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Discrimination, Diversity, and Development: The Legal and Economic Implications of North Carolina's HB2

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Produced as part of a collaboration between the Williams Institute and Out Leadership to research the economic impact of LGBT-related laws and policies

ABOUT THE PARTNERS

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Discrimination, Diversity, and Development: The Legal and Economic Implications of North Carolina's HB2

EXECUTIVE SUMMARY

This report considers the legal and economic implications of North Carolina's HB2. HB2 discriminates against the over 37,800 transgender people in the state by prohibiting them from using restrooms consistent with their gender identity in public schools and universities, and in state government buildings. Further, HB2 repeals all local non-discrimination ordinances that provided protections to many of North Carolina's over 336,000 LGBT residents.

After considering the size of the LGBT population in North Carolina, and the legal landscape and social climate they face, we estimate that HB2 directly puts at risk almost \$5 billion just in terms of federal funding and business investment. In addition, HB2 contributes to a challenging environment for LGBT people that potentially costs the state tens to hundreds of millions of dollars each year. More specifically, we identify the following ten actual or potential harmful economic impacts:

Discrimination

By discriminating against transgender people, HB2 conflicts with federal laws, the laws of many other states and localities, the corporate policies of most large companies, and the equality norms of the majority of people in the United States. As a result, North Carolina has already experienced, or risks, the following economic impacts:

- 1. Federal Funding.** The loss of \$4.8 billion in federal grants and contracts, primarily from the loss of \$4.7 billion in funding for schools, colleges, and universities.
- 2. Business Investment.** The loss of over \$40 million in business investment that has already been withdrawn from the state, resulting in a loss of over 1,250 jobs, and the risk of losing over \$20 million more in business investment and 550 more jobs.
- 3. Travel and Tourism.** The loss of travel, tourism, conference, and event spending that would have supported jobs in the state and generated state and local tax revenue.
- 4. Litigation and Enforcement Costs.** Significant costs in defending litigation and enforcement actions for violating federal non-discrimination laws, and paying for settlements or any damages that are determined.

Diversity

A growing body of research finds that supportive workplace policies and practices have a positive impact on employer outcomes—what many term “the business case for diversity.” HB2, by adding to an already challenging legal landscape and social climate for the over 168,900 LGBT workers in North Carolina, has the following harmful economic impacts:

- 5. Productivity.** Research shows that a poor legal and social climate can mean that LGBT workers are less likely to be out at work and more likely to be distracted, disengaged, or absent, and to be less productive. These outcomes could lead to economic losses for state and local governments, as employers, and private businesses in the state. Since North Carolina, through its agencies and universities, is one of the largest employers in the state, with over 126,000 employees, its own loss in productivity from a discriminatory environment is significant.
- 6. Retention.** Research shows that when LGBT workers are in less supportive work environments, they feel less loyal to their employers and more likely to leave. Given the average replacement costs of an employee, public and private employers risk losing \$8,800 on average for each LGBT employee that leaves the state or changes jobs because of the negative environment that HB2 helps to create.
- 7. Recruitment.** Research shows that many LGBT and non-LGBT workers, in particular those who are younger and more highly educated, prefer to work for companies with more supportive policies, and in states with more supportive laws. Over 60% of North Carolina voters already feel that HB2 has hurt the state’s image with the rest of the U.S., making it harder for public and private employers to attract the best and brightest.

Development

HB2 sends a stigmatizing message about LGBT people, and adds to the challenging environment they face in North Carolina. This takes a human toll. And as scholars applying an economic development approach to LGBT exclusion have demonstrated, this exclusion has a harmful economic impact as well. By moving toward exclusion and away from inclusion, HB2 exacerbates the following disparities for LGBT people:

- 8. Education.** North Carolina is home to more than 86,000 LGBTQ youth including more than 15,600 transgender youth. More than a third of LGBQ high school students in the state report being bullied in the past year and over 41% report seriously considering suicide. HB2 makes a challenging environment even more difficult for LGBTQ youth. When LGBTQ students miss or drop out of school, become homeless, or unemployed or underemployed—these are outcomes which are harmful not only to them, but their future contributions to the economy.

9. Economic. A number of surveys document that LGBT people continue to face discrimination in North Carolina that affects their jobs, incomes, food security, housing and health care. For example, data from North Carolina respondents to a national survey of transgender people shows that over three-fourths report workplace harassment or mistreatment, over half report being harassed in a place of public accommodation, 1 in 5 report being denied a home or an apartment, and 1 in 8 report losing a job because of their gender identity. We estimate that discrimination in the workplace and in housing against transgender people annually costs North Carolina approximately \$227,000 in state Medicaid expenditures and \$345,000 in housing program expenditures.

10. Health. Research indicates that the lack of legal protections and a less favorable social climate for LGBT people, such as what is unfolding in North Carolina, is contributing to health disparities such as major depressive disorder and substance abuse. Research also supports that laws like HB2, and the public debate about it, are exacerbating these health disparities. If North Carolina were to move towards acceptance of LGBT people, it would decrease these health disparities. When just considering the impact of one condition – major depressive disorder – we estimate that the move toward inclusion could eventually benefit the state by \$92 to \$123 million in greater productivity and reduced health care costs each year.

