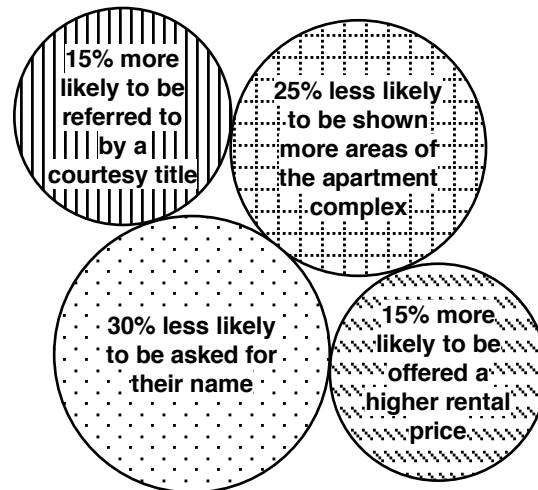


Figure 2. Results for Pairs with Transgender Testers.

addressed by a courtesy title (e.g., Mr., Ms.) than when compared to cisgender testers.

With respect to gender-nonconforming testers, housing providers were more likely to offer their gender-conforming controls a business card. In addition, housing providers showed gender-nonconforming testers fewer amenities, offered them less financial incentives, and made more negative comments about the apartments. However, gender-nonconforming testers did receive a greater degree of follow-up than did the gender-conforming testers.

### GENDER-NONCONFORMING TESTERS WERE...

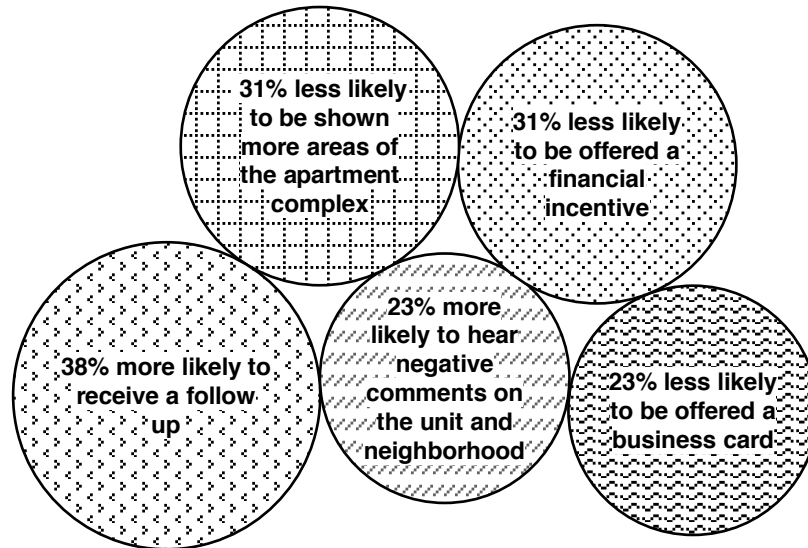


Figure 3. Results for Pairs with Gender-Nonconforming Testers.

### 2. Deeper Dive

We will now look in greater detail at the results of the statistical analyses performed. The tables of data excerpted below are reproduced in full in Appendix A.

The aggregated results table (Table 1), excerpted below in Table 1-A, describes all results for all outcome variables. The first four columns describe the gross outcomes for each variable across all 33 pairs of testers and add up to 100% for each outcome variable. For example, with regard to the question of whether the testers were offered a financial incentive, the test results indicate that (1) in 36% of cases, neither the PC tester nor the control tester were offered a financial incentive; (2) in 30% of cases, both the PC tester and the control tester were offered a financial incentive; (3) in 27% of cases, only the control tester

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was offered a financial incentive; and (4) in 6% of cases, only the PC tester was offered a financial incentive.

Measure	GROSS DIFFERENCE				NET DIFFERENCE
	Neither	Both	Control	PC	
Asked to be seated	79%	3%	12%	6%	-6%
Introduction	0%	79%	12%	9%	-3%
Asked for name	12%	48%	30%	9%	-21%*
Courtesy title	88%	0%	3%	9%	6%
Shook hand	0%	88%	3%	9%	6%
Offered literature	70%	15%	6%	9%	3%
Offered food/drink	82%	9%	6%	3%	-3%
Offered business card	39%	30%	15%	15%	0%
Other gesture	55%	6%	21%	18%	-3%
Told more units available than partner	64%	0%	24%	12%	-12%
Shown more units than partner	67%	0%	18%	15%	-3%
Shown more areas than partner	67%	0%	30%	3%	-27%***
Financial incentive	36%	30%	27%	6%	-21%**
Non-financial incentive	58%	3%	24%	15%	-9%
Larger fee than partner	39%	6%	24%	30%	6%
Rental price higher than partner	91%	0%	0%	9%	9%**
Offered application	45%	18%	21%	15%	-6%
Negative comment	85%	3%	0%	12%	12%**
Positive comment	24%	39%	21%	15%	-6%
Offer help w housing search	85%	0%	9%	6%	-3%
Follow up	48%	12%	18%	21%	3%

Table 1-A. Results Aggregating Over All Pairs with Protected-Class Testers (Columns 1–5 of Table 1).  $n = 33$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

Column 5 of Table 1-A provides a measure of the *net differential treatment*—the proportion of pairs for which the PC tester received more positive treatment minus the proportion of pairs for which the control tester received more positive treatment. To use the previous example, where in 6% of cases only the PC tester was offered a financial incentive and in 27% of cases only the control tester was offered a financial incentive, the PC received positive treatment 21% *less often* than the control tester. This number, and the equivalent for other variables, can therefore be found in column 5 of Table 1.

The final three columns of Table 1, excerpted below in Table 1-B, provide evidence of the statistical significance of the differential treatment of PC testers as compared to control testers. The  $p$ -values measure the strength with which

each piece of evidence rebuts the claim that there was no discrimination. For example, a  $p$ -value of 5% (i.e., 0.05) says there is only a 5% chance that the differential treatment observed across PC and control testers is simply coincidence. All three of the standard  $p$ -values are used: 90%, 95%, and 99%.

Measure	Standard error of net difference	$t$ -statistic	$p$ -value
Asked to be seated	7%	-0.8123	0.4226
Introduction	8%	-0.373	0.7116
Asked for name	10%	-2.0313*	0.0506
Courtesy title	6%	1.0000	0.3248
Shook hand	6%	1.0000	0.3248
Offered literature	7%	0.4417	0.6617
Offered food/drink	5%	-0.5714	0.5717
Offered business card	10%	0.0000	1.0000
Other gesture	11%	-0.2734	0.7863
Told more units available than partner	10%	-1.1608	0.2543
Shown more units than partner	10%	-0.2973	0.7681
Shown more areas than partner	9%	-3.0317***	0.0048
Financial incentive	9%	-2.2346**	0.0326
Non-financial incentive	11%	-0.8281	0.4138
Larger fee than partner	13%	0.4658	0.6445
Rental price higher than partner	5%	1.7889**	0.0831
Offered application	11%	-0.5714	0.5717
Negative comment	6%	2.1009**	0.0436
Positive comment	11%	-0.5714	0.5717
Offer help w housing search	7%	-0.4417	0.6617
Follow up	11%	0.2734	0.7863

Table 2-B. Statistical Significance of Aggregate Results (Columns 6–8 of Table 1).  $n = 33$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

For example, the  $p$ -value for the “Financial incentive” statistic is 3%. This means there is only a 3% chance that it was simply coincidence that the PC testers were less likely to be offered financial incentives than their control counterparts. In other words, there is a statistically significant difference in the offering of financial incentives based on gender identity and gender expression. The outcomes displayed in bold in Table 1 indicate all such outcomes for which the study shows that there is a statistically significant difference in outcomes between PC and control testers.

