

RESEARCH THAT MATTERS

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# DISCRIMINATION AGAINST LGBT PEOPLE IN SOUTH CAROLINA

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## EXECUTIVE SUMMARY

Over 4.5% of American adults identify as LGBT. Approximately 137,000 LGBT adults live in South Carolina. South Carolina does not have a statewide law that expressly prohibits discrimination based on sexual orientation or gender identity, leaving LGBT people vulnerable to harassment and discrimination in the state.

This report summarizes evidence of discrimination against LGBT people in South Carolina, explains the current protections from sexual orientation and gender identity discrimination in the state, and estimates the administrative impact of adding sexual orientation and gender identity to the state's existing non-discrimination laws.

## KEY FINDINGS

**LGBT people in South Carolina report experiencing discrimination and harassment in employment, housing, public accommodations, and other settings.**

- An estimated 137,000 LGBT adults live in South Carolina. There are approximately 99,000 LGBT people aged 16 and older in South Carolina's workforce.<sup>1</sup>
- Survey data indicate that LGBT people experience discrimination in South Carolina. For example, the 2015 U.S. Transgender Survey found that 37% of transgender respondents from South Carolina who held or applied for a job in the prior year reported that they had been fired, denied a promotion, or not hired because of their gender identity or expression.<sup>2</sup> In addition, 26% of transgender survey respondents from South Carolina reported experiencing some form of housing discrimination, such as being evicted or denied housing, in the prior year because of their gender identity or expression.<sup>3</sup> And, 36% of respondents who visited a place of public accommodation where employees knew or thought they were transgender reported experiencing some form of mistreatment, including denial of equal treatment or service, verbal harassment, or physical assault in the prior year.<sup>4</sup>
- In addition, aggregated data from two large public opinion polls conducted between 2011 and 2013 indicated that 81% of South Carolina residents thought that LGBT people experienced discrimination in the state.<sup>5</sup> Another public opinion poll conducted in 2016 found that 52% of South Carolina residents thought that gay and lesbian people experienced a lot of discrimination in the U.S. and 58% of South Carolina residents thought that transgender people experienced a lot of discrimination in the U.S.<sup>6</sup>
- National survey data on discrimination against LGBT people are consistent with data from South Carolina. For example, a national survey of LGBT people conducted by Pew Research Center in 2013 found that 21% of respondents said that they had been treated unfairly by an employer in hiring, pay, or promotions and 23% had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.<sup>7</sup>
- Reports of discrimination based on sexual orientation and gender identity in South Carolina have also been documented in testimony before the state legislature and city councils, through administrative complaints, lawsuits, and in the media.

**Research indicates that LGBT people in South Carolina experience economic instability.**

- Data collected through the Gallup Daily Tracking Poll indicate that LGBT people in South Carolina experience poor socioeconomic outcomes:<sup>8</sup>
  - 28% of LGBT adults in South Carolina reported having a household income below \$24,000 compared to 23% of non-LGBT adults.
  - 23% of LGBT adults in South Carolina reported that they do not have health insurance compared to 13% of non-LGBT adults.
  - 36% of LGBT adults in South Carolina reported not having enough money for food compared to 18% of non-LGBT adults.
  - 11% of LGBT adults in South Carolina reported being unemployed compared to 5% of non-LGBT adults.<sup>9</sup>
- Research has linked socioeconomic disparities for LGBT people to geographic region, lack of legal protections from discrimination, and a poor social climate.

**Local governments, private employers, and public universities in South Carolina have made efforts to protect LGBT people from discrimination and harassment, but coverage is incomplete.**

- Eight localities in South Carolina have adopted local ordinances that prohibit discrimination based on sexual orientation and gender identity in areas such as private and public sector employment, housing, and public accommodations. These localities are: Richland County, Charleston, Columbia, Folly Beach, Latta, Mt. Pleasant, Myrtle Beach, and North Charleston.
- These local ordinances protect approximately 1% of South Carolina's workforce from employment discrimination based on sexual orientation and gender identity. Local ordinances also protect approximately 8% of adults from discrimination in housing and 12% of adults from discrimination in public accommodations based on sexual orientation and gender identity.
- Many of South Carolina's largest corporate employers, including BlueCross BlueShield of South Carolina, Wells Fargo, Spartanburg Regional Healthcare, and SCANA Corporation, have policies prohibiting discrimination based on sexual orientation and gender identity. In addition, several large public universities in South Carolina, including the University of South Carolina, Clemson, The Citadel, and Winthrop University, have adopted policies that prohibit discrimination based on sexual orientation and/or gender identity in employment and/or education.
- Despite these policies, many LGBT South Carolina residents are not protected from discrimination based on sexual orientation or gender identity absent a statewide non-discrimination law that includes these characteristics.

**Public opinion in South Carolina supports the passage of non-discrimination protections for LGBT people.**

- In response to a 2018 poll, 58% of those polled in South Carolina said they favor laws protecting LGBT people from discrimination in employment, housing, and public accommodations.<sup>10</sup>
- In response to a national poll conducted in 2011, 73% of those polled in South Carolina said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>11</sup>

**Public opinion in South Carolina supports the passage of non-discrimination protections for LGBT people.**

- Adding sexual orientation and gender identity to South Carolina's non-discrimination laws would result in an estimated 55 additional complaints, on average, being filed with the South Carolina Human Affairs Commission each year.
- The additional complaints could likely be absorbed into the existing enforcement system with no need for additional staff and negligible costs.

# EVIDENCE OF DISCRIMINATION

## SURVEY DATA AND REPORTS OF DISCRIMINATION

Discrimination against LGBT people in the U.S. has been well documented. For example, a 2016 survey conducted by the Center of American Progress found that 25% of LGBT people had experienced some type of discrimination within the past year.<sup>12</sup> Similarly, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents in the U.S. reported that they had been treated unfairly by an employer in hiring, pay, or promotions and 23% had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.<sup>13</sup> And, in response to a 2017 national survey conducted by NPR, the Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health, 20% of LGBTQ respondents reported being discriminated against when applying for jobs and 22% of LGBTQ respondents reported being discriminated against when trying to rent an apartment or buy a house because of their sexual orientation or gender identity.<sup>14</sup> LGBTQ people of color were more likely to report experiencing employment discrimination in response to the survey than white LGBTQ respondents.<sup>15</sup> Further, 16% of LGBTQ respondents said they had been discriminated against by a doctor or health clinic based on their sexual orientation or gender identity, and 18% said they had avoided going to a doctor or seeking health care because they were afraid of discrimination.<sup>16</sup>

When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, the 2015 U.S. Transgender Survey found that 27% of respondents in the U.S. who held or applied for a job within the prior year reported being fired, denied a promotion, or not being hired because of their gender identity or expression, and 15% reported being verbally harassed, physically attacked, and/or sexually assaulted at work in the year prior to the survey because of their gender identity.<sup>17</sup> Further, 23% of transgender respondents nationwide reported experiencing some form of housing discrimination in the past year and 31% reported experiencing at least one type of mistreatment in the past year in a place of public accommodation.<sup>18</sup>

Among transgender respondents to the 2015 U.S. Transgender Survey from South Carolina, 37% of those who held or applied for a job in the prior year reported that they had been fired, denied a promotion, or not hired for a job they applied for because of their gender identity or expression.<sup>19</sup> Further, nearly one in five (19%) of respondents from South Carolina reported being verbally harassed and 1% reported being physically assaulted at work in the prior year because of their gender identity or expression. In addition, 26% of transgender survey respondents from South Carolina reported experiencing some form of housing discrimination, such as being evicted or denied housing, in the prior year because of their gender identity or expression.<sup>20</sup> And, 36% of respondents who visited a place of public accommodation where employees knew or thought they were transgender reported experiencing at least one type of mistreatment: 19% of respondents said they had been denied equal treatment or service, 24% said they had been verbally harassed, and 1% were physically assaulted because of their gender identity or expression in a place of public accommodation.<sup>21</sup>