Because HB2 conflicts with the non-discrimination laws of the federal government and many state and local governments in the U.S., as well as the policies of most large companies and the beliefs of a majority of Americans, the law is already putting at risk over \$5 billion in economic activity in the state. By adding to an already challenging environment for LGBT people, it is undermining the advantages of diversity in the workplace, eroding worker productivity, and making talented LGBT and non-LGBT employees more difficult to recruit and retain. By moving toward exclusion and away from inclusion, HB2 contributes to the discriminatory environment that LGBT people face at school, in the workplace, in housing, and in public life—creating health and economic disparities for LGBT people in the state and taking a significant toll on LGBT youth in particular. The repeal of HB2 would not only reverse the threat to over \$5 billion in economic activity for the state, but would also begin to bring North Carolina some of the economic advantages that come when a state embraces diversity and its LGBT citizens.

SECTION I. LGBT POPULATION, LEGAL LANDSCAPE, AND SOCIAL CLIMATE IN NORTH CAROLINA

North Carolina is home to over 250,000 LGBT adults and 86,000 LGBTQ youth who reflect the diversity of the state's overall population. The state's LGBT population faces a legal landscape that offers almost no legal protections from discrimination and a social climate that ranks the state 36th in its level of support of LGBT people in the U.S. However, recent public opinion polls show that a majority of North Carolinians support discrimination protections for LGBT people, oppose HB2, and believe the law is hurting the state's image.

A. LGBT People in North Carolina

1. LGBT Adults in North Carolina

North Carolina is home to an estimated 250,000 LGBT adults:¹ 3.3% of adults in the state identify as LGBT, compared to 3.5% in the United States and 3.8% in the South.² In Charlotte, North Carolina's largest metropolitan area, an estimated 90,000 adults identify as LGBT (3.8% of the population).³ Individuals in North Carolina's workforce identify as LGBT at a slightly higher rate than the state's overall population, 3.8%.⁴ Applying this percentage to North Carolina's workforce indicates that there are approximately 168,900 LGBT workers in the state.⁵ According to a 2011 study, 0.3% of adults in the U.S. identify as transgender.⁶ Applying this percentage to the population of North Carolina suggests that 22,200 of North Carolina's 250,000 LGBT adults are transgender.⁷

¹ AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES* 23 (2015) (aged 18 and older), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

² *Id.* at 7-8.

³ Matt Comer, *Gallup Survey: Nearly 90,000 LGBT People in Charlotte Metro*, QNOTES, Mar. 20, 2015, <http://qnotes12.rssing.com/browser.php?indx=12785801&item=811>.

⁴ Special analysis by Gary J. Gates of data collected by the Gallup Daily Tracking Survey from 2012 through 2014 (on file with authors).

⁵ Workforce data, aged 16 and older: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 4, 2016) (enter North Carolina and select go, click on income tab, choose Selected Economic Characteristics under the 2014 American Community Survey).

⁶ GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER?* 1 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

⁷ Population data: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 4, 2016) (select advanced search, enter "Population by Single Year of Age and Sex" under topic or table name and "North Carolina" under state, county or place, select "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2014" 2014 estimates). For methodology, see JODY L. HERMAN, CHRISTY MALLORY & BIANCA D.M. WILSON, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *ESTIMATES OF TRANSGENDER POPULATIONS IN STATES WITH*

LGBT individuals in North Carolina are racially and ethnically diverse. Forty-four percent of LGBT individuals are people of color: 29% are African-American, 11% are Latino/a, 2% are Asian/Pacific Islander, and 2% identify as another race (other than White) or other.⁸ In fact, LGBT individuals in North Carolina are more likely than their non-LGBT counterparts to be people of color. Among non-LGBT adults in the state, 30% are people of color: 20% are African-American, 8% are Latino/a, 1% are Asian/Pacific Islander, and 1% identify their race as other.⁹

LGBT people in North Carolina are also more likely to be people of color when compared to all LGBT people in the U.S (44% v. 37%).¹⁰ In particular, LGBT individuals in North Carolina are much more likely to be African-American (29%) when compared to all LGBT adults in the U.S. (15%) and in the South (22%).¹¹

On average, LGBT adults in North Carolina are eight years younger than their non-LGBT counterparts.¹² Similarly, nationwide and in the South, LGBT adults are seven years younger than their non-LGBT counterparts, on average.¹³

As of 2010, there were 18,300 same-sex couples living in North Carolina.¹⁴ The Williams Institute estimates that 9,155 of these couples will be married by 2017.¹⁵ One in five same-sex couples in North Carolina are raising children,¹⁶ similar to the rate at which same-sex couples are raising children throughout the South.¹⁷ While different-sex married couples are much more

LEGISLATION IMPACTING TRANSGENDER PEOPLE 1 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Estimates-of-Transgender-Populations.pdf>.