These findings indicate that relative to the control testers, PC testers were (1) 21% less likely to be asked their name, (2) 27% less likely to be shown more areas of the apartment complex, (3) 21% less likely to be offered a financial incentive, (4) 9% more likely to be offered a higher rental price, and (5) 12%

more likely to hear negative comments about the unit or neighborhood. All of these results were statistically significant at the 90% level or higher.

Table 2, reproduced in full below, reports whether the differential treatment of PC testers became apparent only after they explicitly revealed their gender identity. The results indicate several statistically significant differences in testing. In particular, relative to their control counterparts, PC testers were (1) 14% less likely to be asked to be seated, (2) 38% less likely to be asked for their name, (3) 32% less likely to be shown more areas than their partner, (4) 23% less likely to be offered a financial incentive, (5) 10% more likely to hear negative comments, and (6) 28% less likely to hear positive comments about the unit or neighborhood.

Measure	Difference	t-statistic	p-value	n
Asked to be seated	-14%	-2.1213**	0.0432	28
Introduction	-25%	-1.5275	0.1705	8
Asked for name	-38%	-3.5082***	0.0022	21
Courtesy title	4%	1.0000	0.3265	27
Shook hand	0%	0.0000	1.0000	9
Offered literature	0%	0.0000	1.0000	26
Offered food/drink	0%	0.0000	1.0000	28
Offered business card	4%	0.3278	0.7457	27
Other gesture	-3%	-0.3282	0.7452	29
Told more units available than partner	-4%	-0.3276	0.7460	26
Shown more units than partner	3%	0.3282	0.7452	29
Shown more areas than partner	-32%	-3.3607***	0.0026	25
Financial incentive	-23%	-2.0045*	0.0560	26
Non-financial incentive	-14%	-1.2787	0.2115	29
Larger fee than partner	-4%	-0.2722	0.7878	25
Rental price higher than partner	8%	1.4460	0.1617	24
Offered application	-7%	-0.6255	0.5369	28
Negative comment	10%	1.7974*	0.0831	29
Positive comment	-28%	-2.5570**	0.0204	18
Offer help w housing search	0%	0.0000	1.0000	29
Follow up	-3%	-0.2967	0.7689	29

Table 2. Aggregate Results After Variable Introduction (i.e., After Gender Identity Reveal). \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

The results were similar when the HDTP examined the data for transgender and gender-nonconforming testers separately. Transgender testers (Table 3, excerpted below in Table 3-A) were 30% less likely to be asked their name, 15% more likely to be quoted a higher price, and 25% more likely to be shown fewer amenities than their counterparts. The data also revealed that housing providers

were 14% more likely to address transgender testers with a courtesy title, such as Mr., Ms., Sir, or Madam.

Measure	GROSS DIFFERENCE				NET DIFFERENCE
	Neither	Both	Control	PC	
Asked to be seated	85%	0%	10%	5%	-5%
Introduction	0%	80%	10%	10%	0%
Asked for name	10%	60%	30%	0%	-30%**
Courtesy title	85%	0%	0%	15%	15%*
Shook hand	0%	95%	0%	5%	5%
Offered literature	70%	15%	5%	10%	0%
Offered food/drink	90%	5%	5%	0%	-5%
Offered business card	40%	25%	10%	25%	15%
Other gesture	65%	5%	15%	15%	0%
Told more units available than partner	65%	0%	25%	10%	-15%
Shown more units than partner	65%	0%	20%	15%	-5%
Shown more areas than partner	65%	0%	30%	5%	-25%
Financial incentive	35%	30%	25%	10%	-15%
Non-financial incentive	65%	5%	25%	5%	-20%
Larger fee than partner	40%	0%	35%	25%	-10%
Rental price higher than partner	85%	0%	0%	15%	15%*
Offered application	45%	10%	30%	15%	-15%
Negative comment	95%	0%	0%	5%	5%
Positive comment	20%	45%	15%	20%	5%
Offer help w housing search	85%	0%	5%	10%	5%
Follow up	55%	5%	30%	10%	-20%

Table 3-A. Results for Pairs with Transgender Testers.  $n = 20$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

The data for gender-nonconforming testers (Table 4, excerpted below in Table 4-A) revealed that 23% of the time only the control tester was offered a business card while their gender-nonconforming counterpart was not. Not once was the reverse true (no gender-nonconforming testers received business cards while their control counterparts did not). Housing providers showed gender-nonconforming testers fewer amenities 31% of the time and offered them fewer financial incentives 31% of the time. Housing providers also made negative comments about the apartments to gender-nonconforming testers 23% of the time but never to the control testers. However, 38% of the time gender-nonconforming testers received follow-up from housing providers while their respective control testers did not.

Measure	GROSS DIFFERENCE				NET DIFFERENCE
	Neither	Both	Control	PC	
Asked to be seated	69%	8%	15%	8%	-8%
Introduction	0%	77%	15%	8%	-8%
Asked for name	15%	31%	31%	23%	-8%
Courtesy title	92%	0%	8%	0%	-8%
Shook hand	0%	77%	8%	15%	8%
Offered literature	69%	15%	8%	8%	0%
Offered food/drink	69%	15%	8%	8%	0%
Offered business card	38%	38%	23%	0%	-23%*
Other gesture	38%	8%	31%	23%	-8%
Told more units available than partner	62%	0%	23%	15%	-8%
Shown more units than partner	69%	0%	15%	15%	0%
Shown more areas than partner	69%	0%	31%	0%	-31%**
Financial incentive	38%	31%	31%	0%	-31%**
Non-financial incentive	46%	0%	23%	31%	8%
Larger fee than partner	38%	15%	8%	38%	31%
Rental price higher than partner	100%	0%	0%	0%	0%
Offered application	46%	31%	8%	15%	8%
Negative comment	69%	8%	0%	23%	23%*
Positive comment	31%	31%	31%	8%	-23%
Offer help w housing search	31%	31%	31%	8%	-23%
Follow up	38%	23%	0%	38%	38%**

Table 4-A. Results for Pairs with Gender-Nonconforming Testers.  $n = 13$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

#### IV. BEYOND THE DATA POINTS: WHAT TESTERS ACTUALLY EXPERIENCED

As predicted, most PC testers who experienced disparate treatment encountered only subtle actions by the housing provider. Most housing providers did not engage the PC testers directly about gender identity.<sup>67</sup> As a result, many PC testers were not even aware that they were being treated differently from their gender-conforming and cisgender counterparts (controls). This section summarizes these subtle, qualitative differences in treatment.

67. The exceptions were one housing provider who gushed about being proud of the tester and another who refused to use the PC tester's preferred name instead of their legal name even after being asked to do so.



In one test the agent told the PC tester to call if they wanted to receive an application but gave the control tester an application on the spot. In that same test, the housing provider told the control but not the PC tester that the kitchen would be painted before they moved in. The PC was not denied the opportunity to start the rental application process, but neither were they encouraged to do so as actively.

