

Nos. 16-60477 & 16-60478

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**In the United States Court of Appeals for the Fifth Circuit**

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RIMS BARBER, ET AL.,

*Plaintiffs-Appellees,*

v.

GOVERNOR PHIL BRYANT, State of Mississippi; JOHN DAVIS, Executive  
Director of the Mississippi Department of Human Services,

*Defendants-Appellants.*

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CAMPAIGN FOR SOUTHERN EQUALITY, ET AL.,

*Plaintiffs-Appellees,*

v.

PHIL BRYANT, in his official capacity as Governor of the State of Mississippi;  
JOHN DAVIS, in his official capacity as Executive Director of the Mississippi  
Department of Human Services,

*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Southern District Of Mississippi, Northern Division  
Nos. 3:16-cv-417-CWR-LRA (Lead Case); 3:16-cv-442-CWR-LRA

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**BRIEF OF SCHOLARS WHO STUDY THE LGBT POPULATION  
AS AMICI CURIAE IN SUPPORT OF APPELLEES**

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### **CERTIFICATE OF INTERESTED PARTIES**

Counsel of record certifies that the following persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

<b>Amici Curiae</b>	<b>Amici Curiae's Counsel</b>
List of Individual Amici Provided in Appendix A	G. Andrew Lundberg R. Peter Durning, Jr. Kendall M. Howes Faraz R. Mohammadi Mary Alice DiPietro LATHAM & WATKINS LLP  Adam P. Romero THE WILLIAMS INSTITUTE

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Dated: December 22, 2016

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## **INTEREST OF AMICI**<sup>1</sup>

Amici curiae are scholars of demographics, economics, law, psychology, political science, public health, public policy, and other disciplines. Many of them are affiliated with the Williams Institute, an academic research center at the UCLA School of Law dedicated to the study of sexual orientation and gender identity law and policy. Amici have conducted extensive research and authored numerous studies regarding the lesbian, gay, bisexual, and transgender (“LGBT”) population in the United States and/or Mississippi. The individual amici are identified in Appendix A.

Amici have a special interest in these proceedings because Mississippi’s House Bill 1523 (“HB 1523”) directly affects LGBT people on the basis of their sexual orientation or gender identity.<sup>2</sup> Many of the individual amici have testified as expert witnesses in federal district courts and/or have appeared as an amicus in

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<sup>1</sup> No counsel for any party authored any part of this brief. No person or entity, other than amici and their counsel, made a monetary contribution intended to fund its preparation or submission. Appellants and appellees have provided written consent to the filing of this brief.

<sup>2</sup> “Sexual orientation” generally refers to an inherent or enduring emotional, romantic, or sexual attraction to other people, and is typically described as heterosexual/straight (attraction to someone of a different sex), homosexual/gay/lesbian (attraction to someone of the same sex), or bisexual (attraction to both sexes). “Gender identity” refers to a person’s internal sense of gender (e.g., being a man, a woman, or genderqueer (i.e., non-binary identity)). “Transgender” generally describes individuals whose gender identity does not correspond with their assigned sex at birth. “Transgender” individuals are thus distinguished from “cisgender” individuals (those whose gender identity matches their sex assigned at birth). See IOM (Institute of Medicine), National Academy of Sciences, *The Health of Lesbian, Gay, Bisexual, and Transgender People* 25-28 (2011).

federal Courts of Appeals and the U.S. Supreme Court on related issues. In *Obergefell v. Hodges*, the Supreme Court expressly relied on research from the Williams Institute, *see* 135 S. Ct. 2584, 2600 (2015) (citing Amicus Brief of Gary J. Gates), as have numerous federal appellate and district courts, *see, e.g., Baskin v. Bogin*, 766 F.3d 648, 663, 668 (7th Cir. 2015); *Campaign for Southern Equality v. Bryant*, 64 F. Supp. 3d 906, 943 n.42 (S.D. Miss. 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 763-64 (E.D. Mich. 2014). Amici believe that their academic expertise will aid the Court in evaluating the constitutionality of HB 1523.

### **SUMMARY OF ARGUMENT**

Amici agree with Appellees that HB 1523 discriminates against and burdens LGBT people in violation of the Equal Protection and Establishment Clauses of the U.S. Constitution. This brief provides relevant demographic, social science, and legal research intended to assist the Court in its consideration of these issues by presenting a fuller picture of Mississippi's LGBT citizens and the long history of discrimination that they have faced. As scholars who specialize in studying the LGBT population, Amici are particularly well suited to present such research to the Court.

HB 1523 elevates the following three beliefs for special protection under Mississippi law: (1) "marriage is or should be recognized as the union of one man

and one woman”; (2) “sexual relations are properly reserved to such a marriage”; and (3) “male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.”<sup>3</sup> Beliefs 1 and 2 demean and disadvantage lesbian, gay, and bisexual (“LGB”) people married to (or who may marry) someone of the same sex, as well as all sexually active unmarried people (especially those who are LGB, given Belief 1). Belief 3 targets transgender people because their sex assigned at birth does not correspond to their gender identity.

Accordingly, HB 1523 demeans and disadvantages approximately 74,500 LGBT adults, thousands of whom are in same-sex marriages, and tens of thousands of LGBT youth and young adults in Mississippi. In turn, HB 1523 jeopardizes thousands of children who are being raised by LGBT parents in Mississippi. Research demonstrates that LGBT people and their families in Mississippi are socially and economically disadvantaged, and have been subject to a long history of discrimination, prejudice, and violence. Thus, far from granting LGBT people “equal dignity in the eyes of the law,” *Obergefell*, 135 S. Ct. at 2608, HB 1523 entrenches harmful discrimination against LGBT people and their families.

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<sup>3</sup> H.B. 1523, 2016 Leg. Reg. Sess., §2 (Miss. 2016).

## **I. OVERVIEW OF THE LGBT POPULATION IN MISSISSIPPI**

The LGBT population is a small but identifiable minority group in the United States. Nationally, approximately 3.9% of all adults—about 9.5 million people—self-identify as LGBT.<sup>4</sup> In Mississippi, approximately 3.3% of adults—about 74,500 people—self-identify as LGBT.<sup>5</sup> There are approximately 13,650 transgender adults in Mississippi, or 0.6% of the adult population.<sup>6</sup> With respect to younger people, studies indicate that sexual minority youth and young adults constitute between 6 and 8%, and transgender youth constitute between 1.3 and

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<sup>4</sup> Jones & Gates, Gallup, *Same-Sex Marriages Up After Supreme Court Ruling* (2015), <http://www.gallup.com/poll/186518/sex-marriages-supreme-court-ruling.aspx>.

<sup>5</sup> Williams Institute, *LGBT Data and Demographics—LGBT Proportion of Population: Mississippi*, <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=28#density>. In Mississippi, there are approximately 2,255,000 adults. U.S. Census, <https://www.census.gov/quickfacts/table/PST045215/28/accessible>.

For purposes of this brief, the phrase “self-identify as LGBT” refers to individuals who disclose their LGBT identity when asked in a survey context. Because willingness to identify as LGBT in surveys can be affected by social stigma, there likely are individuals who do not identify as LGBT on surveys but do so in other dimensions of their lives. *See* Gates, *LGBT Identity: A Demographer’s Perspective*, 45 Loy. L.A. L. Rev. 693, 712 (2012). Furthermore, the percentage of people who self-identify as LGB does not count those who are attracted to others of the same sex, or who have same-sex sexual behavior, but do not identify as LGB. *Id.* Similarly, some people whose sex assigned at birth does not correspond with their gender identity do not describe themselves as transgender because they may simply identify as male, female, or in some other way.