In addition, public opinion polls indicate that people in South Carolina, both LGBT and non-LGBT, think LGBT people experience discrimination. An analysis of aggregated data from two national public opinion polls conducted between 2011 and 2013 found that 81% of South Carolina residents thought that LGBT people experienced discrimination in the state.<sup>22</sup> Another public opinion poll conducted in



2016 found that 52% of South Carolina residents thought that gay and lesbian people experienced a lot of discrimination in the U.S. and 58% of South Carolina residents thought that transgender people experienced a lot of discrimination in the U.S.<sup>23</sup>

Reports of discrimination against LGBT people in the U.S. have also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination.<sup>24</sup>

Documented reports of discrimination based on sexual orientation and gender identity in South Carolina include:

- In October 2017, a lesbian woman from Darlington County filed a complaint in federal district court alleging that her former employer, a nursing home, had discriminated against her based on sex in violation of Title VII of the Civil Rights Act.<sup>25</sup> The woman alleged that during the course of her employment as director of nursing, a nurse and an administrator from a sister facility reported rumors about her sexual orientation directly to the executive director who, in turn, began to treat her differently.<sup>26</sup> The woman stated that the executive director began to watch only her on the surveillance cameras, and that after she raised an objection with the owner of the company, the executive director fired her despite her meeting job expectations and having no notice of unsatisfactory work performance.<sup>27</sup> In November 2018, the district court dismissed the plaintiff's sex discrimination claim stating that precedent in the jurisdiction does not recognize sexual orientation discrimination as a form of sex discrimination barred by Title VII.<sup>28</sup>
- In March 2017, a gay man from Charleston County filed a complaint in court alleging that his former employer, a restaurant group, had discriminated against him based on his sex and race in violation of Title VII of the Civil Rights Act and the South Carolina Human Affairs Law.<sup>29</sup> According to the complaint, in mid-March 2016, upon witnessing two gay men kissing at the restaurant, the employee's manager told him that it was like seeing "a donkey f---ing a sheep or a cat f---ing a dog."<sup>30</sup> The employee stated that when he reported this behavior, the employer did not take action against the manager, but instead terminated his employment in retaliation for making the complaint.<sup>31</sup> In May 2017, the parties settled out of court.<sup>32</sup>
- In October 2016, a lesbian teacher filed a complaint against a high school in the Pickens County alleging she was unlawfully fired in violation of Title IX of the Education Amendments as a result of defending a transgender student.<sup>33</sup> The teacher allowed the student to use a teachers' restroom close to classrooms rather than the restroom the school told the student to use, which was nearly a one-quarter mile away from the student's classes.<sup>34</sup> Although the teacher had not been previously observed by supervisors, the teacher alleged that within two weeks after her advocacy on behalf of the transgender student nearly every assistant principal at the high school visited her class to observe and provide feedback and suggestions without providing sufficient time to implement changes.<sup>35</sup> The teacher alleged administrators subjected her to observations and criticisms that are part of a mentoring program that is designed to be a semester long so as to allow teachers reasonable time for improvement, and that this conduct began to add to her stress and fear for her job.<sup>36</sup> She further stated that less than one month after her last evaluation in November 2016, she was asked to either resign or be terminated.<sup>37</sup> The teacher said that as a

result of the school's conduct, she lost her teacher accreditation and was put on "a list" barring her from teaching anywhere in the tristate area.<sup>38</sup> In October 2017, the parties settled out of court.<sup>39</sup>

- In August 2016, a transgender woman from Richland County filed a complaint in federal court alleging that her prospective employer, an engineering firm, had discriminated against her based on sex in violation of Title VII of the Civil Rights Act and the South Carolina Human Affairs Law.<sup>40</sup> The woman alleged that when she arrived on her first day of work at the engineering firm, she received a phone call from the senior recruiting manager informing her that the offer of employment was revoked. According to the complaint, the recruiting manager informed the woman that the firm was not expecting a woman, and that she "did not fit with the company's culture."<sup>41</sup> As of May 2019, the case was still pending.<sup>42</sup>
- In April 2016, a gay man filed a complaint against his former employer, a hospice provider, alleging discrimination based on sex in violation of Title VII of the Civil Rights Act. The man stated that his executive director discussed his sexual orientation with his co-workers and told them that his lifestyle was biblically unacceptable and a "sin."<sup>43</sup> The man ultimately resigned as a result of the discrimination and moved to a different state. In April 2017, the parties settled out of court.<sup>44</sup>
- In May 2014, the mayor of Latta was recorded saying that he would "much rather have somebody who drank and drank too much taking care of my child than somebody whose lifestyle is questionable around children. . . . I'm not gonna let two women stand up there and hold hands and let my child be aware of it. And I'm not gonna see them do it with two men either."<sup>45</sup> These statements caused some to believe that he may have fired a lesbian police chief because of her sexual orientation, causing significant controversy.<sup>46</sup> After the recording surfaced, the mayor was stripped of power in a special election, and the Town Council rehired the police chief.<sup>47</sup>
- In 2014, the South Carolina Department of Motor Vehicles required a gender non-conforming teenager to remove his makeup for his driver's license picture.<sup>48</sup> The teen's mother filed a complaint on his behalf, alleging that the DMV's decision to force the teen to remove the makeup unconstitutionally discriminated against him based on sex and sex stereotypes and violated his right to free speech and expression.<sup>49</sup> In 2015, the parties reached a settlement that required the DMV to allow the teenager to take his photo while wearing makeup, alter the language in its manual to ensure gender neutrality with respect to wearing makeup in pictures, and train staff to treat transgender and gender non-conforming citizens with respect.<sup>50</sup>
- In 2013, a transgender public safety employee sued his employer for forcing him to wear a female bulletproof vest after he informed his supervisors and fellow officers that he was a transgender man and took leave to undergo surgery.<sup>51</sup> The employee sued the City of Cayce, claiming this decision was part of a pattern of conduct intended to embarrass or subordinate him, eventually leading to reassignment and an allegedly pre-textual firing.<sup>52</sup> The parties settled the case.<sup>53</sup>

## SOCIOECONOMIC OUTCOMES FOR LGBT PEOPLE

Research has found that gay men and transgender people experience wage gaps,<sup>54</sup> and has found a correlation between lower earnings and lack of state-level protections from discrimination for LGBT people.<sup>55</sup> Research also indicates that LGBT people, in general, are disproportionately poor,<sup>56</sup> and that social climate and policy are linked determinants of poverty among LGBT communities.<sup>57</sup>

Data from the Gallup Daily Tracking Poll suggest that LGBT people in South Carolina experience economic instability.<sup>58</sup>

- 28% of LGBT adults in South Carolina reported having a household income below \$24,000 compared to 23% of non-LGBT adults.
- 23% of LGBT adults in South Carolina reported that they do not have health insurance compared to 13% of non-LGBT adults.
- 36% of LGBT adults in South Carolina reported not having enough money for food compared to 18% of non-LGBT adults.
- 11% of LGBT adults in South Carolina reported being unemployed compared to 5% of non-LGBT adults.<sup>59</sup>



## CURRENT PROTECTIONS FROM DISCRIMINATION

South Carolina state law does not prohibit discrimination on the basis of sexual orientation or gender identity in employment, housing, or public accommodations.<sup>60</sup> Legislators in South Carolina have introduced a number of bills that would have amended the state's non-discrimination laws to prohibit discrimination based on sexual orientation and gender identity. However, none of these bills have passed out of committee.<sup>61</sup>

Although there is no state-level protection in South Carolina, several localities, universities, and private corporations in the state have adopted local ordinances and internal policies that prohibit discrimination based on sexual orientation and gender identity. Despite these policies, many LGBT South Carolina residents are not protected from discrimination based on sexual orientation or gender identity absent a statewide non-discrimination law that includes these characteristics.