In another test, the agent offered information to the control about the application process and showed the control the basement area, which included a trash and laundry room. The agent did not give the PC tester that information or show or tell them about the basement area. The agent also said they would, and they did, email the control tester the application the next day. The agent did not offer the PC tester an application or otherwise follow up. Finally, the agent told both testers about a second available unit but made negative comments about that unit to only the PC tester. This had the effect of encouraging the control to see it (which they actually did) and discouraging the PC tester from viewing it (they did not).<sup>68</sup> Here, again, the PC tester was not denied the opportunity to begin the rental application process, but neither were they given the same level of customer service as their gender-conforming, cisgender counterpart.

In another test, the housing provider showed each tester an apartment, gave each a rental application packet, and followed up with each after their site visit. But beyond these similarities, the control received a much higher level of customer service. The housing provider told only the control that a rent discount would be applied if the tester submitted their application within 24 hours after the site visit. The housing provider also showed the control the outdoor lounge and pool area but only told the PC tester about it. The housing provider told the PC tester that the screening process would involve calling former landlords, contacts, and references, but did not tell this to the control. Finally, the housing provider told the PC tester that their income would need to be verified but only asked the control where they worked.

Some housing providers quoted testers different move-in costs. In one test, the housing provider told the PC tester that move-in costs would include first and last month's rent and a cleaning deposit, but they told the control that the move-in cost would be just one month's rent for the deposit. The housing provider gave both testers rental applications; however, the provider told the PC tester that they could leave the completed application on top of the agent's mailbox but told the control that they would travel to their location to pick up the application and deposit. Again, both testers were given the opportunity to begin the rental application process, but the control tester received more deference and a much higher level of customer service.

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68. The testers had the flexibility to choose during the site visit to see more units if they were offered the opportunity.

Some testers were offered financial move-in incentives while others were not. In one test, the housing provider told the control that the security deposit could be reduced by 75% (from \$2,000 to \$500, a difference of \$1,500). The housing provider did not offer the PC tester that option. Additionally, the housing provider quoted the control a lower price for the credit check (although the agent indicated that they were unsure of the exact price). In that test, the agent told the PC tester that the tester had the agent's number if they wanted to follow up. In contrast, the agent told the control that they would email with more information, and the agent did indeed follow up. After the respective site visits, the agent texted the control just a few hours after but waited four days to text the PC tester. Again, in this test, both testers were given the opportunity to begin the rental application process, but the control received a much higher level of customer service.

In another test showing differential treatment, the testers interacted with the housing provider 15 minutes apart. Although the PC tester walked down the street with the housing provider after viewing the unit, and presumably had more time to chat than the control, the agent did not tell the PC they could contact the housing provider for advice on their housing search, or that it was a good time in the market to buy, or, most importantly, that the rent might be negotiable—all of which the agent did tell the control. The PC tester asked the agent to show them the storage space, but the agent showed the control without being asked. Also, when the PC tester introduced that they were transgender, the housing provider responded “congratulations” in what the tester perceived to be a sarcastic tone.

In one of the tests where a PC tester was aware of negative treatment, the housing provider improperly and repeatedly referred to the tester by their legal first name, not the name by which the tester had initially introduced themselves and asked the housing provider to use.<sup>69</sup> The PC was left with the impression that the agent felt they should use their legal name instead of the name that the PC was using. In line with the experiences of other testers, the PC was not denied the opportunity to begin the rental application process; however, they were also not treated with the dignity or respect of being addressed by the name in which they asked repeatedly to be addressed.

Not all tests found evidence of discrimination; in a few tests the PC tester received *better* treatment. In one such test, the PC tester was shown more available units than the control and was told that the broker's fee could be waived, while the control was told that if she had good credit she might be able to get one month's rent free (the broker's fee was equal to one month's rent). The PC tester reported feeling very welcomed and that the agent really wanted to rent her the apartment.

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69. In this test the PC tester introduced that the name they were using would be different from the name used for a credit check. The PC provided their legal name only after the housing provider asked for it.

## V. DISCUSSION

One of the challenges of conducting this study was to recruit a sufficient number of testers. The sample size of PC testers in the aggregate was thirty-three; a number that is small but nevertheless the largest attained in any study of this type. Considered separately, the samples are even smaller: twenty transgender testers and thirteen gender-nonconforming testers. Still, the study found statistically significant differences in treatment across testers, increasing the confidence with which the results from this small study can be generalized to the broader population.

The level of discriminatory treatment experienced by transgender and gender-nonconforming testers in this study was greater than what has been found in other studies involving other protected classes. In a 2015 HUD study, for example, deaf testers were 4.8% less likely to be told about move-in incentives.<sup>70</sup> Similarly, a study investigating racial discrimination found that white people were 4.8% more likely to be told about rent incentives than Black people.<sup>71</sup> This study, in contrast, found transgender and gender-nonconforming testers were 21% less likely to be told about financial incentives. Finally, a 2007 study of discrimination based on disability in the Newton, MA, housing market found evidence of discrimination in 54% of tests,<sup>72</sup> while this study found discrimination based on gender identity in over 60% of tests.

This research still leaves unanswered many questions that should be the subject of further study. For example, an even larger study over a wider geographic area is warranted, such as the national study HUD has conducted with regard to race.<sup>73</sup> Additionally, it is worth investigating how rates of discrimination compare between jurisdictions with and without gender identity as a protected class. Rates of discrimination should be compared between transgender men and transgender women, as well as between transgender or gender-nonconforming people of color and their white counterparts.

## VI. POLICY RECOMMENDATIONS

One participant in this study, a transgender woman, described a series of problematic interactions with her landlord that highlight the struggles of the people in this protected class. These interactions included her landlord telling her

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70. HUD REPORT ON DISABILITY DISCRIMINATION, *supra* note 83, at 40, 48.

71. HUD REPORT ON RACIAL AND ETHNIC DISCRIMINATION, *supra* note 54, at 43.

72. DISABILITY LAW CENTER, INC., DISABILITY DISCRIMINATION AUDIT OF THE HOUSING MARKET OF NEWTON, MASSACHUSETTS 12 (2007), available at <http://www.newtonma.gov/civica/filebank/blobdload.asp?BlobID=46407> [<https://perma.cc/3XSF-5ES2>] (finding evidence of discrimination in 48% of 52 tests and in 54% of 37 tests involving only private, non-subsidized rental housing).

73. *Id.*

not to “make a spectacle of things,” and referring to her girlfriend as her “boyfriend.” When she corrected the landlord, he said “I don’t care what the fuck it is.” The landlord also refused to use her preferred gender after she legally changed her name, calling her “Mr.” and “Sir.” One should not have to endure such humiliating conduct just for expressing one’s gender identity.

This study has provided data evidencing high rates of discrimination based on gender identity and gender expression in the Greater Boston rental housing market along a number of significant variables. While the conduct seen in this study is a subtler kind of discrimination, similar to that found in HUD’s most recent study on race,<sup>74</sup> it is no less problematic than more overt forms. Because of the high level of discrimination found, there is a need for policymakers to adopt legislation prohibiting housing discrimination based on gender identity at the federal and state levels.