<sup>6</sup> Flores et al., Williams Institute, *How Many Adults Identify As Transgender in the United States?* 3, Tab. 1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

3.2%, of the nation’s youth population.<sup>7</sup> Applying these national estimates to the youth and young adult population (ages 13 to 19) in Mississippi, there are between 17,300 and 23,100 sexual minority, and between 3,800 and 9,200 transgender, youth and young adults in Mississippi.<sup>8</sup>

Many of these LGBT individuals cohabit with a same-sex partner; and many of these couples are married. In 2014, there were more than 7,200 adults in 3,628 cohabiting same-sex couples in Mississippi, 44% of whom were married.<sup>9</sup> Importantly, these 2014 data were collected before the Supreme Court’s landmark 2015 decision in *Obergefell, supra*, holding that the Constitution requires states—including Mississippi—to license and recognize marriages between same-sex couples. Therefore, Amici expect the current percentage of married same-sex couples in Mississippi to be higher than it was in 2014. Indeed, since the Supreme Court’s decisions in *United States v. Windsor*, 133 S. Ct. 2675 (2013), holding that the Constitution requires the federal government to recognize marriages between same-sex couples, and *Obergefell*, the number of people in same-sex marriages in

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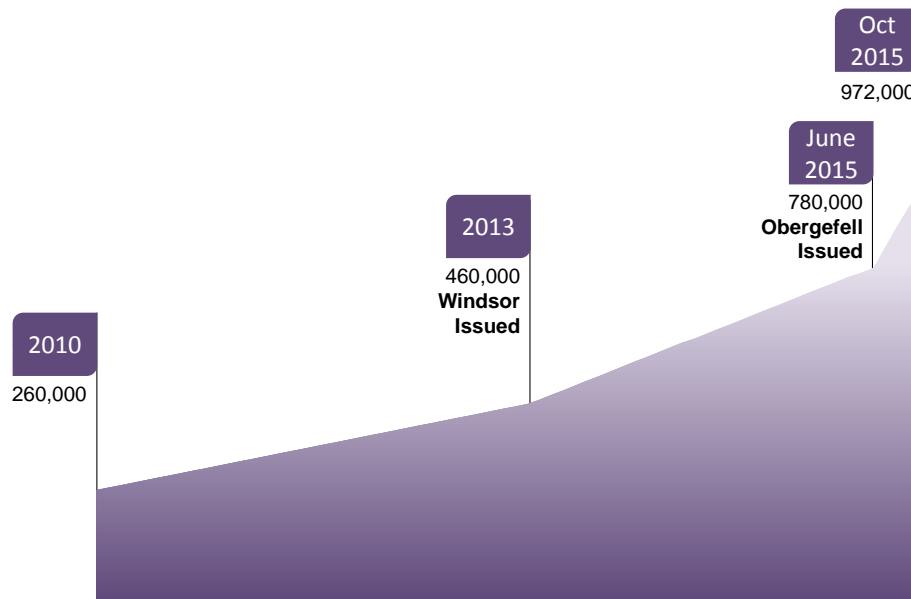
<sup>7</sup> Wilson et al., Williams Institute, *Sexual and Gender Minority Youth In Foster Care: Assessing Disproportionality and Disparities in Los Angeles* 36-37 (2014), [http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf).

<sup>8</sup> According to the U.S. Census Bureau’s American Factfinder, in 2015, Mississippi had 288,558 people ages 13–19.

<sup>9</sup> U.S. Census Bureau, *American Community Survey Data on Same Sex Couples* (2014 Table, Tab 3), <https://www.census.gov/hhes/samesex/data/acs.html>.

the United States has steadily increased. As Figure 1 below shows, there were an estimated 260,000 individuals in married same-sex couples in 2010; 460,000 in 2013 (when *Windsor* was issued); 780,000 in June 2015 (when *Obergefell* was issued), and nearly 1 million just a few months later in October 2015.<sup>10</sup> By June 2016, approximately 49% of all same-sex couples in the country were married.<sup>11</sup>

Figure 1. Individuals in Same-sex Marriages in the United States



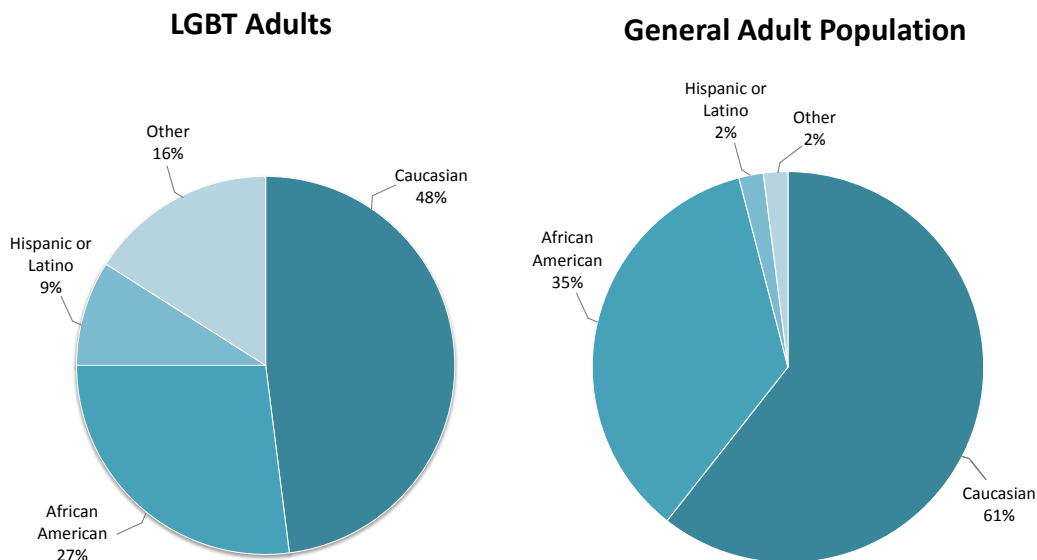
In Mississippi, LGBT adults are racially and ethnically diverse, and are more likely to be members of a racial/ethnic minority group than the general adult

<sup>10</sup> See Gates & Brown, Williams Institute, *Marriage and Same-sex Couples After Obergefell* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Marriage-and-Same-sex-Couples-after-Obergefell-November-2015.pdf>.

<sup>11</sup> Jones & Gates, *Same-Sex Marriages Up After Supreme Court Ruling*, *supra*.

population. As Figure 2 shows, among LGBT adults in Mississippi, 48% identify as White, 27% as African-American, 9% as Hispanic or Latino, and 16% as another race/ethnicity; among the general adult population in Mississippi, 61% identify as White, 35% as African-American, 2% as Hispanic or Latino, and 2% as another race/ethnicity.<sup>12</sup>

Figure 2. Race/Ethnicity Among LGBT and General Adult Population in Mississippi

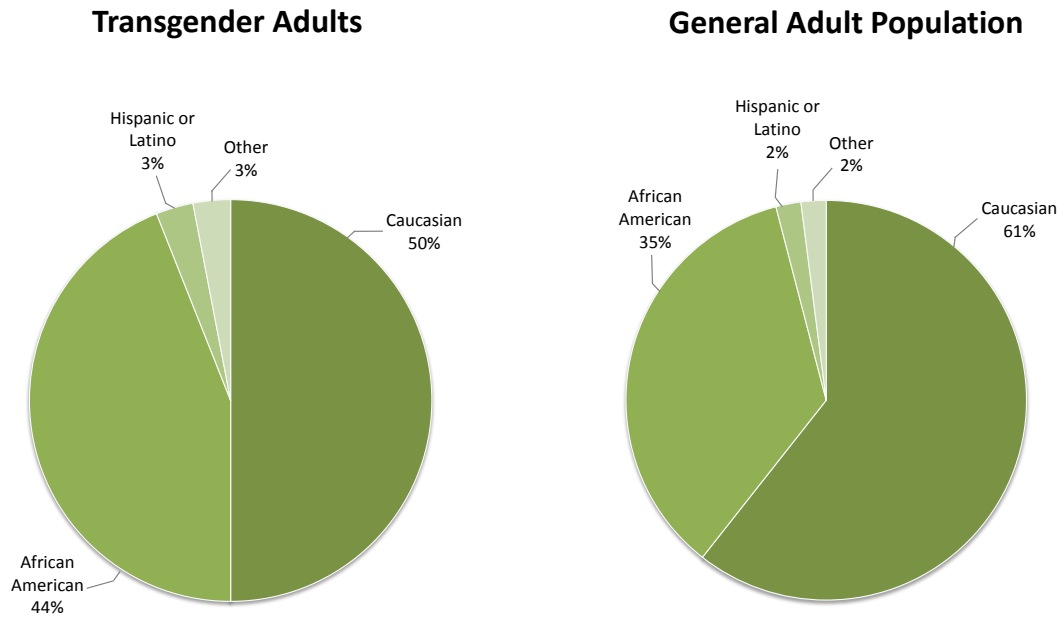


<sup>12</sup> Williams Institute, *LGBT Data and Demographics—Characteristics of LGBT People: Mississippi*, <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=28#demographic>.