⁸ HASENBUSH ET AL., *supra* note 1 at 27.

⁹ *Id.*

¹⁰ *Id.* at 26.

¹¹ *Id.* at 9, 26, 27. Twenty-one percent of individuals in same-sex couples in North Carolina are people of color: 10% are African-American, 6% are Latino/a, 1% are Asian/Pacific Islander, 1% are American Indian/Alaska Native, and 3% identify their race as other. *Id.* By comparison 23% of individuals in different-sex married couples in North Carolina identify as people of color. *Id.* at 28. Similarly, across the U.S., 24% percent of individuals in same-sex couples are people of color and 25% of individuals in same-sex couples in the South are people of color. *Id.* at 9, 26.

¹² *Id.* at 25.

¹³ *Id.* at 8. The age gap in North Carolina holds when comparing individuals in same-sex couples to their different sex married counterparts. While both couple groups are older on average than LGBT and non-LGBT populations as a whole, individuals in different-sex married couples are an average of seven years older than individuals in same-sex couples. *Id.* at 25.

¹⁴ GARY J. GATES & ABIGAIL M. COOKE, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, NORTH CAROLINA CENSUS SNAPSHOT: 2010 1 (2010), http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_North-Carolina_v2.pdf.

¹⁵ JUSTIN M. O'NEILL, CHRISTY MALLORY & M.V. LEE BADGETT, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ESTIMATING THE ECONOMIC BOOST OF MARRIAGE FOR SAME-SEX COUPLES IN NORTH CAROLINA 1 (2014), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/NC-Econ-Impact-oct-2014.pdf>.

¹⁶ HASENBUSH ET AL., *supra* note 1 at 30.

¹⁷ *Id.* at 11.

likely than same-sex couples to be raising children, same-sex couples in the state are more likely to be raising adopted children (10%) than different-sex married couples (3%).¹⁸

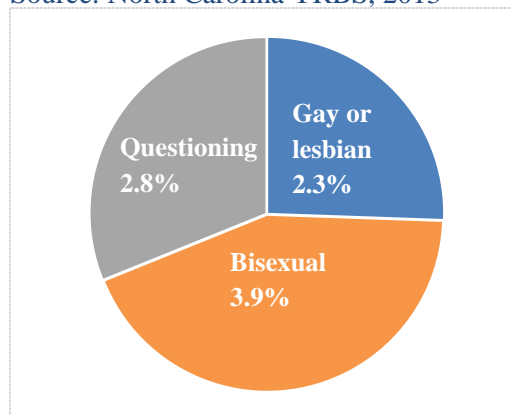
LGBT individuals over age 25 in North Carolina have similar rates of having a college degree as non-LGBT individuals in the state (31% v. 32%).¹⁹ However, individuals over age 25 in same-sex couples in North Carolina are much more likely to have a college degree than individuals over age 25 in married different-sex couples (49% v. 32%).²⁰ Similar patterns are also found in the U.S. overall and in the South.²¹

2. LGBTQ Youth in North Carolina

Every two years, the North Carolina Department of Public Instruction conducts a statewide survey of youth attending grades 6 through 12 to assess their health and wellbeing,²² the North Carolina Youth Risk Behavior Survey (YRBS).²³ Since 2013, North Carolina's YRBS for high school students (grades 9-12) has included a question about sexual orientation.²⁴ The following section is primarily based on the analysis of this data.

In response to North Carolina's 2013 YRBS, 9% of high school students said they were gay or lesbian (2.3%), bisexual (3.9%), or questioning ("not sure") (2.8%).²⁵ Applying this percentage (9%) to North Carolina's youth population

Figure I.a. Sexual orientation of LGBTQ high school students in North Carolina
Source: North Carolina YRBS, 2013



¹⁸ Id. at 30, 31.

¹⁹ These rates are similar to rates throughout the South (33% v. 32%) and in the U.S. (34% v. 34%). Id. at 12, 33.

²⁰ Id. at 33.

²¹ Id. at 12. Forty-eight percent of individuals over age 25 in same-sex couples in the U.S. have college degrees compared to 34% of individuals in married different-sex couples, and 43% of individuals over age 25 in same-sex couples in the South have college degrees compared to 32% of individuals over age 25 in different-sex married couples. Id.

²² *N.C. Youth Risk Behavior Survey (YRBS)*, N.C. HEALTHY SCHOOLS, <http://www.nchealthyschools.org/data/yrbs/> (last visited May 4, 2016).

²³ The North Carolina YRBS is based on the U.S. Centers for Disease Control and Prevention's Youth Risk Behavior Survey and modified by the North Carolina Department of Public Instruction. See *N.C. YOUTH RISK BEHAVIOR SURVEY: MIDDLE SCHOOL 2013 SURVEY RESULTS 2* (2014), <http://www.nchealthyschools.org/docs/data/yrbs/2013/statewide/middle-school.pdf>; *N.C. YOUTH RISK BEHAVIOR SURVEY: HIGH SCHOOL 2013 SURVEY RESULTS v* (2014), <http://www.nchealthyschools.org/docs/data/yrbs/2013/statewide/high-school.pdf>.