While this phenomenon of discrimination against transgender and gender-nonconforming people may not come as a surprise to most, there is a dearth of data about this particular community. Unfortunately, proponents of “bathroom bills” and opponents of anti-discrimination laws that include gender identity typically cite the lack of evidence, often in the form of legal complaints, to argue that there is no problem with discrimination against the transgender and gender-nonconforming population.<sup>75</sup> Such an argument is a red herring. First, gender identity and gender expression are not explicitly protected characteristics at either the federal or state level, so there is no clear cause of action or avenue for relief. Second, as evidenced by this study, it is easy for discrimination to go undetected because the person being discriminated against has no way of knowing that they are being given false or different information. As this study shows, housing discrimination *is* occurring, and at very high rates, even where gender identity is a protected class under state anti-discrimination statutes, as in Massachusetts. Subtler discrimination, of the type that HUD found in its most recent study on race,<sup>76</sup> is no less problematic than overt disparate treatment.

Counterintuitively, the lack of data on discrimination against transgender and gender-nonconforming individuals may in part be because its members have been so historically marginalized: they may therefore be particularly difficult to recruit for a study that is likely to expose them to further discrimination. In interviews, transgender and gender-nonconforming individuals confirmed anecdotally the difficulties facing this community. For example, one individual who transitioned from female to male observed an increase in his level of cultural

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74. See HUD REPORT ON RACIAL AND ETHNIC DISCRIMINATION, *supra* note 54.

75. See Katy Steinmetz, *Lawmakers to Introduce Historic LGBT Non-Discrimination Bills*, TIME, July 23, 2015, <http://time.com/3968995/equality-act-congress-lgbt/> [<https://perma.cc/EAN6-P39Z>] (“‘There is a huge hurdle our community needs to overcome to convince people that this kind of discrimination is—A—perfectly legal, and—B—actually exists,’ says Winnie Stachelberg from the Center for American Progress.”).

76. See HUD REPORT ON RACIAL AND ETHNIC DISCRIMINATION, *supra* note 54.

safety and power. He found it shocking how differently he was treated after he began passing as male. He observed that it was important for him to have transitioned in a safe environment and at a time when he did not have to look for housing. Implicit in this remark is the understanding that those transitioning outside of a safe environment are more vulnerable to ill treatment because of society's outmoded binary conceptions of gender identity. He also observed that in his opinion, transgender women are more likely to be subject to discrimination.<sup>77</sup>

While making gender identity a protected class is not a silver bullet, it is an important next step to protect transgender and gender-nonconforming people from discrimination—those inclined to obey the law will do so, and people who do experience discrimination will have legal recourse. Additionally, laws can have a “culture-shifting” impact, fueling social change through legal reform.<sup>78</sup> The authors recognize that amending anti-discrimination statutes to include gender identity as a protected class will not on its own guarantee an end to discrimination. Indeed, this study is proof of that. However, such amendments would be an important and powerful statement of values and could contribute to a cultural shift sorely needed to eradicate discrimination based on gender identity.<sup>79</sup> Congress should be the first to pass such amending legislation, but this is not likely in the near future. As such, states and municipalities should consider adopting their own protections.

It is important to note that, while this study presents solid statistical evidence that discrimination is occurring and that there is a need for such protections, this study also clearly identifies the need for further research. An even larger study over a wider geographic area is warranted, such as the national study HUD has conducted with regard to race.<sup>80</sup> Additionally, further research should examine rates of discrimination against people based on gender identity or expression as interacting with race and ethnicity.

The increase in hatred toward and harassment of marginalized groups since the 2016 U.S. Presidential election<sup>81</sup> underscores the need for state and local policymakers to step up their efforts with respect to protecting transgender and

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77. Indeed, this study, though with a relatively small sample size, found discrimination at a higher rate among transgender men than among transgender women.

78. See Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. REV. 967 (1997) (arguing that some laws, such as the Civil Rights Act of 1964, challenge long-held discriminatory beliefs and thus may be “culture-shifting” as well as “rule-shifting”).

79. See *id.*

80. See HUD REPORT ON RACIAL AND ETHNIC DISCRIMINATION, *supra* note 54.

81. See Mark Berman, *Hate Crimes in the United States Increased Last Year, the FBI Says*, WASH. POST, Nov. 13, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/11/13/hate-crimes-in-the-united-states-increased-last-year-the-fbi-says/> [<https://perma.cc/8LTV-Y5NX>]; Christopher Mathias, *Exclusive: New Report Offers Proof of US Hate Crime Rise in the Trump Era*, HUFFPOST, Sept. 18, 2017, [https://www.huffingtonpost.com/entry/hate-crime-rise-2016-united-states-trump\\_us\\_59becac8e4b086432b07fed8](https://www.huffingtonpost.com/entry/hate-crime-rise-2016-united-states-trump_us_59becac8e4b086432b07fed8) [<https://perma.cc/C2UQ-DU77>].

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gender-nonconforming people. Where a person lives matters. It impacts every aspect of a person's life; a person's zip code is a better predictor of health than their genetic code.<sup>82</sup> Policymakers should use the data presented in this study and others to design policies that give appropriate protections to transgender and gender-nonconforming people. This community must have redress against ill treatment and must have hope that they will live in a society that allows them to reach their full potential, free from barriers.

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82. See Amy Roeder, *Zip Code Better Predictor of Health than Genetic Code*, HARV. SCH. OF PUB. HEALTH: NEWS, Aug. 4, 2014, <https://www.hsph.harvard.edu/news/features/zip-code-better-predictor-of-health-than-genetic-code/> [<https://perma.cc/NDE7-WK49>].

## APPENDIX A: FULL RESULTS, TABLES 1–4

Table 3. Results and Statistical Significances Aggregated Over All Pairs with Protected-Class Testers.  $n = 33$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

Measure	GROSS DIFFERENCE				NET DIFFERENCE			
	Neither	Both	Control	PC	Difference	Standard error of difference	t-statistic	p-value
Asked to be seated	79%	3%	12%	6%	-6%	7%	-0.8123	0.4226
Introduction	0%	79%	12%	9%	-3%	8%	-0.373	0.7116
Asked for name	12%	48%	30%	9%	-21%	10%	-2.0313*	0.0506
Courtesy title	88%	0%	3%	9%	6%	6%	1.0000	0.3248
Shook hand	0%	88%	3%	9%	6%	6%	1.0000	0.3248
Offered literature	70%	15%	6%	9%	3%	7%	0.4417	0.6617
Offered food/drink	82%	9%	6%	3%	-3%	5%	-0.5714	0.5717
Offered business card	39%	30%	15%	15%	0%	10%	0.0000	1.0000
Other gesture	55%	6%	21%	18%	-3%	11%	-0.2734	0.7863
Told more units available than partner	64%	0%	24%	12%	-12%	10%	-1.1608	0.2543
Shown more units than partner	67%	0%	18%	15%	-3%	10%	-0.2973	0.7681
Shown more areas than partner	67%	0%	30%	3%	-27%	9%	-3.0317***	0.0048
Financial incentive	36%	30%	27%	6%	-21%	9%	-2.2346**	0.0326
Non-financial incentive	58%	3%	24%	15%	-9%	11%	-0.8281	0.4138
Larger fee than partner	39%	6%	24%	30%	6%	13%	0.4658	0.6445
Rental price higher than partner	91%	0%	0%	9%	9%	5%	1.7889*	0.0831
Offered application	45%	18%	21%	15%	-6%	11%	-0.5714	0.5717
Negative comment	85%	3%	0%	12%	12%	6%	2.1009**	0.0436
Positive comment	24%	39%	21%	15%	-6%	11%	-0.5714	0.5717
Offer help w housing search	85%	0%	9%	6%	-3%	7%	-0.4417	0.6617
Follow up	48%	12%	18%	21%	3%	11%	0.2734	0.7863