As Figure 3 shows, transgender adults in Mississippi are even more likely to identify as African-American: an estimated 44% are African-American.<sup>13</sup>

Figure 3. Race/Ethnicity Among Transgender and General Adult Population in Mississippi

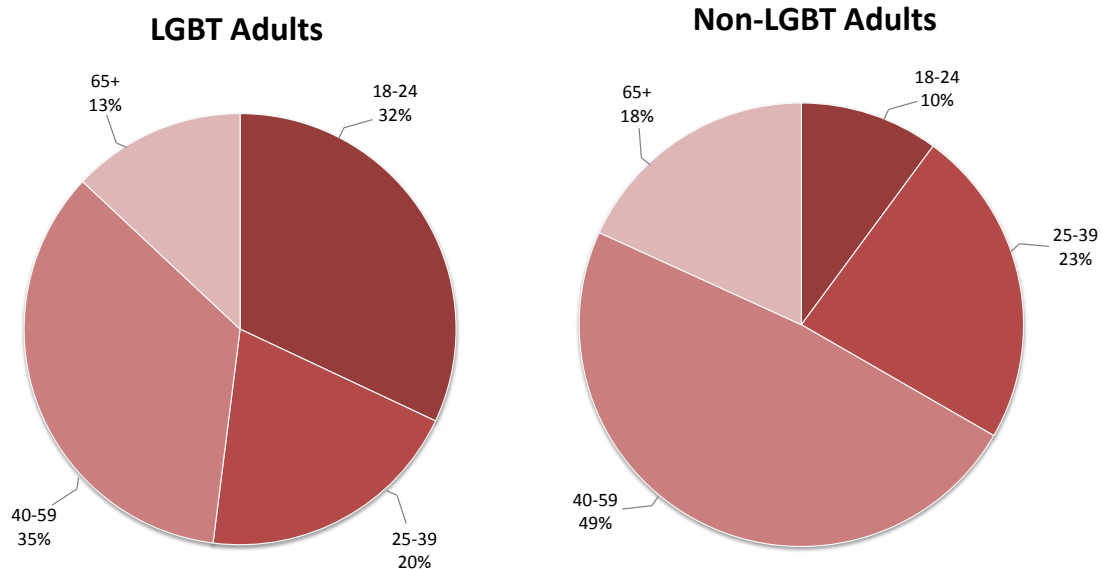


LGBT people in Mississippi are, on average, younger than non-LGBT people in the state, as shown in Figure 4 below. The average age of LGBT adults in Mississippi is 40.2 years, compared to an average of 48.2 years for non-LGBT adults. Fully 32% of LGBT adults in Mississippi are between ages 18-24,

<sup>13</sup> Flores et al., Williams Institute, *Race and Ethnicity of Adults Who Identify as Transgender in the United States* 4, Tab. 1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf>.

compared to only 10% of non-LGBT adults. And whereas 13% of LGBT adults are aged 65 or older, 18% of non-LGBT adults are so aged.<sup>14</sup>

Figure 4. Age of LGBT and Non-LGBT Adults in Mississippi



## **II. LGBT PEOPLE IN MISSISSIPPI ARE RAISING THOUSANDS OF CHILDREN**

In Mississippi, many LGBT people are raising children—children who may be biologically related to, adopted or fostered by, or the step-children of, their LGBT parent. In Mississippi, approximately 44% of LGBT adults are raising

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<sup>14</sup> Williams Institute, *LGBT Data and Demographics—Characteristics of LGBT People: Mississippi, supra*.

children, suggesting that about 33,000 LGBT people are parents in the state.<sup>15</sup>

Among same-sex couples in Mississippi, 29% are raising children, indicating that same-sex-couple households in Mississippi are raising approximately 1,401 children.<sup>16</sup> A much higher percentage of LGBT people are raising children in Mississippi, compared to the nation as a whole. Nationally, 29% of LGBT adults are raising children.<sup>17</sup>

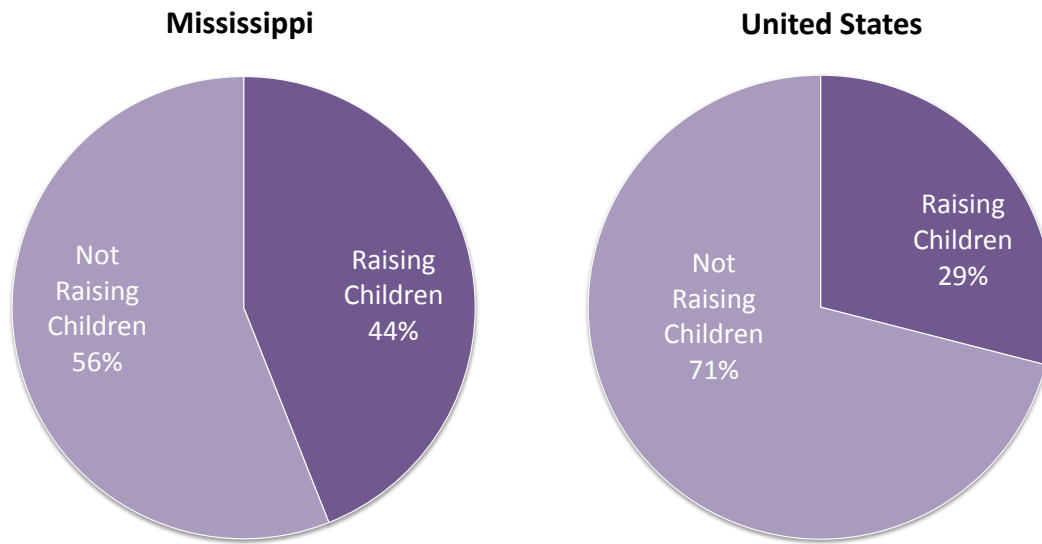
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<sup>15</sup> *Id.* Available data do not allow Amici to estimate the number of children being raised by LGBT people in Mississippi; however, we can estimate the number of children being raised by same-sex couples in the state.

<sup>16</sup> Gates, Williams Institute, *Same-Sex Couples in Mississippi: A Demographic Summary* 1 (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/MI-same-sex-couples-demo-dec-2014.pdf>.

<sup>17</sup> Williams Institute, *LGBT Data and Demographics—Characteristics of LGBT People: United States*, *supra*.

Figure 5. Percentage of LGBT Adults Raising Children



The majority of children in same-sex-couple households in the United States, and nearly two-thirds (63%) of children in same-sex-couple households in Mississippi, are biologically related to one parent.<sup>18</sup> Further, nationally, same-sex couples are nearly three times as likely as different-sex couples to be raising an adopted or foster child.<sup>19</sup> Among married couples, the correlation is even stronger:

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<sup>18</sup> Gates, *Same-Sex Couples in Mississippi*, *supra*, at 1.

<sup>19</sup> Gates, Williams Institute, *Demographics of Married and Unmarried Same-sex Couples: Analyses of the 2013 American Community Survey 1* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Demographics-Same-Sex-Couples-ACS2013-March-2015.pdf>.

married same-sex couples in the United States are more than five times as likely as different-sex married couples to have adopted or foster children.<sup>20</sup>

### **III. LGBT PEOPLE IN MISSISSIPPI ARE SOCIO-ECONOMICALLY DISADVANTAGED**

Contrary to the stereotype that LGBT people are affluent, large proportions of LGBT people nationwide—especially racial/ethnic minorities and transgender people—are economically vulnerable, and LGBT people are more likely to be living in poverty than non-LGBT people.<sup>21</sup> This disparity is even more pronounced in Mississippi.