## EXISTING NON-DISCRIMINATION STATUTES

### The South Carolina Human Affairs Law

Currently, the SC-HAL prohibits employment discrimination by most employers with 15 or more employees<sup>62</sup> on the bases of race, religion, color, sex (including pregnancy),<sup>63</sup> age, national origin (including ancestry),<sup>64</sup> and disability status.<sup>65</sup> The SC-HAL applies to both public sector and private sector employers.<sup>66</sup> The SC-HAL exempts religious organizations from coverage to the extent that such organizations may give employment preference to "individuals of a particular religion to perform work connected with the carrying on by the [religious organization] of its activities."<sup>67</sup>

The Human Affairs Commission (the Commission) enforces the SC-HAL, and has the power to receive complaints, investigate and prosecute specific instances of employment discrimination, and to study and report on discrimination statewide.<sup>68</sup> Complaints must be filed within 180 days after the discriminatory practice occurred.<sup>69</sup>

Upon receiving a complaint, the Commission has the power to investigate, issue subpoenas, and require a party to answer interrogatories or participate in a deposition.<sup>70</sup> The Commission also has the power to resolve the complaint via a conciliation agreement, which may include an agreement by the employer to refrain from committing unlawful discriminatory practices in the future.<sup>71</sup> If the complaint is not resolved at this stage, the Commission has the right to bring a civil action in court against the employer.<sup>72</sup> If the Commission dismisses the charge or, within 180 days of the filing of the complaint, fails to file a civil action or reach a conciliation agreement, a claimant may file a civil complaint in court.<sup>73</sup> If a court determines that an employer has unlawfully discriminated, the court may issue remedies including reinstatement, back pay, and other equitable remedies.<sup>74</sup>

### The South Carolina Fair Housing Law

Discrimination in the sale or rental of housing on the basis of race, color, religion, sex, familial status, or national origin is prohibited under South Carolina's Fair Housing Law.<sup>75</sup> This law also includes an exemption for religious organizations that is identical to the exemption stated in the SC-HAL.<sup>76</sup> In the housing context, the South Carolina Human Affairs Commission has a duty to investigate allegedly discriminatory housing practices and may issue subpoenas to obtain relevant information.<sup>77</sup>

A claimant must file a written complaint with the Commission within 180 days after the alleged discriminatory housing practice occurred.<sup>78</sup> The Commission investigates and, within 100 days of the filing of the complaint, makes a determination whether reasonable cause exists to believe that a discriminatory housing practice occurred.<sup>79</sup> If the Commission determines that a hearing is required, then it must file a complaint against the respondent.<sup>80</sup> The Commission has the authority to correct the alleged discriminatory housing practice by conference, conciliation, or persuasion.<sup>81</sup>

At a hearing adjudged by a panel of three members of the Commission, the complainant is permitted to present and submit evidence.<sup>82</sup> If the panel finds that the respondent has engaged in any unlawful discriminatory practice, it issues an opinion and order for appropriate relief, which may include an injunction of the unlawful discriminatory practice, actual damages, civil penalties, and reasonable attorney's fees.<sup>83</sup> Alternatively, either party may elect to have the claims decided in a civil action, at which point the Commission is required to commence and maintain a civil action on behalf of the aggrieved person within 30 days.<sup>84</sup> A court may impose an injunction, temporary restraining order, or other necessary order and may award the plaintiff actual damages and punitive damages, together with court costs and reasonable attorney's fees.<sup>85</sup>

## Equal Enjoyment and Privileges to Public Accommodations

The Equal Enjoyment and Privileges to Public Accommodations law prohibits discrimination in places of public accommodation on the basis of race, color, religion, or national origin.<sup>86</sup> The public accommodations covered by the law are entities that are required to maintain a state-issued license or permit, including hotels, restaurants, hospitals, retail stores, and movie theaters.<sup>87</sup>

Individuals who have experienced discrimination in public accommodations may file a complaint with the South Carolina Human Affairs Commission or the South Carolina Attorney General's office.<sup>88</sup> The South Carolina Human Affairs Commission may conduct an investigation into the allegations stated in a complaint and may attempt to reach an agreement between parties through conciliation.<sup>89</sup> Sixty days after filing a complaint with the Commission, an individual may file a private action in court for damages.<sup>90</sup> If a court determines that the individual was unlawfully discriminated against, it must award a minimum of \$5,000 in damages, as well as attorney's fees and costs.<sup>91</sup>

The State Attorney General may refer complaints that establish a pattern or practice of discrimination to the State Law Enforcement Division for investigation.<sup>92</sup> A "pattern or practice" of discrimination generally refers to a policy or systematic practice of discriminating against people with a protected characteristic, rather than a single incidence of discrimination.<sup>93</sup> The results of the State Law Enforcement Division's investigation must be provided to the South Carolina Human Affairs Commission, which will determine whether there is reasonable cause to believe that the establishment engaged in a pattern or practice of discrimination.<sup>94</sup> If the Commission finds reasonable cause, it will notify the Attorney General, at which point the Attorney General must file a formal complaint with the Commission.<sup>95</sup> The Commission will then conduct an administrative hearing to determine whether the establishment violated the public accommodations non-discrimination law.<sup>96</sup> If the Commission determines that a violation has occurred, it may revoke the license or permit of the establishment and impose a fine.<sup>97</sup>

## LOCAL PROTECTIONS FROM DISCRIMINATION AGAINST LGBT PEOPLE

One county, Richland County,<sup>98</sup> and seven cities (Charleston,<sup>99</sup> Columbia,<sup>100</sup> Folly Beach,<sup>101</sup> Latta,<sup>102</sup> Mt. Pleasant,<sup>103</sup> Myrtle Beach,<sup>104</sup> and North Charleston<sup>105</sup>) in South Carolina provide protection from discrimination on the basis of sexual orientation and/or gender identity in employment, housing, and/or public accommodations through local ordinances or policies. These local ordinances and policies protect approximately 1% of the South Carolina workforce from employment discrimination based on sexual orientation or gender identity. Local ordinances also protect approximately 8% of adults from discrimination in housing and approximately 12% of adults from discrimination in public accommodations based on sexual orientation or gender identity.<sup>106</sup>

The local ordinances and policies vary in scope and coverage. Ordinances and policies in Richland County,<sup>107</sup> Charleston,<sup>108</sup> Columbia,<sup>109</sup> Latta,<sup>110</sup> Myrtle Beach,<sup>111</sup> Mt. Pleasant,<sup>112</sup> and North Charleston<sup>113</sup> prohibit discrimination based on both sexual orientation and gender identity. Folly Beach's<sup>114</sup> ordinance provides protections from discrimination based on sexual orientation, but does not explicitly include gender identity. In terms of areas covered, Myrtle Beach's resolution is the broadest, prohibiting discrimination in public and private sector employment, housing, public accommodations, and other areas.<sup>115</sup> The other ordinances and policies are more limited:

- Richland County's ordinance prohibits discrimination in public accommodations, and a city personnel policy prohibits discrimination in local government employment;<sup>116</sup>
- Ordinances in Charleston<sup>117</sup> and Columbia<sup>118</sup> prohibit discrimination in housing and public accommodations, and city personnel policies prohibit discrimination in local government employment;
- Folly Beach's ordinance prohibits discrimination in public accommodations;<sup>119</sup>
- Latta's policy prohibits discrimination in local government employment;<sup>120</sup>
- Mt. Pleasant's ordinance prohibits discrimination in housing and public accommodations;<sup>121</sup> and
- North Charleston's ordinance prohibits discrimination in housing.<sup>122</sup>

None of the ordinances or policies explicitly provide for a private right of action, which would allow individuals to file a lawsuit and seek remedies in court for discrimination.<sup>123</sup> Instead, six localities, Richland County,<sup>124</sup> Charleston,<sup>125</sup> Columbia,<sup>126</sup> Folly Beach,<sup>127</sup> Mt. Pleasant,<sup>128</sup> North Charleston,<sup>129</sup> provide for misdemeanor penalties that vary amongst cities and counties. Myrtle Beach's resolution does not provide for specific penalties but instead sets up a Human Rights Commission tasked with eliminating discriminatory practices within the city.<sup>130</sup> Columbia's ordinance does not specify remedies that may be available, but indicates that individuals who have experienced discrimination could obtain some type of relief in addition to the civil penalty that may be imposed by the city: "In addition to appropriate civil and/or equitable remedies for enforcement of this article, a violation shall constitute a misdemeanor punishable as provided by law."<sup>131</sup>

## CORPORATE AND UNIVERSITY POLICIES PROHIBITING DISCRIMINATION AGAINST LGBT PEOPLE

Research indicates that private companies often adopt internal policies prohibiting employment discrimination based on personal characteristics, including sexual orientation and gender identity,

because they make good business sense. For example, one study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top 50 Fortune 500 companies and the top 50 federal contractors in the U.S. with LGBT-inclusive policies had adopted the policies for economic reasons.<sup>132</sup> The specific economic benefits these companies pointed to included improved recruitment and retention of employees, increased employee productivity and customer satisfaction, an expanded customer base, and others. Additionally, a growing body of academic research supports the link between LGBT-inclusive corporate policies and several positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.<sup>133</sup>

Many of South Carolina's largest employers have adopted internal policies that prohibit employment discrimination against LGBT people. The most recent comprehensive information about South Carolina's largest employers dates from 2011;<sup>134</sup> based on this list, at least sixteen of South Carolina's twenty largest employers prohibit discrimination based on sexual orientation<sup>135</sup> and at least thirteen of those companies also prohibit discrimination based on gender identity.<sup>136</sup>

Additionally, some large public universities in South Carolina have adopted policies that prohibit employment discrimination based on sexual orientation and/or gender identity, including the University of South Carolina,<sup>137</sup> Clemson University,<sup>138</sup> The Citadel, and Winthrop University.<sup>139</sup>

## PUBLIC SUPPORT FOR NON-DISCRIMINATION PROTECTIONS

Public opinion in South Carolina supports the passage of non-discrimination protections for LGBT people. In response to the Public Religion Research Institute's 2018 American Values Survey, 58% of South Carolina residents said they supported laws that would protect LGBT people from discrimination in employment, housing, and public accommodations.<sup>140</sup> In response to the same survey, 58% of respondents said they were opposed to laws that would allow small businesses to discriminate against gay and lesbian people in the provision of goods or services.<sup>141</sup> Additionally, in response to a national poll conducted in 2011, 74% of those polled in South Carolina said that Congress should pass a federal law to prohibit employment discrimination based on sexual orientation and gender identity.<sup>142</sup>

## ADMINISTRATIVE IMPACT

### ADDING SEXUAL ORIENTATION AND GENDER IDENTITY TO NON-DISCRIMINATION LAWS

Adding sexual orientation and gender identity to South Carolina's Human Affairs Law, Fair Housing, and Equal Enjoyment and Privileges to Public Accommodations law would allow LGBT people to file discrimination complaints with the state. The South Carolina Human Affairs Commission would be responsible for handling the complaints. The additional complaints would have a minimal impact on staff and resources and would not be burdensome or costly for the agency to enforce.

#### Complaint Estimate

Despite the persistence and pervasiveness of discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. LGBT people file complaints of sexual orientation and gender identity discrimination at approximately the same rate as people of color and women file complaints of race and sex discrimination, respectively.<sup>143</sup> However, because the LGBT population is small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is low.<sup>144</sup>

Non-discrimination laws in South Carolina allow individuals who believe they have experienced discrimination to file complaints with the South Carolina Human Affairs Commission. We estimate that approximately 55 complaints of sexual orientation or gender identity discrimination would be filed with the South Carolina Human Affairs Commission each year if sexual orientation and gender identity were added to the state's non-discrimination laws. To reach this estimate, we drew on data collected by Gallup and the Census Bureau from South Carolina to estimate the size of the LGBT workforce and adult population in the state, and applied national sexual orientation and gender identity complaint rates to that population.<sup>145</sup>

First, data from the Gallup Daily Tracking Poll and the American Community Survey indicate that there are 99,000 LGBT workers age 16 and older and 137,000 LGBT adults in South Carolina.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT adults and LGBT workers in South Carolina to determine how many complaints would be filed annually if these characteristics were added to South Carolina's non-discrimination laws. We used the national average complaint rates from a series of studies that analyzed administrative complaint data from states that prohibited sexual orientation and gender identity discrimination as of 2015.<sup>146</sup> The studies found that across these states, the average rate of employment discrimination complaints filed on the basis of sexual orientation or gender identity was 4.6 per 10,000 LGBT workers;<sup>147</sup> the average rate of housing discrimination complaints was 3 per 100,000 LGBT adults;<sup>148</sup> and the average rate of public accommodations complaints was 4 per 100,000 LGBT adults.<sup>149</sup>

Applying the national complaint rates to the LGBT population in South Carolina suggests that 55 additional complaints of discrimination in employment, housing, or public accommodations would be filed annually if sexual orientation and gender identity were added to South Carolina's existing

non-discrimination laws. More specifically, applying the national complaint rate for employment discrimination (4.6 per 10,000 LGBT workers) to the number of LGBT workers in South Carolina (99,000) suggests that 46 complaints of employment discrimination based on sexual orientation or gender identity would be filed annually; and applying the national complaint rates for housing (3 per 100,000 LGBT adults) and public accommodations discrimination (4 per 100,000 LGBT adults) to the number of LGBT adults in South Carolina (137,000) suggests that 4 complaints of housing discrimination and 5 complaints of public accommodations discrimination would be filed annually.

## Cost of Enforcement

Available data suggest that an additional 55 complaints filed with the South Carolina Human Affairs Commission each year would not be costly or burdensome to enforce. According to the most recent data available from the Commission (FY 2013-2018), the Commission received an annual average of 1,208 discrimination complaints.<sup>150</sup>

The Commission's annual reports do not provide enough data to determine the cost of enforcement per complaint, so it is not possible to precisely estimate any added expense associated with the additional 55 complaints. However, the data suggest that the additional complaints would have a minimal impact on the Commission. The annual number of complaints filed with the Commission varied from 1,033 to 1,401 over the five fiscal year periods from 2013 to 2018. On average, annual filings from 2013 through 2018 fluctuated by 176 complaints. This information suggests that an additional 55 complaints would be within the range of normal variation and could be absorbed by the Commission with minimal impact on staff and resources.