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*Table 2. Results and Statistical Significances After Variable Introduction (i.e., After Gender Identity Reveal) Aggregated Over All Pairs with Protected-Class Testers. \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.*

<b>Measure</b>	<b>Difference</b>	<b>t-statistic</b>	<b>p-value</b>	<b>n</b>
Asked to be seated	-14%	-2.1213**	0.0432	28
Introduction	-25%	-1.5275	0.1705	8
Asked for name	-38%	-3.5082***	0.0022	21
Courtesy title	4%	1.0000	0.3265	27
Shook hand	0%	0.0000	1.0000	9
Offered literature	0%	0.0000	1.0000	26
Offered food/drink	0%	0.0000	1.0000	28
Offered business card	4%	0.3278	0.7457	27
Other gesture	-3%	-0.3282	0.7452	29
Told more units available than partner	-4%	-0.3276	0.7460	26
Shown more units than partner	3%	0.3282	0.7452	29
Shown more areas than partner	-32%	-3.3607***	0.0026	25
Financial incentive	-23%	-2.0045*	0.0560	26
Non-financial incentive	-14%	-1.2787	0.2115	29
Larger fee than partner	-4%	-0.2722	0.7878	25
Rental price higher than partner	8%	1.4460	0.1617	24
Offered application	-7%	-0.6255	0.5369	28
Negative comment	10%	1.7974*	0.0831	29
Positive comment	-28%	-2.5570**	0.0204	18
Offer help w housing search	0%	0.0000	1.0000	29
Follow up	-3%	-0.2967	0.7689	29



Table 3. Results and Statistical Significances for Pairs with Transgender Testers.  $n = 20$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

Measure	GROSS DIFFERENCE				NET DIFFERENCE			
	Neither	Both	Control	PC	Difference	Standard error of difference	t-statistic	p-value
Asked to be seated	85%	0%	10%	5%	-5%	9%	-0.5675	0.5770
Introduction	0%	80%	10%	10%	0%	10%	0.0000	1.0000
Asked for name	10%	60%	30%	0%	-30%	11%	-2.8536**	0.0102
Courtesy title	85%	0%	0%	15%	15%	8%	1.8311*	0.0828
Shook hand	0%	95%	0%	5%	5%	5%	1.0000	0.3299
Offered literature	70%	15%	5%	10%	0%	9%	0.5675	0.5770
Offered food/drink	90%	5%	5%	0%	-5%	5%	-1.0000	0.3299
Offered business card	40%	25%	10%	25%	15%	13%	1.1425	0.2674
Other gesture	65%	5%	15%	15%	0%	13%	0.0000	1.0000
Told more units available than partner	65%	0%	25%	10%	-15%	13%	-1.1425	0.2674
Shown more units than partner	65%	0%	20%	15%	-5%	14%	-0.3697	0.7157
Shown more areas than partner	65%	0%	30%	5%	-25%	12%	-2.0323	0.0563
Financial incentive	35%	30%	25%	10%	-15%	13%	-1.1425	0.2674
Non-financial incentive	65%	5%	25%	5%	-20%	12%	-1.7097	0.1036
Larger fee than partner	40%	0%	35%	25%	-10%	18%	-0.5675	0.5770
Rental price higher than partner	85%	0%	0%	15%	15%	8%	1.8311*	0.0828
Offered application	45%	10%	30%	15%	-15%	15%	-1.0000	0.3299
Negative comment	95%	0%	0%	5%	5%	5%	1.0000	0.3299
Positive comment	20%	45%	15%	20%	5%	14%	0.3697	0.7157
Offer help w housing search	85%	0%	5%	10%	5%	9%	0.5675	0.5770
Follow up	55%	5%	30%	10%	-20%	14%	-1.4530	0.1625

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Table 4. Results and Statistical Significances for Pairs with Gender-Nonconforming Testers.  $n = 13$ . \*Difference is statistically significant at the 90% level, \*\*at the 95% level, \*\*\*at the 99% level. Rows with statistically significant values are shaded.

Measure	GROSS DIFFERENCE				NET DIFFERENCE			
	Neither	Both	Control	PC	Difference	Standard error of difference	t-statistic	p-value
Asked to be seated	8%	15%	69%	8%	-8%	14%	-0.5620	0.5845
Introduction	77%	15%	0%	8%	-8%	14%	-0.5620	0.5845
Asked for name	31%	31%	15%	23%	-8%	21%	-0.3651	0.7214
Courtesy title	0%	8%	92%	0%	-8%	8%	-1.0000	0.3370
Shook hand	77%	8%	0%	15%	8%	14%	0.5620	0.5845
Offered literature	15%	8%	69%	8%	0%	11%	0.0000	1.0000
Offered food/drink	15%	8%	69%	8%	0%	11%	0.0000	1.0000
Offered business card	38%	23%	38%	0%	-23%	12%	-1.8974*	0.0821
Other gesture	8%	31%	38%	23%	-8%	21%	-0.3651	0.7214
Told more units available than partner	0%	23%	62%	15%	-8%	18%	-0.4330	0.2735
Shown more units than partner	0%	15%	69%	15%	0%	16%	0.0000	0.6727
Shown more areas than partner	0%	31%	69%	0%	-31%	13%	-2.3094**	0.0395
Financial incentive	31%	31%	38%	0%	-31%	13%	-2.3094**	0.0395
Non-financial incentive	0%	23%	46%	31%	8%	21%	0.3651	0.7214
Larger fee than partner	15%	8%	38%	38%	31%	17%	1.7598	0.1039
Rental price higher than partner	0%	0%	100%	0%	0%	0%	--	--
Offered application	31%	8%	46%	15%	8%	14%	0.5620	0.5845
Negative comment	8%	0%	69%	23%	23%	12%	1.8974*	0.0821
Positive comment	31%	31%	31%	8%	-23%	17%	-1.3887	0.1902
Offer help w housing search	31%	31%	31%	8%	-23%	10%	-1.4771	0.1654
Follow up	23%	0%	38%	38%	38%	14%	2.7386**	0.0180

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## APPENDIX B: SITE VISIT TEST REPORT FORM

Suffolk University Law School  
Housing Discrimination Testing Program

**RENTAL TEST REPORT FORM***To be removed by test coordinator***HOUSING PROVIDER'S INFORMATION:**

HOUSING PROVIDER'S NAME:		
COMPANY:		
ADDRESS:		CITY, STATE, ZIP:
PHONE:	DATES OF SITE VISIT(S)	TEST REPORT DATE:

**TESTER'S INFORMATION:**

NAME:					
NAME USED FOR TEST (IF DIFFERENT):					
PHONE: (HOME)			PHONE: (CELL)		
LIST ALL APARTMENTS SEEN OR MENTIONED; APPEND A PAGE IF NECESSARY					
ADDRESS	CITY	APT. #	MONTHLY RENT	# OF BEDROOMS	UTILITIES/AMENITIES INCLUDED
A.			\$		
B.			\$		
C.			\$		
DESCRIBE EACH PERSON YOU SPOKE WITH OR CAME INTO CONTACT WITH; APPEND A PAGE IF NECESSARY.					
NAME	POSITION/TITLE		PHYSICAL DESCRIPTION (Age, gender identity, race)		