Approximately 42% of the LGBT adults in Mississippi have incomes under \$24,000 per year, compared to 34% of non-LGBT adults in the state, as shown in

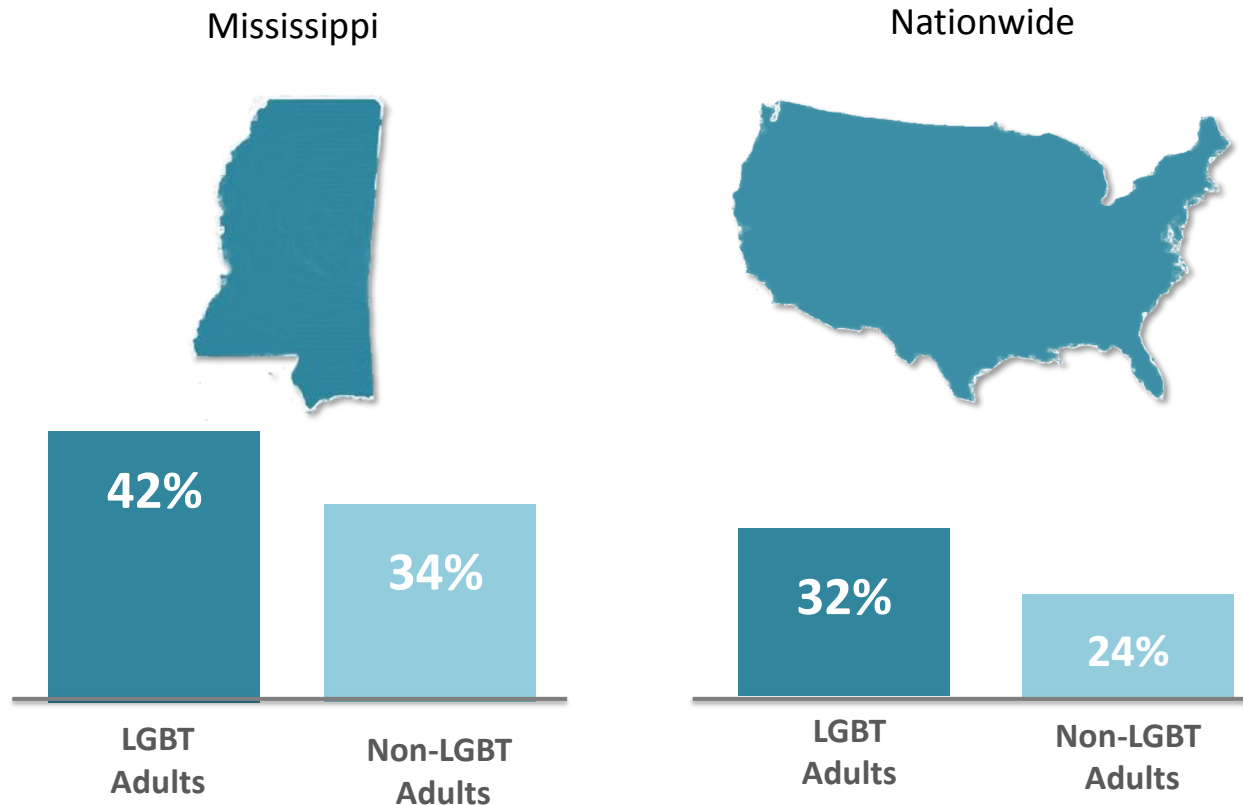
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<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., Brown et al., Williams Institute, *Food Insecurity and SNAP Participation in the LGBT Community* 1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>; Badgett et al., Williams Institute, *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* 1 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>; James et al., National Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey* (hereinafter *USTS*) 5 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

Figure 6.<sup>22</sup> Nationally, 32% of LGBT adults have incomes under \$24,000 per year, compared to 24% of non-LGBT adults.<sup>23</sup>

Figure 6. Percentage of LGBT and Non-LGBT Adults with Incomes Under \$24,000



<sup>22</sup> Williams Institute, *LGBT Data & Demographics—Socioeconomic Indicators: Mississippi*, <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=28#economic>.

<sup>23</sup> Williams Institute, *LGBT Data & Demographics—Socioeconomic Indicators: United States*, <http://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#economic>.

In addition, in Mississippi, LGBT adults have higher unemployment rates, are less likely to have health insurance, and are less likely to have a college education, than non-LGBT adults.<sup>24</sup>

The socio-economic disadvantages facing LGBT people reflect, and are compounded by, longstanding and widespread discrimination against LGBT people based on sexual orientation and gender identity, as summarized below.

#### **IV. LGBT PEOPLE HAVE FACED A LONG HISTORY OF DISCRIMINATION IN THE UNITED STATES AND MISSISSIPPI**

Many courts have acknowledged that LGBT people have experienced and continue to face persistent and pervasive discrimination in the United States by state actors and private citizens. In *Obergefell*, the Supreme Court observed that gays and lesbians have been “prohibited from most government employment, barred from military services, excluded under immigration laws, targeted by police, and burdened in their rights to associate.” 135 S. Ct. at 2596. The Seventh Circuit has explained that “homosexuals are among the most stigmatized, misunderstood, and discriminated-against minorities in the history of the world, the disparagement of their sexual orientation, implicit in the denial of marriage rights to same-sex couples, is a source of continuing pain to the homosexual

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<sup>24</sup> Williams Institute, *LGBT Data & Demographics—Socioeconomic Indicators: Mississippi*, *supra*.

community.” *Baskin v. Bogin*, 766 F.3d 648, 663, 658 (7th Cir. 2015). In *Campaign for Southern Equality v. Bryant*, the court summarized Mississippi’s anti-gay history, concluding that gay people “have suffered through a long and unfortunate history of discrimination.” 64 F. Supp. 3d 906, 930-37 (S.D. Miss. 2014), *aff’d* 791 F.3d 625 (5th Cir. 2015); *see also Windsor v. United States*, 699 F.3d 169, 182 (2d Cir. 2012) (“It is easy to conclude that homosexuals have suffered a history of discrimination,” and the point “is not much in debate.”), *aff’d*, 133 S. Ct. 2675 (2013); *Brocksmith v. United States*, 99 A.3d 690, 698 n.8 (D.C. 2014) (“The hostility and discrimination that transgender individuals face in our society today is well-documented.”). Ample research confirms these observations.

#### **A. LGBT People Have Faced A Long History Of *De Jure* Discrimination**

Since colonial times, criminal laws have prohibited sexual intimacy between people of the same sex.<sup>25</sup> Prior to 1961, every state outlawed sodomy, and 21 states still had anti-sodomy laws in 2003<sup>26</sup> when the Supreme Court in *Lawrence v. Texas* held that such laws are unconstitutional and “demean [the] existence” of gay

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<sup>25</sup> Public Statute Laws of the State of Connecticut, 1808 tit. LXVI, ch. 1, § 2, 294-295 & n.1 (enacted 1642; rev. 1750); *see also Lawrence v. Texas*, 539 U.S. 558, 568-71 (2003).

<sup>26</sup> Mallory et al., Williams Institute, *Discrimination by Law Enforcement Officers in the LGBT Community* 5 & n.11 (2015) (hereinafter *Discrimination by Law Enforcement*), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.



and lesbian people. 539 U.S. at 578. “[M]aking their private sexual conduct a crime,” the Court explained, “[was] an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.” *Id.* at 575. Anti-sodomy laws nevertheless remain on the books in numerous states (including Mississippi),<sup>27</sup> with some legislators declining to repeal the laws in order to send a message of moral disapproval.<sup>28</sup> These laws have been unconstitutionally applied since *Lawrence* in ways that harass and stigmatize gay people.<sup>29</sup>

Throughout the 20th Century, states enacted laws preventing LGBT people from openly participating in public life. For example, a 1923 New York law made it a crime for men to solicit other men in public, leading to the arrests (often through entrapment) of over 50,000 gay men.<sup>30</sup> Liquor laws forbidding LGBT patrons and employees facilitated hundreds of raids on private establishments.<sup>31</sup> In 1974, LGBT welfare organizations were denied federal tax exemptions on the

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<sup>27</sup> See *id.* at 5 & n.14.