**Table 1. Number of sexual orientation and gender identity discrimination complaints filed in South Carolina, by year**

FISCAL YEAR	COMPLAINTS FILED <sup>151</sup>	CHANGE FROM PRIOR YEAR
2018	1,231	-170
2017	1,401	368
2016	1,033	-21
2015	1,054	-246
2014	1,300	74
2013	1,226	N/A



## CONCLUSION

Documented evidence indicates that LGBT people face discrimination across the country, including in South Carolina. There are currently no statewide laws that prohibit discrimination based on sexual orientation or gender identity in South Carolina. Adding these characteristics to South Carolina's non-discrimination laws would provide new protections or strengthen existing protections from discrimination to approximately 137,000 LGBT adults, including 99,000 LGBT workers, in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 55 complaints of sexual orientation or gender identity discrimination would be filed in South Carolina annually if its laws were amended. Based on fluctuations in the annual number of complaints in recent years, it is likely that the additional complaints could be absorbed by the South Carolina Human Affairs Commission with relatively little fiscal impact.

## AUTHORS

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The Director of State Policy & Education Initiatives, Christy oversees state law and policy work at the Williams Institute, focusing on a variety of topics, including sexual orientation and gender identity non-discrimination protections, bans on the use of gay and trans panic defenses, and laws prohibiting conversion therapy on youth.

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## ENDNOTES

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<sup>2</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY (SOUTH CAROLINA STATE REPORT) 1 (2017) [hereinafter S.C. STATE REPORT], <http://www.transequality.org/sites/default/files/docs/usts/USTSSCStateReport.pdf>.

<sup>3</sup> Id. at 2.

<sup>4</sup> Id.

<sup>5</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Evaluations of Government and Society Study, Survey 3 (2011) & Survey 4 (2012) and Pew Research Center Poll (2013) (data and calculations on file with author).

<sup>6</sup> PRRI, American Values Atlas: South Carolina, <http://ava.prri.org/#discrimination/2016/States/trnsdis/m/US-SC> (under dropdown menu for "Select Question" select "Discrimination against gay and lesbian people" or "Discrimination against transgender people;" under dropdown menu for "Select Response" select "Yes;" under dropdown menu for "Year" select "2016").

<sup>7</sup> A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES, PEW RESEARCH CENTER (2003), <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

<sup>8</sup> Williams Institute, LGBT Data and Demographics: South Carolina (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=45#about-the-data>.

<sup>9</sup> Id. Unstable estimate due to an insufficient sample size ( $n < 30$ ) and/or 95% confidence interval width as per suppression guidance provided in Nat'l Ctr. For Health Stats., U.S. Dep't of Health and Human Svcs., National Center for Health Statistics Data Presentation Standards for Proportions, 2 VITAL HEALTH STAT. 175 (2017).

<sup>10</sup> PRRI, American Values Atlas: South Carolina <http://ava.prri.org/#lgbt/2018/States/lgbtdis/m/US-SC> (under dropdown menu for "Select Question" select "LGBT Nondiscrimination Law"; under dropdown menu for "Year" select "2018").

<sup>11</sup> Andrew Flores & Scott Barclay, Williams Institute Analysis based on public opinion data from Public Religion Research Institute Survey (2011) (data and calculations on file with author).

<sup>12</sup> SEJAL SINGH & LAURA E. DURSO, CENTER FOR AM. PROGRESS, WIDESPREAD DISCRIMINATION CONTINUES TO SHAPE LGBT PEOPLE'S LIVES IN BOTH SUBTLE AND SIGNIFICANT WAYS (2017), <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

<sup>13</sup> A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES, *supra* note 7. Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians reported experiencing workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

<sup>14</sup> NPR, ROBERT WOOD JOHNSON FOUNDATION & HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS 1 (2017), [https://www.rwjf.org/content/dam/farm/reports/surveys\\_and\\_polls/2017/rwjf441734](https://www.rwjf.org/content/dam/farm/reports/surveys_and_polls/2017/rwjf441734).

<sup>15</sup> Id. at 11.

<sup>16</sup> Id. at 1.

<sup>17</sup> SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

<sup>18</sup> Id. at 13, 16.

<sup>19</sup> S.C. STATE REPORT, *supra* note 2.

<sup>20</sup> Id. at 2.

<sup>21</sup> Id.

<sup>22</sup> Andrew Flores & Scott Barclay, *supra* note 5.

<sup>23</sup> PRRI, American Values Atlas: South Carolina, <http://ava.prri.org/#discrimination/2016/States/trnsdis/m/US-SC> (under dropdown menu for "Select Question" select "Discrimination against gay and lesbian people" or "Discrimination against transgender people;" under dropdown menu for "Select Response" select "Yes;" under dropdown menu for "Year" select "2016").

<sup>24</sup> CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT

PEOPLE (2011), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>.

<sup>25</sup> Compl. at 1, 3-4, *Bennett v. Wilson Senior Care, Inc.*, No. 4:17-cv-02798 (D.S.C. Oct. 16, 2017), ECF No. 1.

<sup>26</sup> *Id.* at 2-3.

<sup>27</sup> *Id.*

<sup>28</sup> *Bennett v. Wilson Senior Care, Inc.*, No. 4:17-cv-02798-RBH (D.S.C. Sept. 18, 2018).

<sup>29</sup> Amended Compl. at 2, *Reyes v. Holy City Hosp., LLC*, No. 2:16-cv-03423-DCN-KDW (D.S.C. Mar. 1, 2017), ECF No. 28.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 3-4.

<sup>32</sup> Order of Dismissal, *Reyes v. Holy City Hosp., LLC*, No. 2:16-cv-03423-DCN-KDW (D.S.C. May 11, 2017), ECF No. 41.

<sup>33</sup> *Id.*

<sup>34</sup> Compl. at 1-3, 5-6, *Matlis v. Sch. Dist. of Pickens Cty.*, No. 2016-CP-39-01232 (Ct. Com. Pl. Oct. 26, 2016). *Id.* at 5-6.

<sup>35</sup> *Id.* at 6, 9.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *Id.* at 9-10.

<sup>39</sup> Order of Dismissal, *Matlis v. Sch. Dist. of Pickens Cty.*, No. 8:16-cv-03679-MGL-JDA (D. S.C. Oct. 25, 2017), ECF No. 29.

<sup>40</sup> Compl. at 1, *Moore v. ATS Carolina, Inc.*, No. 0:16-cv-02748-JFA-SVH (D.S.C. Aug. 5, 2016), ECF No. 1.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> Civil Docket in *Moore v. ATS Carolina, Inc.*, No. 0:16-cv-02748-JFA-SVH (D.S.C., accessed Mar. 8, 2019).

<sup>43</sup> Compl. at 2, 7, *Simpson v. SouthernCare, Inc.* No. 2:16-cv-01624-DCN-MGB (D.S.C. Apr. 18, 2016), ECF No. 1.

<sup>44</sup> Stipulation of Dismissal, *Simpson v. SouthernCare, Inc.*, No. 2:16-cv-01624-DCN-MGB (D.S.C. May 4, 2017), ECF No. 58.

<sup>45</sup> Paul Bowers, *Latta's Mayor Fired the Police Chief, But Town Council is Fighting Back*, CHARLESTON CITY PAPER (Apr. 2014).

<sup>46</sup> *Id.*

<sup>47</sup> AP, *Gay South Carolina Police Chief Crystal Moore Makes Historic Sheriff's Run*, CBS NEWS (Aug. 21, 2016), <https://www.cbsnews.com/news/gay-south-carolina-police-chief-crystal-moore-makes-historic-sheriffs-run/>.

<sup>48</sup> Order Approving Settlement and Dismissing Action at 1-2, *Culpepper v. Shwedo*, No. 3:14-cv-03504-CMC (D.S.C. Apr. 20, 2015) [hereinafter *Culpepper Order*], ECF No. 24.