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\*To be removed by test coordinator

**RENTAL TEST REPORT FORM****HOUSING PROVIDER'S DEMOGRAPHIC INFORMATION:**

ETHNICITY (select one):

 HISPANIC OR LATINO     NOT-HISPANIC OR LATINO     UNSURE

RACE (select one or more):

WHITE     BLACK/AFRICAN AMERICAN     NATIVE HAWAIIAN OR OTHER  
OTHER PACIFIC ISLANDER

ASIAN     AMERICAN INDIAN     OTHER (SPECIFY):  
OR ALASKA NATIVE

HOUSING PROVIDER'S (PERCEIVED) GENDER IDENTITY:

 MALE     FEMALE**TESTER'S DEMOGRAPHIC INFORMATION:**

ETHNICITY (select one):

 HISPANIC OR LATINO     NOT-HISPANIC OR LATINO

RACE (select one or more):

WHITE     BLACK/AFRICAN AMERICAN     NATIVE HAWAIIAN OR OTHER  
OTHER PACIFIC ISLANDER

ASIAN     AMERICAN INDIAN     OTHER (SPECIFY):  
OR ALASKA NATIVE

TESTER'S ASSIGNED SEX AT BIRTH:     MALE     FEMALE INTERSEX OTHER: \_\_\_\_\_TESTER'S GENDER IDENTITY:     MALE     FEMALE TRANSGENDER GENDER NON-CONFORMING

IF THERE ARE OTHER TERMS TO DESCRIBE THE TESTER'S IDENTITY  
(GENDERQUEER, FTM, MTF, AGENDER, ETC. PLEASE INDICATE THEM  
HERE:

---

GENDER MARKER ON STATE ISSUED ID:     MALE     FEMALE

Test #: (Please see assignment form for test #)
---

***I. GENERAL SITE VISIT INFORMATION***

1. FROM THE TIME YOU ENTERED THE OFFICE OR ARRIVED AT THE APARTMENT, HOW LONG DID YOU WAIT TO BE HELPED?
2. HOW MANY EMPLOYEES WERE VISIBLE IN THE OFFICE? (check one of the following)  <input type="checkbox"/> 1-2 <input type="checkbox"/> 3-5 <input type="checkbox"/> 6-9 <input type="checkbox"/> 10 OR MORE <input type="checkbox"/> DOES NOT APPLY
3. HOW MANY CUSTOMERS (EXCLUDING YOURSELF) WERE VISIBLE IN THE OFFICE OR DWELLING?
4. HOW MANY BUILDINGS DO YOU ESTIMATE ARE IN THE COMPLEX?
5. HOW MANY RENTAL UNITS DO YOU ESTIMATE ARE IN EACH BUILDING?
6. HOW MANY FLOORS ARE IN EACH BUILDING?
7. HOW OLD DO YOU ESTIMATE THE BUILDING/COMPLEX TO BE?
8. DID ANYONE, <u>OTHER THAN THE HOUSING PROVIDER WHO INTERVIEWED AND HELPED YOU PERSONALLY</u> , DO ANY OF THE FOLLOWING FOR YOU?  <input type="checkbox"/> YES <input type="checkbox"/> NO   A. ASKED TO BE SEATED <input type="checkbox"/> YES <input type="checkbox"/> NO   B. INTRODUCED HIM/HERSELF TO YOU <input type="checkbox"/> YES <input type="checkbox"/> NO   C. ASKED YOUR NAME <input type="checkbox"/> YES <input type="checkbox"/> NO   D. ADDRESSED YOU BY A COURTESY TITLE (MR., MS., SIR, MADAM, ETC.) <input type="checkbox"/> YES <input type="checkbox"/> NO   E. SHOOK YOUR HAND <input type="checkbox"/> YES <input type="checkbox"/> NO   F. OFFERED LITERATURE ON HOMES AVAILABLE <input type="checkbox"/> YES <input type="checkbox"/> NO   G. OFFERED YOU SOMETHING TO DRINK/EAT <input type="checkbox"/> YES <input type="checkbox"/> NO   H. OFFERED YOU A BUSINESS CARD <input type="checkbox"/> YES <input type="checkbox"/> NO   I. OTHER (SPECIFY)

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9. DID THE HOUSING PROVIDER THAT INTERVIEWED AND HELPED YOU PERSONALLY DO ANY OF THE FOLLOWING?

- |                              |                             |   |
|------------------------------|-----------------------------|---|
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | A. ASKED TO BE SEATED   |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | B. INTRODUCED HIM/HERSELF TO YOU                                  |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | C. ASKED YOUR NAME  |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | D. ADDRESSED YOU BY A COURTESY TITLE (MR., MS., SIR, MADAM, ETC.) |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | E. SHOOK YOUR HAND  |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | F. OFFERED LITERATURE ON HOMES AVAILABLE                          |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | G. OFFERED YOU SOMETHING TO DRINK/EAT                             |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | H. OFFERED YOU A BUSINESS CARD                                    |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | I. OTHER (SPECIFY)  |

10. WHICH OF THE FOLLOWING BEST DESCRIBES THE PLACE WHERE YOU WERE INTERVIEWED BEFORE BEING SHOWN ANY RENTAL UNITS? (check only one)

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | A. A RENTAL UNIT IN WHICH THE HOUSING PROVIDER RESIDES                  |
| <input type="checkbox"/> | B. A "MODEL APARTMENT" IN WHICH NO ONE REGULARLY RESIDES                |
| <input type="checkbox"/> | C. AN OFFICE WITH ONE OR MORE DESKS AND NO SEPARATE ROOMS OR PARTITIONS |
| <input type="checkbox"/> | D. AN OFFICE WITH ONE OR MORE DESKS SEPARATED BY PARTITIONS             |
| <input type="checkbox"/> | E. A SUITE OF OFFICES WITH A RECEPTION AREA                             |
| <input type="checkbox"/> | F. OTHER (SPECIFY)  |

**II. SUBJECTS OF DISCUSSION WITH THE HOUSING PROVIDER**

11. WERE ANY OF THE FOLLOWING SUBJECTS DISCUSSED?

*Please describe how each subject was brought up and what was said about it. If a subject was not discussed please check the appropriate box. (Please note that "vol." stands for volunteered.)*

SUBJECT	SUBJECT AROSE BECAUSE:	WHAT WAS SAID?
A. SIZE OF APARTMENT	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
B. RENTAL PRICE RANGE	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
C. WHO WILL OCCUPY THE APARTMENT	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
D. GENDER(S) OF OCCUPANT(S)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
E. AGE(S) OF OCCUPANT(S)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:

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F. DISABILITY OF OCCUPANT(S)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
G. MARITAL STATUS	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
H. CURRENT ADDRESS	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
I. PHONE NUMBER	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
J. OCCUPATION	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
K. EMPLOYMENT HISTORY AND/OR EMPLOYER	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:



L. INCOME	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
M. ASSETS OTHER THAN INCOME (i.e. SSI, Section 8, child support, etc.)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
N. CREDIT HISTORY	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
O. DEBTS	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
P. SPOUSE/ ROOMMATE'S INCOME	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
Q. SPOUSE/ ROOMMATE'S EMPLOYMENT HISTORY AND/ OR EMPLOYER	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:

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R. WHY YOU WANT TO MOVE	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
S. HOW MUCH RENT YOU CURRENTLY PAY	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
T. REFERENCES (i.e. current landlord, employer, etc.)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
U. RACE OR NATIONAL ORIGIN	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
V. TO DISPLAY OR LEAVE A DRIVER'S LICENSE	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:
W. TO FILL OUT A VISITOR/GUEST CARD	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:
		YOU SAID:

<p>X. WAS ANY OF THE INFORMATION IN QUESTION 11A THROUGH 11U RECORDED/NOTED BY THE HOUSING PROVIDER? (i.e. on a guest/visitor's card, computer log, scratch paper, etc.) <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF YES, PLEASE SPECIFY WHAT INFORMATION WAS RECORDED/NOTED.</p>
<p>12. WHEN YOU INQUIRED ABOUT THE AVAILABILITY OF THE RENTAL UNIT(S), DID THE AGENT SAY SOMETHING WAS AVAILABLE? <input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>A. WHAT UNIT #'S WERE AVAILABLE?</p>
<p>B. HOW MANY UNITS WERE AVAILABLE?</p>
<p>C. WHAT DATE(S) WOULD THE UNIT(S) BECOME AVAILABLE?</p>
<p>D. IF NOTHING WAS AVAILABLE, DID THE HOUSING PROVIDER SAY A UNIT WOULD BECOME AVAILABLE IN THE FUTURE? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF YES, WHEN, HOW MANY, AND WHAT UNIT(S) WOULD BECOME AVAILABLE IN THE FUTURE?  DATE:                      # OF UNITS:                      UNIT #S:</p>
<p>13. DID THE HOUSING PROVIDER OFFER TO PUT YOU ON A WAITING LIST? (check one)</p> <p><input type="checkbox"/> YES, VOLUNTARILY (if yes, answer 15A and 15B)</p> <p><input type="checkbox"/> YES, BUT ONLY AFTER YOU ASKED HIM/HER ABOUT A WAITING LIST (if yes, answer 13A and 13B)</p> <p><input type="checkbox"/> NO, BECAUSE NO WAITING LIST EXISTS</p> <p><input type="checkbox"/> NO, BECAUSE A UNIT WAS AVAILABLE OR WOULD BE AT A GIVEN DATE</p> <p><input type="checkbox"/> OTHER, PLEASE SPECIFY</p>
<p>14. HOW MANY RENTAL UNITS DID YOU <b>ACTUALLY</b> INSPECT?</p>
<p>15. IF YOU DID NOT INSPECT AT LEAST ONE RENTAL UNIT, EXPLAIN WHY NOT.</p>

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**III. LEASE, SECURITY DEPOSIT, APPLICATION, ETC.**

16. WERE ANY OF THE FOLLOWING SUBJECTS DISCUSSED?		
<i>(Please describe how each subject was brought up and what was said about it. If a subject was not discussed please check the appropriate box. Please note that "vol." stands for volunteered.)</i>		
SUBJECT	SUBJECT AROSE BECAUSE:	WHAT WAS SAID?
A. LEASE REQUIREMENTS (please note the length of the lease if discussed)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
B. SECURITY DEPOSIT (please note the charge for the security deposit if discussed)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
C. RENT SPECIAL AND/OR WAIVING OF FEES (please note the special and/or fee to be waived if discussed)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
D. APPLICATION AND APPLICATION FEES (please note the fee for the application if discussed)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
E. CREDIT CHECK (please note the charge for the credit check if discussed)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
F. ADDITIONAL FEES (i.e. pet fees, parking fees, etc. – please note if these fees are refundable if discussed)	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:
G. BUILDING/UNIT OWNERSHIP	<input type="checkbox"/> AGENT ASKED/VOL. <input type="checkbox"/> YOU ASKED/VOL. <input type="checkbox"/> NOT DISCUSSED	AGENT SAID:  YOU SAID:

*IV. DEMOGRAPHIC MAKE-UP, NEIGHBORHOOD, ETC.*

17. DID THE HOUSING PROVIDER MAKE ANY REFERENCES TO GENDER IDENTITY, SEX, RACIAL COMPOSITION, OR USE "CODE WORDS" WHEN DESCRIBING THE BUILDING(S) OR COMPLEX? (check one)  YES  NO  NOT SURE

IF YES OR NOT SURE, PLEASE EXPLAIN WHAT WAS SAID:

18. DID THE AGENT SPEAK NEGATIVELY ABOUT THE COMPLEX OR NEIGHBORHOOD?  YES  NO

IF YES, PLEASE EXPLAIN.

19. DID YOU OBSERVE ANY OF THE FOLLOWING: (check yes or no, and "check not sure if they were tenants" if unsure of status)

YES  NO MINORITIES  NOT SURE IF THEY WERE TENANTS

YES  NO CHILDREN  NOT SURE IF THEY WERE TENANTS

YES  NO PERSONS W/  
VISIBLE DISABILITIES  NOT SURE IF THEY WERE TENANTS

IF YOUR RESPONSE WAS **YES** OR **NOT SURE** TO ANY OF THE ABOVE, PLEASE EXPLAIN WHERE YOU SAW THEM AND WHAT THEY WERE DOING.

20. WHEN YOU VISITED THE NEIGHBORHOOD, THE RENTAL UNIT WAS IN...

YES  NO A. A NOISY AREA (i.e. near a busy street, highway, airport, railroad, heavy industry, etc.)

YES  NO B. A DETERIORATING AREA (i.e. surrounded by poorly maintained houses and yards, etc.)

YES  NO C. AN AREA THAT HAD OTHER NEGATIVE FEATURES (specify)

21. WERE THERE ANY EQUAL HOUSING SIGNS OR NOTICES VISIBLE ON THE PREMISES?  YES  NO

22. DID THE HOUSING PROVIDER ASK YOU TO MAKE A DECISION OR ASK YOU WHEN YOU WOULD MAKE A DECISION?

YES  NO

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23. DID THE HOUSING PROVIDER INVITE YOU TO CALL BACK?  
 YES    NO

IF YES, EXPLAIN.

***IF THE AGENT CONTACTS YOU AFTER YOU HAVE TURNED THIS REPORT FORM IN, PLEASE CALL THE TEST COORDINATOR WITH THIS INFORMATION AND COMPLETE A FOLLOW-UP CONTACT REPORT FORM.***

***V. REPORT NARRATIVE***

(Please give a detailed description of all interactions with the housing provider. Unless needed for clarity, please do not include any names (yours or the housing provider's).