<sup>28</sup> See, e.g., Serwer, *Cuccinelli Loses His Long War Against Sodomy*, MSNBC (Oct. 8, 2013), <http://www.msnbc.com/msnbc/cuccinelli-loses-his-long-war-against-sodomy>.

<sup>29</sup> See, e.g., Gregory, *Louisiana Sodomy Sting: How Invalidated Sex Laws Still Lead to Arrests*, TIME (July 31, 2013), <http://nation.time.com/2013/07/31/louisiana-sodomy-sting-how-invalidated-sex-laws-still-lead-to-arrests/>.

<sup>30</sup> Chauncey, *A Gay World, Vibrant and Forgotten*, N.Y. Times (June 26, 1994), <http://www.nytimes.com/1994/06/26/opinion/a-gay-world-vibrant-and-forgotten.html>; Chauncey, *Gay New York: Gender, Urban Culture, And The Making Of The Gay Male World, 1890-1940*, 172 (1994).

<sup>31</sup> *Id.* at 335-349; Mallory et al., *Discrimination by Law Enforcement*, *supra*, at 6.

basis that their mission was “perverted or deviate behavior contrary to public policy,” and therefore not “charitable.”<sup>32</sup> In 1984, Mississippi refused to charter the Mississippi Gay Alliance and the Friends of Lesbians/Gays Mississippi because they were perceived as likely to encourage violations of the state’s “crime against nature” law.<sup>33</sup> More than half the states passed laws enabling police or courts to place “sexual deviants” into involuntary psychiatric treatment.<sup>34</sup> States also criminalized cross-dressing throughout much of the 20th Century.<sup>35</sup>

For many years until 1975, the Civil Service Commission’s regulations “provided that ... immoral or notoriously disgraceful conduct, which include[d] homosexuality or other types of sex perversion, [were] sufficient grounds for denying appointment to a Government position or for the removal of a person from

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<sup>32</sup> Letter from E D Coleman, Exempt Organizations Branch, IRS, to the Pride Foundation 1, 4-5 (Oct 8, 1974), <https://www.irs.gov/loft/images/kameny.pdf>.

<sup>33</sup> The Mississippi Gay Alliance finally received its charter in the summer of 1985, after threat of a lawsuit. Eskridge, *Challenging the Apartheid of the Closet: Establishing Conditions for Lesbian and Gay Intimacy, Nomos, and Citizenship, 1961-1981*, 25 Hofstra L. Rev. 817, 887 & n. 257 (1997).

<sup>34</sup> See Freedman, “*Uncontrolled Desires*”: *The Response to the Sexual Psychopath 1920-1960*, 74 J. Am. Hist. 83, 95-98 (1987).

<sup>35</sup> Ballard, *Sex Change: Changing the Face of Transgender Policy in the United States*, 18 Cardozo J.L. & Gender 775, 786-88 (2012); Capers, *Cross Dressing and the Criminal*, 20 Yale J.L. & Human. 1, 8-10 (2008).

the Federal service.”<sup>36</sup> As a result, thousands of federal employees were forced out of their jobs, as were state and local government employees on similar grounds.<sup>37</sup>

More recently, in *Romer v. Evans*, the Supreme Court invalidated a voter-enacted amendment to the Colorado Constitution that precluded all legislative, executive, or judicial action at any level of state or local government designed to protect the status of persons based on their “homosexual, lesbian or bisexual orientation, conduct, practices or relationships.” 517 U.S. 620, 624 (1996). And just this year, North Carolina enacted a law that preempts local ordinances prohibiting sexual orientation and gender identity discrimination.<sup>38</sup> Both the provision voided by *Romer* and North Carolina’s recent legislation were adopted in direct response to local government-sponsored protections from discrimination.<sup>39</sup>

Discriminatory laws have also directly targeted LGBT people’s families. In 1996, Congress passed the Defense of Marriage Act (“DOMA”), prohibiting the

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<sup>36</sup> Brief of the United States on Merits Question, *United States v. Windsor* at 23, 133 S. Ct. 2675, No. 12-307, (U.S. 2013) (internal quotation marks omitted).

<sup>37</sup> *Id.* (citing *inter alia* Sears et al., Williams Institute, *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment*, ch. 5 at 7 (2009), <http://williamsinstitute.law.ucla.edu/research/workplace/documenting-discrimination-on-the-basis-of-sexual-orientation-and-gender-identity-in-state-employment/>).

<sup>38</sup> 2016 N.C. Sess. Laws 3.

<sup>39</sup> See *Romer*, 517 U.S. at 623-24; Phillips, *North Carolina Bans Local Anti-Discrimination Policies*, N.Y. Times (Mar. 23, 2016), [http://www.nytimes.com/2016/03/24/us/north-carolina-to-limit-bathroom-use-by-birth-gender.html?\\_r=0](http://www.nytimes.com/2016/03/24/us/north-carolina-to-limit-bathroom-use-by-birth-gender.html?_r=0).

federal government from recognizing valid same-sex marriages. *Windsor*, 133 S. Ct. at 2682-83. Nearly every state enacted constitutional and/or statutory prohibitions on same-sex marriage (and sometimes civil unions and/or domestic partnerships as well).<sup>40</sup> In addition, numerous states have outright banned or created substantial obstacles to LGBT people adopting children.<sup>41</sup> Today, state laws preventing LGBT people and same-sex couples from adopting have been repealed or overturned in all states.<sup>42</sup> Mississippi was the last state to have such a law and it was declared unconstitutional only last year.<sup>43</sup>

**B. LGBT People Continue To Face Discrimination By Courts, Law Enforcement, Public And Private Employers, Landlords, Healthcare Workers, And Others**

LGBT people have gained constitutional protections in recent years by court action, reducing the extent of *de jure* discrimination. Nevertheless, ample research

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<sup>40</sup> See Klienman & Wicks, *Legal Recognition of Same-Sex Relationships*, 13 Geo. J. Gender & L. 365, 391-424 (2012).

<sup>41</sup> See Joslin et al., *Lesbian, Gay, Bisexual and Transgender Family Law* §§ 2:8, 2:9, 2:11, 2:12 (August 2016 update)..

<sup>42</sup> See, e.g., Ark. Code Ann. § 9-8-304(a) (invalidated by *Ark. Dep't of Human Servs. v. Cole*, 380 S.W.3d 429 (2011)); Fla. Stat. Ann. § 63.042 (West 2001) (invalidated by *Florida Dep't of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, 45 So. 3d 79 (Fla. Dist. Ct. App. 3d Dist. 2010)); Okla. Stat. Ann. tit. 10, § 7502-1.4 (invalidated in part by *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007).

<sup>43</sup> See *Campaign for S. Equal. v. Miss. Dep't of Human Servs.*, 175 F. Supp. 3d 691 (S.D. Miss. 2016).

demonstrates that public and private discrimination persists, harming LGBT people across the United States.