<sup>49</sup> Press Release, Transgender Legal Defense & Education Fund, *Gender Non-Conforming Teen to File Federal Lawsuit against South Carolina Department of Motor Vehicles after Being Forced to Remove Makeup for Driver's License Photo*, Sept. 1, 2014, [http://www.transgenderlegal.org/press\\_show.php?id=392](http://www.transgenderlegal.org/press_show.php?id=392).

<sup>50</sup> *Culpepper Order*, supra note 48 at \*3; Settlement Agreement at 3-5, *Culpepper v. Shwedo*, No. 3:14-cv-03504-CMC (D.S.C. Apr. 20, 2015), ECF No. 23-1.

<sup>51</sup> Dan McCue, *Transgender Worker Sues His City*, COURT HOUSE NEWS (May 3, 2013), <https://www.courthousenews.com/transgender-worker-sues-his-city>.

<sup>52</sup> *Id.*

<sup>53</sup> Order of Dismissal in *Green v. City of Cayce*, No. 3-13-cv-1445-MBS-JDA (S.D.C. Mar. 31, 2014), ECF No. 30.

<sup>54</sup> Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 INDUS. REL. 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men); C.S. Carpenter et al., *Transgender Status, Gender Identity, and Economic Outcomes in the United States*, 71 ILR REV. (forthcoming) (manuscript at 9) (on file with authors); Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 INDUS. REL. 59, 96 (2015).

<sup>55</sup> Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 SOC. FORCES 1005 (2011); Marieka Klawitter, *Multilevel Analysis of the Effects of Antidiscrimination Policies on Earnings by Sexual Orientation*, 30 J. POL'Y ANALYSIS & MGMT. 334 (2011); Gary J. Gates, *The Impact of Sexual Orientation Anti-discrimination Policies on the Wages of Lesbians and Gay Men* (Cal. Ctr. Pop. Res., Working Paper No. CCPR-2009-010), <http://papers.ccpr.ucla.edu/index.php/pwp/article/view/852/235>.

<sup>56</sup> M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBaum, WILLIAMS INST., *NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY* (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013>.

pdf; TAYLOR N.T. BROWN, ADAM P. ROMERO, AND GARY J. GATES, WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

<sup>57</sup> M.V. LEE BADGETT & ALYSSA SCHNEEBaum, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

<sup>58</sup> Williams Institute, LGBT Data and Demographics: South Carolina (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=45#about-the-data>.

<sup>59</sup> Id. Unstable estimate due to an insufficient sample size ( $n < 30$ ) and/or 95% confidence interval width as per suppression guidance provided in Nat'l Ctr. For Health Stats., U.S. Dep't of Health and Human Svcs., National Center for Health Statistics Data Presentation Standards for Proportions, 2 VITAL HEALTH STAT. 175 (2017).

<sup>60</sup> See Legislation Affecting LGBT Rights Across the Country, ACLU <https://www.aclu.org/other/legislation-affecting-lgbt-rights-across-country> (last visited Mar. 9, 2019).

<sup>61</sup> S.B. 438, 117th Gen. Assemb., 1st Reg. Sess. (S.C. 2007); S.B. 443, 117th Gen. Assemb., 1st Reg. Sess. (S.C. 2007); S.B. 73, 118th Gen. Assemb., 1st Reg. Sess. (S.C. 2009); S.B. 76, 118th Gen. Assemb., 1st Reg. Sess. (S.C. 2009); H.B. 4025, 120th Gen. Assemb., 1st Reg. Sess. (S.C. 2013); H.B. 3950, 121st Gen. Assemb., 1st Reg. Sess. (S.C. 2015); S.B. 639, 121st Gen. Assemb., 1st Reg. Sess. (S.C. 2015).

<sup>62</sup> S.C. CODE ANN. § 1-13-30(e) (2017). The SC-HAL limits causes of actions to those covered by Title VII of the Civil Rights Act of 1964 if the cause of action arises from discrimination on the basis of race, color, religion, sex, or national origin, and those covered by the Age Discrimination in Employment Act of 1967 if the cause of action arises from discrimination on the basis of age, which may in rare cases limit the applicability of the law against some employers with 15 or more employees. Id. § 1-13-100 (2017).

<sup>63</sup> Id. § 1-13-30(1) (2017).

<sup>64</sup> Id. § 1-13-30(b) (2017).

<sup>65</sup> Id. § 1-13-30 (2017).

<sup>66</sup> See Id. § 1-13-30(e) (2017); see also, The Compliance Division, S.C. HUM. AFF. COMM'N <http://www.schac.sc.gov/aboutus/Pages/ComplianceDivision.aspx> (last visited Mar. 9, 2019) (discussing Human Affairs Commission's Private Sector Investigations unit, which "processes employment discrimination complaints filed against private, non-governmental, employers in South Carolina," and its Public Sector Investigations unit, which does the same for "[s]tate government agencies and their local subdivisions, city and county government agencies and regional government agencies").

<sup>67</sup> S.C. CODE ANN. § 1-13-80(i)(5).

<sup>68</sup> Id. §§ 1-13-40, 1-13-70.

<sup>69</sup> Id. § 1-13-90(a).

<sup>70</sup> Id. § 1-13-90(d)(2).

<sup>71</sup> Id. § 1-13-90(d)(3).

<sup>72</sup> Id. § 1-13-90(d)(4).

<sup>73</sup> Id. § 1-13-90(d)(6).

<sup>74</sup> Id. § 45-9-10.

<sup>75</sup> Id. § 31-21-40.

<sup>76</sup> Id. § 31-21-60(D).

<sup>77</sup> Id. § 31-21-110.

<sup>78</sup> Id. § 31-21-120(B).

<sup>79</sup> Id. § 31-21-120(F).

<sup>80</sup> Id. § 31-21-130(C)(1).

<sup>81</sup> Id. § 31-21-120(A).

<sup>82</sup> Id. § 31-21-130(K).

<sup>83</sup> Id. § 31-21-130(L).

<sup>84</sup> Id. § 31-21-130(C)(2).

<sup>85</sup> Id. § 31-21-140.

<sup>86</sup> Id. § 45-9-10(A).

<sup>87</sup> Id. § 45-9-10(B).

<sup>88</sup> How to File a Public Accommodations Complaint, S.C. HUM. AFF. COMM'N, <http://www.schac.sc.gov/aboutus/Pages/ComplianceDivision.aspx> (last visited May 9, 2019).

<sup>89</sup> Id.

<sup>90</sup> S.C. CODE ANN. § 45-9-110 (2017).

<sup>91</sup> Id. § 45-9-100.

<sup>92</sup> Id. § 45-9-40.

<sup>93</sup> See Pattern-or-Practice Case Law and Legal Definition, U.S. LEGAL, <https://definitions.uslegal.com/p/pattern-or-practice-case/> (last visited May 9, 2019).

<sup>94</sup> S.C. CODE ANN. § 45-9-40 (2017).

<sup>95</sup> Id.

<sup>96</sup> Id. § 45-9-50.

<sup>97</sup> Id. §§ 45-9-65, -90.

<sup>98</sup> RICHLAND COUNTY, S.C., CODE § 16-66 (2017).

<sup>99</sup> CHARLESTON, S.C., CODE §§ 16-20, 16-33 (2018); CITY OF CHARLESTON, EMPLOYEE HANDBOOK § 1 (Oct. 24, 2017), <http://www.charleston-sc.gov/employeehandbook> [hereinafter CHARLESTON EQUAL OPPORTUNITY POLICY] (Section containing Charleston equal employment opportunity policy).