²⁴ See *N.C. YOUTH RISK BEHAVIOR SURVEY: HIGH SCHOOL 2013 SURVEY RESULTS*, *supra* note 23 at 53.

²⁵ Id. Other studies of sexual minority youth have included youth who responded "not sure" in the LGB sample. E.g., BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE* 37 (2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf. We adopt that approach here.

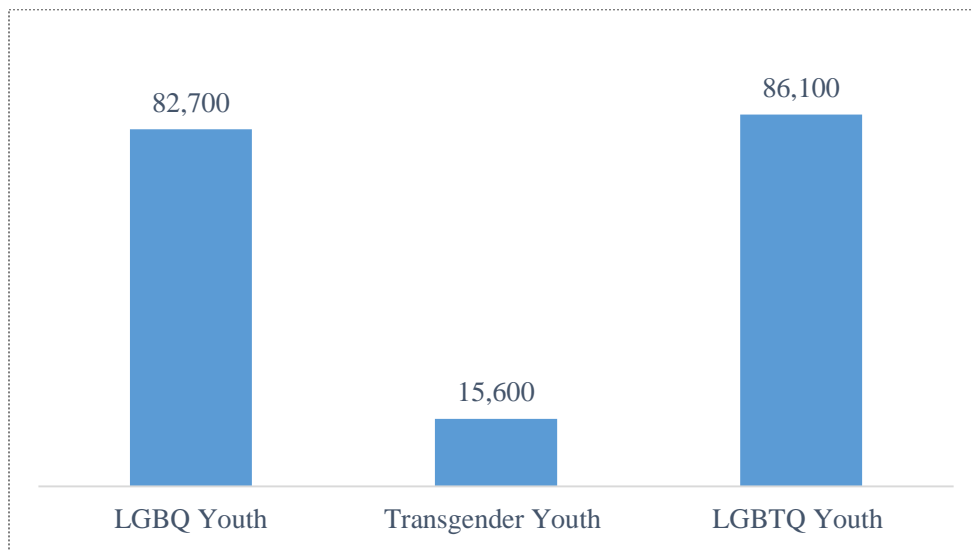
indicates that there are over 82,600 LGBQ youth aged 13-19 in the state.²⁶

The 2013 North Carolina YRBS did not provide a question that allowed students to identify themselves as transgender. However, a 2014 review of local probability samples and national convenience samples found that between 1.4% and 3.2% of youth identify as transgender.²⁷ The most reliable study of gender identity among youth found that 1.7% of youth identified as transgender.²⁸ Applying this percentage (1.7%) to North Carolina's youth population indicates that there are 15,600 transgender youth aged 13-19 in the state.²⁹

To provide an estimate for LGBTQ youth we take into account that a recent study found that only 22% of transgender adults identified as heterosexual/straight.³⁰ Thus we assume that 78% of our transgender youth estimate overlaps with our LGBQ estimate. Taking this taken into account, we estimate that there are over 86,000 LGBTQ youth aged 13-19 in North Carolina.

Figure I.a. Estimates of LGBTQ youth in North Carolina aged 13-19

Sources: North Carolina YRBS, 2013; Herman et al., 2016; American Community Survey, 2014



²⁶ We assume the same distribution of sexual orientation across all youth in the state, including those who declined to answer this question on the YRBS and those who are not enrolled in school.

²⁷ WILSON ET AL., *supra* note 25.

²⁸ HERMAN ET AL., *supra* note 7.

²⁹ Population data (aged 13-19): search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 4, 2016) (select advanced search, enter "Population by Single Year of Age and Sex" under topic or table name and "North Carolina" under state, county or place, select "Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States, States, and Puerto Rico Commonwealth: April 1, 2010 to July 1, 2014" 2014 estimates).

³⁰ JODY L. HERMAN, *LGB WITHIN THE T: SEXUAL ORIENTATION IN THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY AND IMPLICATIONS FOR PUBLIC POLICY 1* (2016), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sexual-Orientation-in-NTDS-March-2016.pdf>.

Of the students who identified as LGBQ on the 2013 North Carolina YRBS, 63.5% were female and 36.5% were male.³¹

LGBQ high school students in North Carolina were more likely to be people of color than those who identified as heterosexual or straight. While less than half of non-LGBQ students (44.0%) identified as people of color, more than half of LGBQ students (57%) identified as people of color. LGBQ students were 38.3% African-American, 9.9% Latino, 2.4% Asian, and 5.9% multi-racial.