The federal government and most states, including Mississippi, do not expressly enumerate sexual orientation or gender identity as prohibited grounds of discrimination in employment, housing, public accommodations, credit,<sup>44</sup> or education.<sup>45</sup> Although Mississippi does not prohibit discrimination based on sexual orientation or gender identity, the city of Jackson, Mississippi adopted local ordinances prohibiting such discrimination in certain contexts,<sup>46</sup> seven more cities in the state have passed resolutions opposing LGBT discrimination,<sup>47</sup> and the University of Mississippi has a policy that guarantees equal access to “educational, programmatic and employment opportunities without regard to”

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<sup>44</sup> See Movement Advancement Project, *Non-Discrimination Laws*, [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_laws](http://www.lgbtmap.org/equality-maps/non_discrimination_laws). An increasing number of courts and agencies are concluding that existing sex discrimination prohibitions cover discrimination on the basis of gender identity and sexual orientation. See, e.g., *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151, 1159-60 (C.D. Cal. 2015); *Baldwin v. Anthony Foxx, Sec’y, Dep’t of Transp.*, EEOC Appeal No. 0120133080, 2015 WL 4397641 (EEOC July 16, 2015); *Macy v. Eric Holder, Attorney General, Dep’t of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (EEOC Apr. 20, 2012).

<sup>45</sup> See GLSEN, *Enumerated Anti-Bullying Laws By State*, <http://www.glsen.org/article/state-maps>.

<sup>46</sup> Jackson, Mississippi Code of Ordinances §§ 86-191, 86-193, 86-302, 126-161.

<sup>47</sup> *Eight Mississippi City Passes LGBTQ-Inclusive Resolution*, UNITY MS (June 3, 2014), <http://unityms.org/news/eighth-mississippi-city-passes-lgbtq-inclusive-resolution.html>.

religion, sexual orientation, or gender identity.”<sup>48</sup> HB 1523 would limit these anti-discrimination measures, if not effectively preempt them.<sup>49</sup> In addition, Amici are not aware of any openly LGBT people elected to government office in Mississippi.

1. ***Discrimination in the judicial system and by law enforcement***

LGBT individuals have suffered discrimination and harassment in the judicial process. In a 2012 national survey of LGBT people, 19% of respondents reported hearing negative comments regarding sexual orientation or gender identity/expression from a judge, other court employee, or attorney, and 16% reported that their own sexual orientation or gender identity was brought up in court unnecessarily.<sup>50</sup> These findings are consistent with surveys conducted by judicial commissions and bar associations around the country.<sup>51</sup>

There are numerous documented incidents of judges manifesting anti-LGBT prejudice. For many years, courts—including in Mississippi—denied custody or visitation to LGBT parents on the ground that being gay or transgender rendered

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<sup>48</sup> *Barber v. Bryant*, No. 3:16-CV-417-CWR-LRA, 2016 WL 3562647, at \*11 (S.D. Miss. June 30, 2016).

<sup>49</sup> *Id.* at \*21.

<sup>50</sup> Lambda Legal, *Protected and Served?: Courts* (2015), <http://www.lambdalegal.org/protected-and-served/courts>.

<sup>51</sup> Lambda Legal, *Justice Out of Balance: An Empirical Examination of Support for LGBT Rights Claims in State High Courts, 2003-2015* 12, [http://www.lambdalegal.org/sites/default/files/justiceoutofbalance\\_final\\_rev1\\_2.pdf](http://www.lambdalegal.org/sites/default/files/justiceoutofbalance_final_rev1_2.pdf).

the parent unfit,<sup>52</sup> and Mississippi appears still to permit courts to view gay and lesbian relationships as “immoral conduct” when determining custody or visitation.<sup>53</sup> Most recently, the Alabama Supreme Court refused to recognize an adoption granted in Georgia of three children to a lesbian woman.<sup>54</sup> Courts have also denied name-change requests of transgender applicants.<sup>55</sup> And in 2004, the Mississippi Supreme Court dismissed a complaint by the state’s Commission on Judicial Performance to sanction a state court judge who publically stated that

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<sup>52</sup> See, e.g., *Ex Parte H.H.*, 830 So. 2d 21, 37 (Ala. 2002) (affirming denial of custody to lesbian mother and describing homosexuality as an “inherent evil, and an act so heinous that it defies one’s ability to describe it”); *Weigand v. Houghton*, 730 So. 2d 581, 586 (Miss.1999) (affirming denial of custody to gay father in large part because he was in a long-term relationship with another man); *White v. Thompson*, 569 So.2d 1181, 1185 (Miss.1990) (affirming decision denying lesbian visitation to her children in the presence of her female partner); *S.B. v. L.W.*, 793 So. 2d 656, 661 (Miss. Ct. App. 2001) (affirming custody ruling based in part on moral unfitness of lesbian mother); *Kantaros v. Kantaras*, 884 So. 2d 155 (Fla. App. 2004) (reversing grant of custody to transgender man because he was born female); *Daly v. Daly*, 715 P.2d 56, 59 (Nev. 1986) (upholding termination of parental rights of a transgender woman because she had chosen to “discard his fatherhood and assume the role of a female who could never be either mother or sister to his daughter”).

<sup>53</sup> See, e.g., *Davidson v. Coit*, 899 So. 2d 904, 909-10 (Miss. Ct. App. 2005) (affirming change of custody from lesbian mother because she exposed her children to “immoral conduct” (i.e., her lesbian relationship)).

<sup>54</sup> See *Ex parte E.L.*, No. 1140595, 2015 WL 5511249 (Ala. Sept. 18, 2015) *rev’d by V.L. v. E.L.*, 136 S. Ct. 1017 (2016).

<sup>55</sup> See, e.g., *In re Harvey*, No. CV-2011-1075, slip op. at 1, 5-6 (Dist. Ct. Okla. Sept. 2, 2011) (holding that granting a name-change request for a transgender woman would be “to assist that which is fraudulent [according to the judge’s view of the Bible]”).

“gays and lesbians should be put in some type of mental institute” and that homosexuality was an “illness” meriting treatment.<sup>56</sup>

LGBT people also faced discrimination and harassment—including profiling, entrapment, and violence—by law enforcement.<sup>57</sup> In a 2014 survey, for example, 21% of LGBT respondents who had come into contact with law enforcement in the previous five years reported encountering hostile attitudes by police, and 14% reported verbal assault.<sup>58</sup> In Mississippi, the largest survey of LGBT people in the state to date found that nearly one-quarter of respondents reported experiencing harassment from a police officer or other public servant.<sup>59</sup> Many LGBT people have developed a lack of trust of police due to fear of discrimination, harassment, and violence, resulting in underreporting of crimes.<sup>60</sup>

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<sup>56</sup> *Miss. Comm’n on Judicial Performance v. Wilkerson*, 876 So. 2d 1006, 1008-09 (Miss. 2004).

<sup>57</sup> Mallory et al., *Discrimination by Law Enforcement*, *supra*, at 6.

<sup>58</sup> *Id.* at 6-7.

<sup>59</sup> Human Rights Campaign Mississippi, *Human Rights Campaign Unveils Results of Largest LGBT Survey in Mississippi History* (hereinafter *Mississippi Survey*) 2, [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Mississippi\\_Messaging\\_7.14.pdf](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Mississippi_Messaging_7.14.pdf).

<sup>60</sup> Mallory et al., *Discrimination by Law Enforcement*, *supra*, at 12.



LGBT prisoners have suffered discrimination as well.<sup>61</sup> For example, incarcerated LGBT people face disproportionate levels of abuse (including sexual abuse) from prison staff and from other inmates.<sup>62</sup>

## 2. *Discrimination in the workplace*

Research demonstrating pervasive and persistent discrimination against LGBT workers includes national and local surveys, documented examples, wage studies, and controlled experiments.<sup>63</sup> In Mississippi, 24% of respondents to a statewide survey of LGBT people reported experiencing discrimination at their workplace, and 38% reported being harassed at work due to their sexual orientation or gender identity.<sup>64</sup> These rates are consistent with nationwide data.<sup>65</sup>

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<sup>61</sup> See, e.g., Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails LGBT People* 92-93 (2016), <http://www.lgbtmap.org/file/lgbt-criminal-justice.pdf> (LGBT inmates are more likely to be placed in solitary confinement and transgender inmates are “almost exclusively” assigned to facilities matching their sex at birth).

<sup>62</sup> See, e.g., Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States*, Am. J. Pub. Health (pre-print available online Dec. 20, 2016); Beck, Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12—Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates* (2014), [http://www.bjs.gov/content/pub/pdf/svpjri1112\\_st.pdf](http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf).