<sup>100</sup> COLUMBIA, S.C., CODE §§ 11-393, 11-503 (2017); CITY OF COLUMBIA, EMPLOYEE HANDBOOK 5 (2011).

<sup>101</sup> FOLLY BEACH, S.C., CODE § 96.06 (2018).

<sup>102</sup> Latta Town Council Minutes: Oct.-Nov. 2014, THE DILLON HERALD (Dec. 28, 2014), <http://www.dillonheraldonline.com/2014/12/28/latta-town-council-minutes-oct-nov-2014/>.

<sup>103</sup> Adam Manno, Mt. Pleasant Passes LGBTQ Protections for Housing and Public Accommodations, THE BATTERY, Oct. 24, 2018, <https://www.charlestoncitypaper.com/TheBattery/archives/2018/10/24/mt-pleasant-passes-lgbtq-protections-for-housing-and-public-accommodations>.

<sup>104</sup> Myrtle Beach, S.C., Res. R2014-21 (June 10, 2014).

<sup>105</sup> N. CHARLESTON, S.C., CODE § 10-92 (2017).

<sup>106</sup> Calculated by authors using population and labor force data by state and locality from the American Community Survey: American FactFinder, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed May 9, 2019). Because the City of Columbia is located largely within Richland County, the authors did not count Columbians in the calculation of protected public employees, as this number is likely reflected in the overall Richland County total. Thus, there may be a small number of public employees residing within Columbia and outside of Richland County who were not counted.

<sup>107</sup> RICHLAND COUNTY, S.C., CODE § 16-67 (2017); RICHLAND COUNTY S.C., CAREERS, <http://www.richlandcountysc.gov/Home/Careers> (last visited May 9, 2019).

<sup>108</sup> CHARLESTON, S.C., CODE §§ 16-20, 16-33; CITY OF CHARLESTON, *supra* note 100.

<sup>109</sup> COLUMBIA, S.C., CODE §§ 11-393, 11-503; CITY OF COLUMBIA, *supra* note 100.

<sup>110</sup> Latta Town Council Minutes: Oct.-Nov. 2014, *supra* note 102.

<sup>111</sup> Myrtle Beach Res. R2014-21, *supra* note 109.

<sup>112</sup> Manno, *supra* note 103.

<sup>113</sup> N. CHARLESTON, S.C., CODE § 10-92.

<sup>114</sup> FOLLY BEACH, S.C., CODE § 96.06.

<sup>115</sup> Myrtle Beach Res. R2014-21, *supra* note 109.

<sup>116</sup> RICHLAND COUNTY, S.C., CODE § 16-67 (public accommodations); Richland County Council, *supra* note 107 (public employment).

<sup>117</sup> CHARLESTON EQUAL OPPORTUNITY POLICY, *supra* note 99 (public employment); CHARLESTON, S.C., CODE §§ 16-33 (public accommodations), 16-20 (housing).

<sup>118</sup> CITY OF COLUMBIA, *supra* note 100 (public employment); Columbia, S.C., CODE §§ 11-503 (public accommodations), 11-



393 (housing).

<sup>119</sup> FOLLY BEACH, S.C., CODE § 96.03 (2018).

<sup>120</sup> Latta Town Council Minutes: Oct.-Nov. 2014, *supra* note 102.

<sup>121</sup> Manno, *supra* note 103.

<sup>122</sup> N. CHARLESTON, S.C., CODE § 10-92.

<sup>123</sup> CHARLESTON, S.C., CODE § 16-34; FOLLY BEACH, S.C., CODE § 96.07; COLUMBIA, S.C., CODE ch. 10, art. IX, X; RICHLAND COUNTY, S.C., CODE ch. 16, art. VI; N. CHARLESTON, S.C., CODE ch. 10, art. VI.

<sup>124</sup> RICHLAND COUNTY, S.C., CODE § 16-66.

<sup>125</sup> CHARLESTON, S.C., CODE §§ 16-22, 16-33.

<sup>126</sup> COLUMBIA, S.C., CODE §§ 11-393, 11-503.

<sup>127</sup> FOLLY BEACH, S.C., CODE § 96.07.

<sup>128</sup> Manno, *supra* note 103.

<sup>129</sup> N. CHARLESTON, S.C., CODE § 10-96.

<sup>130</sup> Myrtle Beach Res. R2014-21, *supra* note 109.

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<sup>132</sup> BRAD SEARS & CHRISTY MALLORY, ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES, WILLIAMS INST. (Oct. 2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

<sup>133</sup> M.V. LEE BADGETT, LAURA E. DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, THE BUSINESS IMPACT OF LGBT-SUPPORTIVE WORKPLACE POLICIES, WILLIAMS INST. (May 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf>.

<sup>134</sup> J.W. HUNT & COMPANY LLP & S.C. CHAMBER OF COMMERCE, THE SOUTH CAROLINA BIG 50, S.C. BUS. 68 (Nov./Dec. 2011), [https://dc.statelibrary.sc.gov/bitstream/handle/10827/15120/DOC\\_Big\\_50\\_Ranking\\_of\\_the\\_State%27s\\_Major\\_Employers\\_2011-12.pdf?sequence=1&isAllowed=y](https://dc.statelibrary.sc.gov/bitstream/handle/10827/15120/DOC_Big_50_Ranking_of_the_State%27s_Major_Employers_2011-12.pdf?sequence=1&isAllowed=y). We confirmed via company webpages that these companies still maintain a large workforce in South Carolina. We also note that more recent but less comprehensive and less methodologically rigorous lists of major South Carolina companies mention many of the same companies, indicating that the “Big 50” companies remain representative. E.g., THESE ARE THE 100 LARGEST COMPANIES IN SOUTH CAROLINA, ZIPPPIA, <https://www.zippia.com/advice/largest-companies-in-south-carolina/> (last visited Apr. 2, 2019) (listing only companies headquartered in South Carolina; the list includes several on the “Big 50” List including Greenville Health, Palmetto Health, Milliken, BlueCross BlueShield of South Carolina, Roper St. Francis, and SCANA).

<sup>135</sup> This is based on official equal employment opportunity policies, job postings describing equal opportunity, and corporate policy tracking by the Human Rights Campaign. See CORPORATE EQUALITY INDEX 2018, HUMAN RIGHTS CAMPAIGN, 125, 127 (2018), <https://assets2.hrc.org/files/assets/resources/CEI-2018-FullReport.pdf?ga=2.156398459.1519124968.1528319834-939411361.1522169886> (noting sexual orientation and gender identity non-discrimination policies at Wal-Mart and Dollar General); Why Choose Us, SOUTH EASTERN GROCERS, <https://www.segrocers.com/careers/whychooseus> (last visited May 9, 2019) (Bi-lo diversity policy); FAQs, GREENVILLE HEALTH SYS., <http://www.ghscareers.org/faqs.php> (last visited Mar. 9, 2019); Welcome to Palmetto Health, PALMETTO HEALTH, <https://www.palmettohealth.org/patients-guests> (last visited Mar. 9, 2019); Welcome, BLUECROSS BLUESHIELD OF S.C., <https://sjobs.brassring.com/TGWebHost/home.aspx?partnerid=25328&siteid=5117> (last visited Mar. 9, 2019); Store Seasonal Employee, LOWE’S, <https://jobs.lowes.com/job/bluffton/store-seasonal-employee/1627/7371601> (last visited Mar. 9, 2019); Equal Employment Opportunity and Affirmative Action, WELLS FARGO, <https://www.wellsfargo.com/about/careers/equal-employment-opportunity/> (last visited Mar. 9, 2019); Equal Opportunity, SPARTANBURG REGIONAL HEALTHCARE SYSTEM, <https://www.spartanburgregional.com/careers/equal-opportunity-employer/> (last visited Mar. 9, 2019); Careers, ROPER ST. FRANCIS HEALTHCARE, <http://www.rsfh.com/careers/> (last visited Mar. 9, 2019); Careers, SCANA, <https://www.scana.com/careers> (last visited Mar. 9, 2019); Charleston, S.C., Careers, VERIZON, <http://www.verizon.com/about/work/jobs/2507726-retail-sales-representative> (last visited Mar. 9, 2019); Job Offers, BOSCH, <https://www.bosch.us/careers/job-offers/> (last visited Mar. 9, 2019); Employment, PIGGLY WIGGLY, (last visited Mar. 9, 2019); Careers, HCA SOUTH ATLANTIC, <https://hcasouthatlantic.com/careers/search.dot> <http://pigglywigglypanamacityfl.com/employment/> (last visited Mar. 9, 2019); Careers, MILLIKEN, <http://www.milliken.com/en-us/ourcompany/careers/Pages/careers.aspx> (last visited Mar. 9, 2019).