Figure I.b. LGBTQ youth in North Carolina, by gender

Source: North Carolina YRBS, 2013

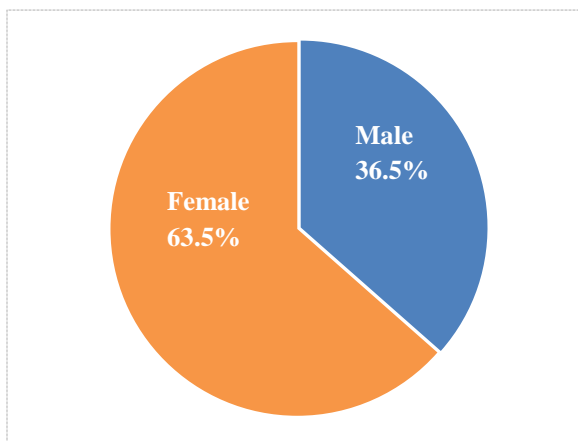
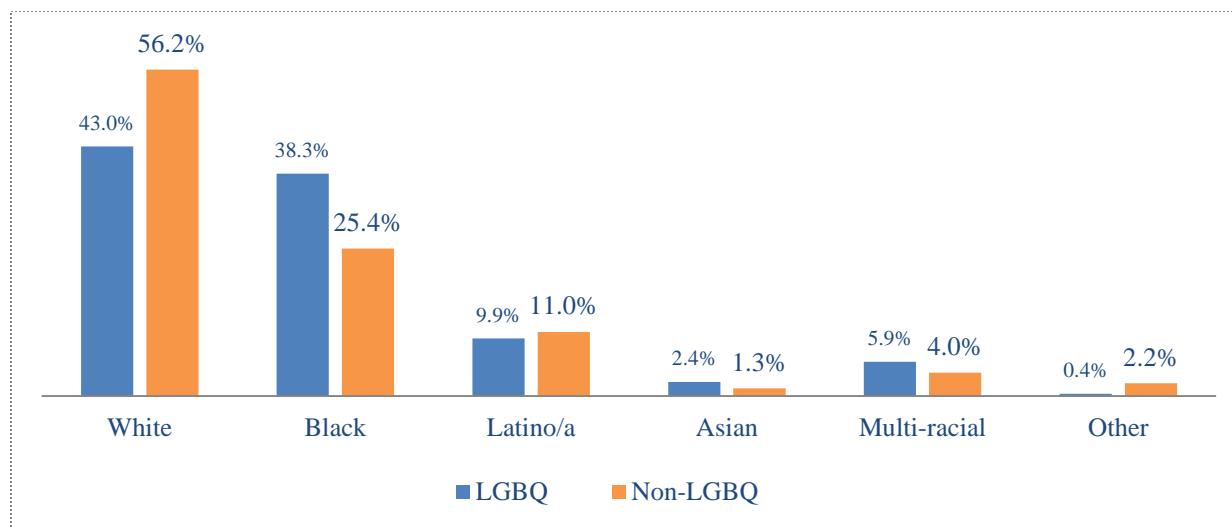


Figure I.c. Race and ethnicity of high school students in North Carolina, by sexual orientation

Source: North Carolina YRBS, 2013



B. Legal Landscape

HB2 is the latest example of a history of state laws and policies in North Carolina that have sought to limit protections for LGBT people or that facially discriminate against them. Although marriage equality was recently brought to the state by a federal court decision, and the state has passed an LGBT-inclusive safe schools law, the state still lacks comprehensive protections from

³¹ Calculations of sex/gender and race/ethnicity of LGBQ students were conducted by Williams Institute researchers using data from the 2013 YRBS. See Section IV.A. *infra* for more details on the methodology used to analyze the data.

discrimination for LGBT people, and HB2 and other recent statutes and court decisions have legally sanctioned discrimination against the members of the LGBT community.

Sodomy Law. The modern history of discrimination by North Carolina against LGBT people can be traced to the investigation of 32 gay men in Greensboro in the 1950s under North Carolina’s sodomy law.³² Called “one of the most intense gay scares of the 1950s”³³ most of the men were sentenced to prison terms of up to 60 years or assigned to psychiatric care.³⁴ North Carolina was one of 21 remaining states that had a sodomy law when the U.S. Supreme Court declared such statutes unconstitutional in 2003.³⁵ In 2005, an effort to amend the state’s sodomy law to comply with the Supreme Court’s holding failed,³⁶ and the sodomy statute remains.³⁷

Marriage Equality. Nearly a decade before any state extended marriage to same-sex couples, North Carolina passed a statute prohibiting marriage equality.³⁸ Like HB2, it passed both houses of the legislature in a single day.³⁹ In 2012, the state augmented the statutory ban with an even more sweeping constitutional ban that prohibited domestic partnerships as well.⁴⁰ Same-sex couples have been permitted to marry in North Carolina since October 10, 2014 as a result of a federal district court decision striking down the statute and the constitutional amendment.⁴¹ Three months after the court decision, the North Carolina legislature passed a law allowing certain state officials to refuse to perform marriages based on religious objection,⁴² and 30 state magistrates quickly recused themselves from performing marriages.⁴³ North Carolina, Utah, and Mississippi are the only states to have passed such laws.⁴⁴

³² BRAD SEARS, NAN D. HUNTER & CHRISTY MALLORY, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, DOCUMENTING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY IN STATE EMPLOYMENT 5-31 (2009), http://williamsinstitute.law.ucla.edu/wp-content/uploads/5_History.pdf. The purge was part of a larger era of “gay scares” of LGBT people by the federal government, state and local governments during the 1950s and '60s. *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Lawrence v. Texas*, 539 U.S. 558 (2003).