<sup>63</sup> See Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People*, 45 Loy. L.A. L. Rev 715, 721-28 (2012); see also Williams Institute, *Mississippi—Sexual Orientation and Gender Identity Law and Documentation of Discrimination* 2 (2009), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mississippi1.pdf>; Mallory & Sears, Williams Institute, *Employment Discrimination Based on Sexual Orientation and Gender Identity in Mississippi* 3-4 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mississippi-ND-September-2015.pdf>.

<sup>64</sup> *Id.* at 3.

Employment discrimination appears to be especially prevalent against transgender people. According to the 2015 United States Transgender Survey (“USTS”)—the largest survey of the U.S. transgender population to date—30% of respondents who had been employed in the past year reported being fired, denied a promotion, or experiencing some other form of mistreatment related to the gender identity or expression.<sup>66</sup> Fear of harassment leads high proportions of LGBT workers to conceal their sexual orientation or gender identity from their co-workers, causing discontent at work and increased stress.<sup>67</sup>

There are abundant examples of employment discrimination against LGBT workers documented in the courts, administrative cases, and the press. The following are three recent examples from Mississippi. In 2015, a restaurant manager was reportedly fired for being gay, after his subordinates had called him “faggot” and expressed disgust at his sexual orientation.<sup>68</sup> In 2013, a juvenile

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<sup>65</sup> See Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People*, *supra*, at 723.

<sup>66</sup> James et al., *USTS*, *supra*, at 13.

<sup>67</sup> Sears & Mallory, Williams Institute, *Documented Evidence of Employment Discrimination & Its Effects on LGBT People* 12-13 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>.

<sup>68</sup> See Stevenson, *Jimmy John’s Manager in Mississippi Reportedly Fired for Being a “Faggot”*, Logo (Mar. 23, 2015), <http://www.newnownext.com/jimmy-johns-mississippi-faggot/03/2015/>.

corrections officer alleged that he was fired after his boss discovered he was gay from a domestic violence report.<sup>69</sup> Also in 2013, a lesbian woman was told by her co-workers that her boss was calling her a “carpet muncher” and a “cat licker” when she was absent.<sup>70</sup>

Controlled experiments have also found evidence of discrimination against LGBT workers. In one recently published study, researchers sent 1,769 pairs of resumes to employers in seven states who had advertised openings for white-collar, entry-level jobs. The resumes in each pair were matched in all respects, except that one resume indicated that the applicant had been involved with a gay campus organization, and the other did not. Based on the number of interviews offered to the fictitious candidates, the study concluded that the gay male applicant needed to apply to five more jobs, on average, than the heterosexual male applicant (14 versus 9) before receiving a positive response.<sup>71</sup>

Finally, wage studies also find evidence of discrimination against gay men and transgender people. Twelve studies conducted since 2000 have shown that gay

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<sup>69</sup> See, e.g., Sutter, *No One Should Be Fired For Being Gay*, CNN (Mar. 22, 2013), <http://www.cnn.com/2013/03/22/opinion/sutter-employment-discrimination-lgbt/>.

<sup>70</sup> See Sutter, *The County Where No One's Gay*, CNN (Mar. 25, 2013), <http://www.cnn.com/2013/03/24/opinion/sutter-franklin-county-mississippi-lgbt/>.

<sup>71</sup> Tilcsik, *Pride and Prejudice: Employment Discrimination Against Openly Gay Men in the United States*, 117 Am. J. Soc. 586, 606 (2011).

male workers are paid significantly less on average than their heterosexual male coworkers with the same productivity characteristics, with the wage gap varying from 10% to 32% of the heterosexual men's earnings.<sup>72</sup> A forthcoming study based on representative data from 27 states finds that transgender adults suffer a "household income penalty" equivalent to 12% of annual household income.<sup>73</sup>

### 3. *Discrimination in housing, public accommodations, and healthcare*

Discrimination also affects LGBT individuals outside the workplace, in areas such as housing.<sup>74</sup> According to one recent federal study, same-sex couples experience less favorable treatment than heterosexual couples in the online rental housing market.<sup>75</sup> Among transgender respondents to the USTS, 23% reported some form of housing discrimination in the past year, such as being evicted or denied an apartment because of being transgender, and 12% reported homelessness

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<sup>72</sup> *Id.* at 737.

<sup>73</sup> Carpenter et al., *Transgender Status, Employment, and Income* (forthcoming 2017), at 9 (on file with counsel).

<sup>74</sup> See, e.g., Mallory et al., Williams Institute, *Evidence of Housing Discrimination Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014* 2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Housing-Discrimination-Complaints-2008-2014.pdf>.

<sup>75</sup> Friedman et al., *An Estimate of Housing Discrimination Against Same-Sex Couples*, U.S. Department of Housing and Urban Development 3 (2013), [https://www.huduser.gov/portal/Publications/pdf/Hsg\\_Disc\\_against\\_SameSexCpls\\_v3.pdf](https://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf); see also *id.* at 3-4 (reviewing previous research on housing discrimination against LGBT people).

in the past year because of being transgender.<sup>76</sup> More than a quarter (26%) of USTS respondents who experienced homelessness in the past year avoided shelters because they feared being mistreated as a transgender person.<sup>77</sup>

LGBT people are also discriminated against in public accommodations and in healthcare.<sup>78</sup> In Mississippi, 48% of LGBT respondents to a statewide survey reported experiencing harassment in a public establishment, and 47% reported that they do not consider their doctors to be LGBT friendly.<sup>79</sup>

#### 4. ***Discrimination against LGBT youth***

Discrimination also impacts LGBT youth nationally and in Mississippi. The 2015 National School Climate Survey (“NSCS”) concluded that “[s]chools nationwide are hostile environments” for LGBT students.<sup>80</sup> In just the preceding year, 71% of students responding to the NSCS reported verbal harassment due to

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<sup>76</sup> James et al., *USTS*, *supra*, at 13.

<sup>77</sup> *Id.*

<sup>78</sup> See, e.g., Mallory & Sears, Williams Institute, *Evidence of Public Accommodations Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies, 2008-2014* 1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Accommodations-Discrimination-Complaints-2008-2014.pdf>; Lambda Legal, *When Healthcare Isn't Caring* (2010), [http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report\\_when-health-care-isnt-caring.pdf](http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf); James et al., *USTS*, *supra*, at 16, 175.

<sup>79</sup> Human Rights Campaign Mississippi, *Mississippi Survey*, *supra*, at 2.

<sup>80</sup> GLSEN, *2015 National School Climate Survey* xvi (2016), <https://www.glsen.org/sites/default/files/GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>.

sexual orientation, and 55% reported verbal harassment due to gender expression.<sup>81</sup> Nearly three in ten reported physical harassment because of their sexual orientation and two in ten on the basis of their gender expression.<sup>82</sup> Discrimination at school leads to absenteeism, lower GPAs, lower self-esteem, and higher rates of depression.<sup>83</sup>

In Mississippi, 46% of students responding to a statewide LGBT survey reported being harassed at school.<sup>84</sup> Mississippi case law also documents examples of discrimination by school officials against LGBT students. In *McMillen v. Itawamba County School District*, for example, the court ruled that a Mississippi school's denial of a female high school student's request to bring her girlfriend to prom and wear a tuxedo at the event violated the First Amendment.<sup>85</sup>

LGBT youth are also disproportionately represented in foster care<sup>86</sup> and among the homeless.<sup>87</sup> LGBT youth and youth homeless service providers cite

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at xviii.

<sup>84</sup> Human Rights Campaign Mississippi, *Mississippi Survey*, *supra*, at 2.

<sup>85</sup> 702 F. Supp. 2d 699 (N.D. Miss. 2010); *see also Sturgis v. Copiah Cnty. Sch. Dist.*, No. 3:10-CV-455, 2011 WL 4351355, at \*1 (S.D. Miss. Sept. 15, 2011).