**PLEASE INCLUDE ALL EMAIL/TEXT CORRESPONDENCE  
CHRONOLOGICALLY**

COMPLETE NARRATIVE BELOW:

Date: \_\_\_\_\_

## APPENDIX C: ANALYSIS GROUP CODING DICTIONARY

<b>Measure</b>	<b>Survey question</b>	<b>Description</b>	<b>Coding definition</b>	<b>Measure type: survey or new</b>
Asked to be seated	9a	All parts of question 9 were coded in order to capture "helpfulness" gestures of the housing provider.	Coded question 9a: "Did the housing provider that interviewed and helped you personally do any of the following: Asked to be seated." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative.	Survey
Introduction	9b		Coded question 9b: "Did the housing provider that interviewed and helped you personally do any of the following: Introduced himself/herself to you." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative.	Survey
Asked for name	9c		Coded question 9c: "Did the housing provider that interviewed and helped you personally do any of the following: Asked your name." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative.	Survey
Courtesy title	9d		Coded question 9d: "Did the housing provider that interviewed and helped you personally do any of the following: Addressed you by a courtesy title." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative.	Survey
Shook hand	9e		Coded question 9e: "Did the housing provider that interviewed and helped you personally do any of the following: Shook your hand." A "yes" to this question was coded as "1", and missing responses were	Survey

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			filled in using the report narrative.	
Offered literature	9f		Coded question 9f "Did the housing provider that interviewed and helped you personally do any of the following: Offered literature on homes available." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative. (If the report narrative included instances of the provider showing floorplans or other information to the tester on the computer, this variable was coded as "1".)	Survey
Offered food/drink	9g		Coded question 9g: "Did the housing provider that interviewed and helped you personally do any of the following: Offered you something to drink/eat." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative.	Survey
Offered business card	9h		Coded question 9h: "Did the housing provider that interviewed and helped you personally do any of the following: Offered you a business card." A "yes" to this question was coded as "1", and missing responses were filled in using the report narrative.	Survey
Other gesture	9i		Coded question 9i: "Did the housing provider that interviewed and helped you personally do any of the following: Asked to be seated." A "yes" to this question was coded as "1".	Survey
Told more units available than partner	12b	This binary variable indicates if a provider informed a tester of a higher number of units available than the provider mentioned was	This measure was based on responses to question 12b: "How many units were available?" If one tester was told of more available units than the other, this variable was coded as "1". If a tester reported that "multiple" units were available without reporting a figure, we used	Constructed



		available to the other tester.	the narrative to determine or estimate an exact number. If the response was missing or it was otherwise unclear how many units the tester was told was available, we assumed they were told only the number of units they were shown. If there was a discrepancy between the question's response and the narrative, the coding was updated using number of units in the narrative.	
Shown more units than partner	14	This binary variable indicates if one tester saw a higher number of units than the other tester.	This measure is based on question q14: "How many rental units did you actually inspect?" If the response was missing, it was updated using the report narrative. The response was also adjusted if the narrative mentioned that the provider offered to show the tester an additional unit, but the tester declined inspecting it.	Constructed
Shown more areas than partner	Narrative	This binary variable indicates if a provider showed one tester more areas of the building the other tester. "Areas" are considered to be any locations outside of the rental unit itself, including laundry rooms, outdoor patios, gyms, recreation rooms, mail rooms, etc.	This variable was coded based on the areas listed in the report narrative. This variable did not consider that a tester was shown an area if the provider mentioned a location but did not show it. This variable also does not consider if a tester requested to see an area and was shown it- only unprompted areas were counted.	New
Financial incentive	16c	This is a measure of whether any tester was offered a discount, promotion, or other financial incentive to sign a lease. This variable aggregates several measures included in the HUD report,	This measure was coded based on any mention of monetary incentives (question 16c). A financial incentive was considered any discount, promotion, waiver of a fee, or statement that a financial part of the lease was negotiable. The incentive must have been explicitly framed as a <u>reduction from existing prices</u> in order for the	New

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		including "tester told fees are negotiable", "tester told about incentives", "tester told payments negotiable", "tester offered month-to-month", "tester told deposit or bond is negotiable", and others.	measure to have been coded as a "1".	
Non-financial incentive	16c-f	This is a measure of whether any tester was offered a service or amenity to sign a lease.	This measure was coded based on responses to questions 16c-f, which pertain to details of the lease. This measure was coded as "1" if the tester was offered any service or amenity, such as doggy daycare, resident parking, or upgrading features of the apartment. (Free parking was considered a non-financial incentive.)	New
Larger fee than partner	16d, 16f	This variable captures if a tester was informed of a fee that was not mentioned to the other tester, and if a tester was quoted a higher amount for a fee than the other tester.	This measure was coded based on responses to questions 16d and 16f, which pertain to whether fees were discussed (both those associated with the application/signing and ongoing fees). This measure was coded as "1" if one tester was told of a fee that was not mentioned to the other tester, or if the stated amount of a fee was higher for the tester than for the other tester. This measure pertains to fees only- any differences in rental price were either captured in the "financial incentive" or "rental price" variables. (This variable also only pertains to stated fees that are discussed in terms of reductions. If a fee was discussed in the context of a discount, it was captured by the "financial incentive" measure.)	New

Rental price higher than partner		This variable measures if a tester was quoted a higher rental price than the other tester. This measure only pertained to instances where neither tester was offered a discount on the rental price.	This variable was coded as "1" if the rent price was higher than the price quoted for the other tester. This measure only pertained to instances where neither tester was offered a discount- if a discount was offered, it was captured by the "financial incentive" variable. A statement is considered a quoted rent price if it is <u>not framed as a discount</u> from a previous price, e.g. if it is an increase from a previous price or a simply a quoted price. If a rental price was framed as a discount, it was considered a financial incentive, not a rental price. (If one tester was told that the rent included utilities and the other tester was not informed that utilities were included, the latter tester was coded as receiving a higher rental price.)	New
Offered application	Narrative	This variable captures if the provider shared either a paper or electronic copy with the tester.	This measure was coded using the narrative report, and captured any instance where the provider offered a hard copy application or emailed an application to the tester.	New
Negative comment	Q18, Narrative	The variable captures whether the provider made disparaging references or remarks regarding any aspect of the unit or neighborhood. This variable is intended to measure presence of "steering" the tester away from the unit or unit's neighborhood.	This variable was coded based on responses to question 18: "Did the agent speak negatively about the complex or neighborhood?", as well as the report narrative. We considered a wide definition of "negative", and considered subtle references to safety, cleanliness, and noise as negative comments. Negative comments about possible other units that the housing provider could show the tester are included. Because it is considered a measure of "steering", negative comments about other neighborhoods where	Constructed

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			the unit is not located are not included in this measure.	
Positive comment	Narrative	This variable captures complimentary statements about any aspect of the unit or neighborhood.	If a comment could be considered purely factual, i.e. describing square footage, it was not considered a positive comment. Positive comments are considered subjective or complimentary statements about any aspect of the unit, building, landlord, neighborhood, neighbors, location, e.g. a statement about the nice view or "good size", or other remarks framed in the positive. (This measure is intended to capture the provider's degree of selling enthusiasm, and does not capture compliments made about the tester.)	New
Follow up	Narrative	This variable indicates whether the provider contacted the tester after the showing, for any reason and via any method.	Based on the narrative, this variable is coded as "1" if the provider followed up with the tester in any way after the showing. (Instances where the provider followed up to tell the tester that the unit was not available were still coded as "1".)	New
Gender Identity	"Tester's Gender Identity"	This variable distinguished transgender and gender non-conforming classes.	For the purposes of distinguishing PC gender identity from the control group and creating a separate dataset of transgender and gender non-conforming individuals, gender identity marked "female" or "male" was coded as "transgender".	Constructed
Offered to help search	Narrative	This variable captures whether the housing provider offered to assist the tester with a general housing search.	If a housing provider offers his or her assistance to the tester during the in-person meeting, this variable is coded as "1". Housing search offers include offers to assist with locating homes outside of the unit(s) relevant to the visit.	Constructed