³⁶ In 2005, the North Carolina Court of Appeals upheld the sodomy law, stating that the law regulated sexual conduct that “[fell] outside the narrow liberty interest recognized in *Lawrence*.” *State v. Whiteley*, 616 S.E.2d 576 (N.C. Ct. App. Aug. 16, 2005).

³⁷ NC GEN. STAT. ANN. § 14-177 (2004).

³⁸ N.C. Gen. Stat. § 51-1.2 (1996).

³⁹ *Senate Bill 1487 / S.L. 1995-588*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=1995&BillID=S1487> (last visited May 4, 2016).

⁴⁰ N.C. CONST. amend 1 (2012).

⁴¹ *General Synod of the United Church of Christ v. Cooper*, No. 3:14-cv-00213-MOC-DLH (W.D.N.C. October 10, 2014).

⁴² S.B. 2, 2015-2016 Gen. Assem., Reg. Sess. (N.C. 2015), 2015 North Carolina Laws 75; N.C. Gen. Assem., House Bill 2/S.L. 2016-3, <http://www.ncleg.net/gascripts/BillLookup/BillLookup.pl?Session=2015E2&BillID=H2> (last visited Apr. 15, 2016).

⁴³ Associated Press, *In North Carolina, More than 30 Magistrates Refusing to Perform Weddings*, PRESSHERALD.COM, Sept. 3, 2015, <http://www.pressherald.com/2015/09/03/in-north-carolina-more-than-30-magistrates-refusing-to-perform-weddings/>.

⁴⁴ H.B. 1523, 2016 Reg. Sess. (Miss. 2016), enacted; S.B. 297, 2015 Gen. Sess. (Utah 2015).

Discrimination Protections. North Carolina does not have a statewide statute that prohibits discrimination based on sexual orientation or gender identity in employment, housing, public accommodations, or any other setting.⁴⁵ In every legislative session since 2003, efforts have been made to add sexual orientation and/or gender identity to North Carolina’s law prohibiting discrimination in state and local government employment.⁴⁶ None of these bills has made it out of committee.

At least nine counties and fifteen municipalities prohibit discrimination against their own government employees based on sexual orientation, including Buncombe County,⁴⁷ Durham County,⁴⁸ Guilford County,⁴⁹ Iredell County,⁵⁰ Mecklenburg County,⁵¹ Montgomery County,⁵² Orange County,⁵³ Wake County,⁵⁴ Yancey County,⁵⁵ Asheville,⁵⁶ Bessemer City,⁵⁷ Boone,⁵⁸ Carrboro,⁵⁹ Chapel Hill,⁶⁰ Charlotte,⁶¹ Dunn,⁶² Durham,⁶³ Elizabeth City,⁶⁴ Franklinton,⁶⁵

⁴⁵ See N.C. GEN. STAT. ANN. § 143-422.2.

⁴⁶ S. 1007, 2003-2004 Gen. Assem., Reg. Sess. (N.C. 2003); H.R. 1203, 2005-2006 Gen. Assem., Reg. Sess. (N.C. 2005); H.R. 1789, 2007-2008, Gen. Assem., Reg. Sess. (N.C. 2007); S. 1534, 2007-2008 Gen. Assem., Reg. Sess. (N.C. 2007); S. 843, 2009-2010 Gen. Assem., Reg. Sess. (N.C. 2009); H. 478, 2011-2012 Gen. Assem., Reg. Sess. (N.C. 2011); S. 452, 2011-2012 Gen. Assem., Reg. Sess. (N.C. 2011); S. 544 2013-2014 Gen. Assem., Reg. Sess. (N.C. 2013); S. 612 2015-2016 Gen. Assem., Reg. Sess. (N.C. 2015).

⁴⁷ Buncombe Cty., N.C., Personnel Ordinance § 5 (2012),

<http://www.buncombecounty.org/common/personnel/PersonnelOrdinanceManual.pdf>.

⁴⁸ Durham County, N.C., Equal Employment Opportunity Policy (on file with authors).

⁴⁹ Matt Comer, *North Carolina News: Guilford County Passes New Anti-Discrimination Policy*, INTERSTATEQ.COM, Mar. 22, 2007, <http://interstateq.com/archives/1959/>.

⁵⁰ Iredell Cty., N.C., Personnel Policy § 9, available at

<https://www.co.iredell.nc.us/DocumentCenter/Home/View/3436> (last visited Apr. 15, 2016).