<sup>136</sup> WAL-MART, *supra* note 135; PALMETTO, *supra* note 135; BCBS OF S.C., *supra* note 135; LOWE’S, *supra* note 135; WELLS FARGO ETHICS POLICY, *supra* note 135; SPARTANBURG REGIONAL, *supra* note 135; ROPER ST. FRANCIS, *supra* note 135; SCANA, *supra* note 135; VERIZON, *supra* note 135; DOLLAR GENERAL, *supra* note 135; BOSCH, *supra* note 135; HCA, *supra* note 135; MILLIKEN, *supra* note 135.

<sup>137</sup> EOP No. 1.04, NON-DISCRIMINATION POLICY, UNIV. OF S.C. (rev. Oct. 7, 2014), <http://www.sc.edu/policies/ppm/eop104.pdf>.

<sup>138</sup> ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY, CLEMSON UNIV., <https://www.clemson.edu/campus-life/campus-services/access/anti-harassment-policy.html> (last visited Mar. 9, 2019).

<sup>139</sup> NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY, WINTHROP UNIV. (rev. Oct. 19, 2016), <https://www.winthrop.edu/uploadedFiles/hr/policies/NonDiscriminationAndAntiHarassmentPolicy.pdf>.

<sup>140</sup> PRRI, American Values Atlas: South Carolina <http://ava.prrri.org/#lgbt/2018/States/lgbtdis/m/US-SC> (under dropdown menu for “Select Question” select “LGBT Nondiscrimination Law”; under dropdown menu for “Year” select “2018”).

<sup>141</sup> Id. (under dropdown menu for “Select Question” select “Religiously Based Refusals to Serve LGBT People”; under dropdown menu for “Year” select “2018”).

<sup>142</sup> Andrew R. Flores, Jody L. Herman & Christy Mallory, Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness, *Research & Politics*, Oct.-Dec. 2015, at 4.

<sup>143</sup> CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014, WILLIAMS INST. (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Employment-Discrimination-Complaints-2008-2014.pdf>; CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014, WILLIAMS INST. (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Housing-Discrimination-Complaints-2008-2014.pdf>; CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008-2014, WILLIAMS INST. (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Accommodations-Discrimination-Complaints-2008-2014.pdf>.

<sup>144</sup> MALLORY & SEARS, EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143, at 1.

<sup>145</sup> We have used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states. See DISCRIMINATION, WILLIAMS INST., <https://williamsinstitute.law.ucla.edu/category/research/discrimination/> (last visited Mar. 9, 2019) (collecting various state-focused articles that use the same methodology).

<sup>146</sup> “National average” refers to the average of the complaint rates in the states that provided data for the studies. MALLORY & SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143; MALLORY & SEARS, EVIDENCE OF HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143; MALLORY & SEARS, EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143 (all studies cited). The data gathered for the studies included all discrimination complaints filed on the basis of sexual orientation and gender identity; it was not limited to complaints filed by LGBT people. Heterosexual, non-transgender employees may also file complaints under sexual orientation and gender identity non-discrimination laws if they were discriminated against because of their heterosexuality, gender identity, or because they were perceived to be LGBT. However, we use the LGBT population as the underlying population for purposes of our analysis because LGBT people likely file the vast majority of sexual orientation and gender identity discrimination complaints. See William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 66, 79-81 (2001).

<sup>147</sup> MALLORY & SEARS, EVIDENCE OF EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143, at 1.

<sup>148</sup> MALLORY & SEARS, EVIDENCE OF HOUSING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143, at 1.

<sup>149</sup> MALLORY & SEARS, EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, *supra* note 143, at 1.

<sup>150</sup> FISCAL YEAR 2016-17 ACCOUNTABILITY REPORT, S.C. HUMAN AFFAIRS COMM’N (SCHAC) (Sept. 8, 2017), [https://dc.statelibrary.sc.gov/bitstream/handle/10827/26018/HAC\\_Annual\\_Accountability\\_Report\\_2016-2017.pdf?sequence=1&isAllowed=y](https://dc.statelibrary.sc.gov/bitstream/handle/10827/26018/HAC_Annual_Accountability_Report_2016-2017.pdf?sequence=1&isAllowed=y) [hereinafter 2016-2017 SCHAC REPORT]; FISCAL YEAR 2015-16 ACCOUNTABILITY REPORT, SCHAC, [https://dc.statelibrary.sc.gov/bitstream/handle/10827/23011/HAC\\_Annual\\_Accountability\\_Report\\_2015-2016.pdf?sequence=1&isAllowed=y](https://dc.statelibrary.sc.gov/bitstream/handle/10827/23011/HAC_Annual_Accountability_Report_2015-2016.pdf?sequence=1&isAllowed=y) (last visited Mar. 9, 2019) [hereinafter 2015-2016 SCHAC REPORT]; FISCAL YEAR 2014-15 ACCOUNTABILITY REPORT, SCHAC (Sept. 14, 2015), [https://dc.statelibrary.sc.gov/bitstream/handle/10827/20378/HAC\\_Annual\\_Accountability\\_Report%202014-2015.pdf?sequence=1&isAllowed=y](https://dc.statelibrary.sc.gov/bitstream/handle/10827/20378/HAC_Annual_Accountability_Report%202014-2015.pdf?sequence=1&isAllowed=y) [hereinafter 2014-2015 SCHAC REPORT]; FISCAL YEAR 2013-14 ACCOUNTABILITY REPORT, SCHAC (Sept. 11, 2014), <http://www.scstatehouse.gov/Archives/aar2014/L36.pdf> [hereinafter 2013-2014 SCHAC REPORT]; 2012-2013 ACCOUNTABILITY REPORT, SCHAC, [https://dc.statelibrary.sc.gov/bitstream/handle/10827/17186/HAC\\_Annual\\_Accountability\\_Report\\_2012-2013.pdf?sequence=1&isAllowed=y](https://dc.statelibrary.sc.gov/bitstream/handle/10827/17186/HAC_Annual_Accountability_Report_2012-2013.pdf?sequence=1&isAllowed=y) (last visited Mar. 2, 2019) [hereinafter 2012-2013 SCHAC REPORT] (reporting 1,220 discrimination complaints).

<sup>151</sup> 2016-2017 SCHAC REPORT, *supra* note 156; 2015-2016 SCHAC REPORT, *supra* note 156; 2014-2015 SCHAC REPORT, *supra* note 156; 2013-2014 SCHAC REPORT, *supra* note 156; 2012-2013 SCHAC REPORT, *supra* note 156