<sup>86</sup> *See, e.g., Wilson et al., Sexual and Gender Minority Youth in Foster Care*, *supra*, at 6-7.

<sup>87</sup> Durso & Gates, Williams Institute, *Serving Our Youth: Findings from a National Survey of Service Providers Working With LGBT Youth Who Are Homeless Or At Risk of Becoming*

lack of family acceptance as the primary contributor to homelessness for LGBT youth.<sup>88</sup> LGBT foster-care youth are more than twice as likely as non-LGBT foster-care youth to report that the foster system did not treat them well.<sup>89</sup>

### 5. *Same-sex marriage and LGBT people are viewed unfavorably in Mississippi*

A significant portion of Mississippi's population still holds unfavorable opinions regarding same-sex marriage and LGBT people generally. A 2015 study estimated that only 39% of Mississippi's population supported same-sex marriage (making Mississippi the fourth least supportive state of same-sex marriage).<sup>90</sup> Mississippi is one of the lowest ranked states in terms of its support for LGBT people and issues.<sup>91</sup>

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*Homeless* 3 (2012), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>; Ray, NGLTF, and National Coalition for the Homeless, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* 13 (2006), [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/HomelessYouth.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/HomelessYouth.pdf).

<sup>88</sup> Choi et al., Williams Institute, *Serving Our Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness* 5 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>; Wilson et al., *Sexual and Gender Minority Youth*, *supra*, at 34.

<sup>89</sup> *Id.* at 38.

<sup>90</sup> Flores & Barclay, *Trends in Public Support for Marriage for Same-Sex Couples by State*, *Williams Institute* 3 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Trends-in-Public-Support-for-Same-Sex-Marriage-2004-2014.pdf>.

<sup>91</sup> Mallory & Sears, Williams Institute, *Discrimination, Diversity, and Development* 13-14 & Fig. I.d (2016), [http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development\\_The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development_The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf).

6. *Many LGBT people are victims of violence*

Each year, hundreds of LGBT people are murdered, assaulted, criminally harassed, or otherwise victimized. A 2016 mass shooting at a LGBT nightclub in Orlando, Florida resulted in 49 deaths and 53 other injuries.<sup>92</sup> In 2015, the National Coalition of Anti-Violence Programs received reports on 24 hate violence related homicides of LGBT people, and 1,253 reports of hate violence.<sup>93</sup> In its 2009 report in support of Local Law Enforcement Hate Crimes Prevention Act of 2009, Congress recognized that from 1991 to 2005, “there were over 17,000 reported hate crimes based on sexual orientation[, and that] this figure is likely to significantly understate the true number of these crimes,”<sup>94</sup> and that over 400 people were murdered due to anti-transgender bias in the preceding decade.<sup>95</sup>

From 2007 to 2011, while the rate of hate crimes overall decreased by 19%, hate crimes based on sexual orientation bias *increased* 3%.<sup>96</sup> From 2011 through 2014, hate crimes motivated by sexual orientation and gender identity biases were

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<sup>92</sup> Mickle & Stevens, *Federal Authorities Call Orlando Shooting a Hate Crime, Act of Terrorism*, WSJ (June 15, 2016), <http://www.wsj.com/articles/orlando-news-station-says-caller-claimed-to-be-shooter-1466011791>.

<sup>93</sup> National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015* 18-19 (2016), [http://www.avp.org/storage/documents/ncavp\\_hvreport\\_2015\\_final.pdf](http://www.avp.org/storage/documents/ncavp_hvreport_2015_final.pdf).

<sup>94</sup> H.R. Rep. No. 111-86, at 10 (2009).

<sup>95</sup> *Id.* at 11.

<sup>96</sup> Mallory et al., *Discrimination by Law Enforcement*, *supra*, at 6.



second only to racially motivated crimes.<sup>97</sup> According to the most recent FBI data, nearly 20% of hate crimes reported in 2015 involved the victim's real or perceived sexual orientation or gender identity.<sup>98</sup> Notwithstanding the above, Mississippi's statute providing for penalty enhancements for hate crimes does not include crimes motivated by the victim's actual or perceived sexual orientation or gender identity.<sup>99</sup>

### **C. Discrimination Against LGBT People Is Linked To Adverse Health And Welfare Consequences**

Studies have found that prejudice, stigma, and discrimination against LGBT people create a social environment characterized by excess exposure to various stressors, referred to as "minority stress."<sup>100</sup> In turn, this excess stress leads to an array of adverse effects on the health of LGBT people that is reflected in

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<sup>97</sup> *Id.*

<sup>98</sup> FBI, *Uniform Crime Report: Hate Crime Statistics, 2015* 1 (2016), [https://ucr.fbi.gov/hate-crime/2015/topic-pages/victims\\_final.pdf](https://ucr.fbi.gov/hate-crime/2015/topic-pages/victims_final.pdf).

<sup>99</sup> Miss. Code Ann. § 99-19-301.

<sup>100</sup> See, e.g., Bockting et al., *Adult Development and Quality of Life of Transgender and Gender Nonconforming People*, 23 *Current Op. Endocrinology, Diabetes, and Obesity* 188 (2016); Hendricks & Testa, *A Conceptual Framework for Clinical Work With Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 *Prof'l Psychol. Research and Practice* 460 (2012); Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 *Psychol. Bulletin* 674 (2003); see generally IOM, *The Health of Lesbian, Gay, Bisexual, and Transgender People*, *supra*, at 20-21, 211-22.

disparities in physical and mental health outcomes between LGBT and non-LGBT populations in the United States.<sup>101</sup>

The perception or fear of discrimination among LGBT people has been linked to disproportionately high rates of psychiatric disorders, psychological distress, depression, loneliness, low self-esteem, suicidal intention, anxiety, and post-traumatic stress.<sup>102</sup> For example, rates of depression, anxiety, and suicidality are two to three times greater among sexual minorities versus the heterosexual majority,<sup>103</sup> and observed disparities are estimated to be even greater for

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<sup>101</sup> See *id.*

<sup>102</sup> See, e.g., Mays & Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 Am. J. Pub. Health 1869 (2001); Zakalik & Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. Counseling Psychol. 302 (2006); Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being Among HIV-positive Latino Gay Men*, 27 Hisp. J. Behav. Sci. 101 (2005); Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945 (1999).

<sup>103</sup> See, e.g., Bostwick et al., *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100(3) Am. J. Pub. Health 468 (2010); Fredriksen-Goldsen et al. *Health Disparities Among Lesbian, Gay, and Bisexual Older Adults: Results From a Population-based Study*, 103 Am. J. Pub. Health 1802 (2013); Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 Am. J. Pub. Health 452 (2010); King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 BMC Psychiatry 70 (2008); Marshal et al., *Suicidality and Depression Disparities Between Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. Adolescent Health 115-123 (2011).

transgender versus cisgender people.<sup>104</sup> Research has also shown that when social conditions improve, so does the health of sexual minorities, leading to a reduction of health disparities.<sup>105</sup>

## V. CONCLUSION

Research demonstrates that LGBT Mississippians and their families are vulnerable socio-economically and many are subject to discrimination in employment, housing, and other important aspects of their lives. HB 1523, by elevating anti-LGBT religious beliefs over others, demeans and disadvantages LGBT people in the state. The Court should affirm the District Court's ruling.

December 22, 2016

Respectfully submitted,

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<sup>104</sup> See, e.g., James et al., *USTS*, *supra*, at 112; Hass et al., Williams Institute, *Suicide Attempts Among Transgender and Gender Non-Conforming Adults 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.

<sup>105</sup> See, e.g., Hatzenbeuhler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, *supra*, at 457.

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## CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements and Type Style Requirements:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). Pursuant to the December 6, 2016 letter from the Court’s Deputy Clerk Shea E. Pertuit, “[t]he amici in support of the appellee[s] will also have the same word count limitations as the amici in support of the appellant,” and:

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Dated: December 22, 2016



### **CERTIFICATE OF ELECTRONIC SERVICE**

On December 22, 2016, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that:

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