⁵¹ Matt Comer, *Mecklenburg Commissioners Vote to Add Transgender Protections*, QNOTES.COM, Oct. 16, 2013,

<http://goqnotes.com/25492/mecklenburg-commissioners-vote-to-add-transgender-protections/>.

⁵² MONTGOMERY CTY., N.C., EMPLOYEE PERSONNEL MANUAL 4 (2014), available at

http://www.montgomerycountync.com/sites/default/files/human-resources/documents/2014_07/personnel_manual.pdf.

⁵³ ORANGE CTY., N.C., CODE § 28-10 (2014).

⁵⁴ *Wake County Protects LGBT Workers from Discrimination*, TARGETED NEWS SERVICE, Sept. 21, 2015.

⁵⁵ YANCEY CTY., N.C., PERSONNEL POLICY MANUAL § 1.7 (2012) (on file with authors).

⁵⁶ *Asheville, North Carolina City Council Passes Pro-Gay Resolution 5-1*, PROUDPARENTING.COM, Feb. 23, 2011,

<http://www.proudparenting.com/2011/02/asheville-north-carolina-city-council-passes-pro-gay-resolution-5-1/>.

⁵⁷ Bessemer City, N.C., Personnel Policy Manual, Art. IV. Recruitment and Employment (on file with author).

⁵⁸ Boone, N.C., Personnel Policy § 2, available at [http://24-196-192-](http://24-196-192-77.static.hckr.nc.charter.com/departments/hr/Personnel%20Policy.pdf)

[77.static.hckr.nc.charter.com/departments/hr/Personnel%20Policy.pdf](http://24-196-192-77.static.hckr.nc.charter.com/departments/hr/Personnel%20Policy.pdf) (last visited Apr. 15, 2016).

⁵⁹ Corroboro, N.C., Human Resources, Equal Opportunity Employment,

<http://www.ci.carrboro.nc.us/130/Employment-Application> (last visited Apr. 15, 2016).

⁶⁰ CHAPEL HILL, N.C., CODE § 14-29 (2015).

⁶¹ Charlotte, N.C., Human Resources, Diversity and Inclusion,

<http://charmeck.org/city/charlotte/HumanResources/Pages/Diversity.aspx> (last visited Apr. 15, 2016).

⁶² DUNN, N.C., PERSONNEL POLICY 5 (2012), available at [http://www.dunn-](http://www.dunn-nc.org/downloads/City%20of%20Dunn%20Personnel%20Policy.pdf)

[nc.org/downloads/City%20of%20Dunn%20Personnel%20Policy.pdf](http://www.dunn-nc.org/downloads/City%20of%20Dunn%20Personnel%20Policy.pdf).

⁶³ DURHAM, N.C., EMPLOYEE HANDBOOK 9 (2013), available at

<http://durhamnc.gov/DocumentCenter/Home/View/4093>.

⁶⁴ Elizabeth City, N.C., Personnel Policy § 3.0, available at

[http://www.cityofec.com/vertical/Sites/%7B19DF6A6A-CE57-43EF-A53C-](http://www.cityofec.com/vertical/Sites/%7B19DF6A6A-CE57-43EF-A53C-DE6F51122031%7D/uploads/Personnel_Policies_-_proposed_revisions_2013_REDLINE.pdf)

[DE6F51122031%7D/uploads/Personnel_Policies_-_proposed_revisions_2013_REDLINE.pdf](http://www.cityofec.com/vertical/Sites/%7B19DF6A6A-CE57-43EF-A53C-DE6F51122031%7D/uploads/Personnel_Policies_-_proposed_revisions_2013_REDLINE.pdf) (last visited Apr. 15, 2016).

Goldsboro,⁶⁶ Greensboro,⁶⁷ Raleigh,⁶⁸ Saluda,⁶⁹ and Winston-Salem.⁷⁰ Seven of these localities, Buncombe County, Durham County, Mecklenburg County, Boone, Chapel Hill, Charlotte, and Raleigh also prohibit discrimination against government employees based on gender identity.⁷¹ These 24 local personnel policies provide protections to approximately 2% of North Carolina’s workforce.⁷²

House Bill 2. In March 2016, House Bill 2/Session Law 2016-3 was enacted during a one-day special session of the North Carolina legislature that was convened solely for the purpose of hearing the bill.⁷³ HB2 prohibits localities in the state from adopting ordinances that impose non-discrimination requirements on employers and places of public accommodation which are not also imposed by state law, and overrides existing ordinances to this effect.⁷⁴ Because the statewide non-discrimination law does not include sexual orientation or gender identity, HB2 effectively prohibits localities from adopting non-discrimination ordinances that include these characteristics. Additionally, HB2 invalidated Charlotte’s non-discrimination ordinance which prohibited discrimination based on sexual orientation and gender identity in public accommodations.⁷⁵ HB2 does not prohibit localities from adopting non-discrimination policies that apply to their own government employees, even if the policies include characteristics not covered by state law.⁷⁶

HB2 further requires state and local government entities and public educational institutions to restrict use of restrooms according to “biological sex.”⁷⁷ The law defines “biological sex” as

⁶⁵ Franklinton, N.C., Employee Handbook, Art. IV. Recruitment and Employment (on file with author).

⁶⁶ GOLDSBORO, N.C., PERSONNEL POLICY 6 (2015), available at <http://www.goldsboronc.gov/wp-content/uploads/personnel-policy-manual.pdf>.

⁶⁷ Greensboro, N.C., Employment Application, Equal Employment Opportunity Questionnaire, <http://greensboronc.gov/modules/showdocument.aspx?documentid=22997> (last visited Apr. 15, 2016).

⁶⁸ Raleigh, N.C., Employment Opportunities with 9-1-1, <http://www.raleighnc.gov/home/content/EmerCommunications/Articles/EmploymentwiththeEmer.html> (last visited Apr. 15, 2016).

⁶⁹ Saluda, N.C., Application for Employment, <http://www.cityofsaludanc.com/Public/files/Application%20for%20Employment.pdf> (last visited Apr. 16, 2016).

⁷⁰ Winston-Salem, N.C., Human Resources, Equal Employment Policy, <http://www.cityofws.org/departments/human-resources> (last visited Apr. 15, 2016).

⁷¹ *Supra*, notes 47, 48, 51, 58, 60, 61, 68; *Raleigh Non-Discrimination Policy Now Addresses Transgender Workers*, WRAL.COM, Oct. 21, 2014, <http://www.wral.com/raleigh-non-discrimination-policy-now-addresses-transgender-workers/14101213/>.

⁷² Workforce data: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 4, 2016) (enter North Carolina or locality name and select go, click on income tab, choose Selected Economic Characteristics under the 2014 American Community Survey).

⁷³ N.C. Gen. Assem., House Bill 2/S.L. 2016-3, <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2015E2&BillID=H2> (last visited Apr. 15, 2016).

⁷⁴ H.B. 2, 2015-2016 Gen. Assem., 2nd Extra Sess. (N.C. 2016), 2016 North Carolina Laws 3.

⁷⁵ Steve Harrison, *Charlotte City Council Approves LGBT Protections in a 7-4 Vote*, CHARLOTTEOBSERVER.COM, Feb. 22, 2016, <http://www.charlotteobserver.com/news/politics-government/article61786967.html>.

⁷⁶ H.B. 2, *supra* note 74 at 3.

⁷⁷ *Id.*

“the physical condition of being male or female, which is stated on a person’s birth certificate.”⁷⁸ This policy prohibits transgender individuals who have not been able to amend their birth certificates from using restrooms consistent with their gender identity in public buildings and schools in North Carolina.

On April 12, 2016, shortly after the passage of HB2, Governor Pat McCrory issued an executive order prohibiting discrimination based on sexual orientation and gender identity in state government employment and in the provision of state government services.⁷⁹ However, the executive order did not change HB2’s mandate that state and local government entities and public educational institutions restrict use of restrooms according to an individual’s biological sex. The executive order provides limited protections to 6.7% of the state’s workforce.⁸⁰ Bills in both North Carolina houses have been introduced to repeal HB 2.⁸¹

Parenting Rights. The parenting rights of same-sex couples continue to be uncertain in North Carolina. The state’s Supreme Court ruled second-parent adoptions invalid in 2010.⁸² Accordingly, same-sex couples must be married in order to adopt and both become legal parents.⁸³ Additionally, North Carolina statutes regulating parentage use gendered terms that facially exclude same-sex couples. For instance, the donor insemination statute only applies to “a husband and wife;”⁸⁴ according to the statute, a man who consent’s to his wife’s insemination with donor sperm would be recognized as a legal parent, but a woman in the same situation would not. This treatment poses constitutional problems in light of the Supreme Court’s recognition of same-sex couples’ right to marry in *Obergefell v. Hodges*.⁸⁵ While recent state guidelines allow both women in a married same-sex couple to be listed on a child’s birth certificate,⁸⁶ a birth certificate alone does not establish parentage. Male same-sex couples face an even more hostile environment with regard to parenting. Since no statutes in North Carolina directly address gestational surrogacy, for same-sex couples the non-biological father would ordinarily need to adopt the child and could only do so after the gestational surrogate relinquishes parental rights following the child’s birth.

⁷⁸ *Id.*

⁷⁹ N.C. Exec. Or. No. 93 (Apr. 12, 2016).

⁸⁰ Workforce data: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited May 4, 2016) (enter North Carolina and select go, click on income tab, choose Selected Economic Characteristics under the 2014 American Community Survey)..

⁸¹ On April 25, 2016, House Bill 946 was introduced. H.B. 946, 2015-2016 Gen. Assem Reg. Sess. (N.C. 2016). On April 27, 2016, S.B. 784 was introduced. 2015-2016 Gen. Assem Reg. Sess. (N.C. 2016).

⁸² *Boseman v. Jarrell*, 704 S.E.2d 494 (N.C. Ct. App. 2010).

⁸³ Nonetheless, the *Boseman* court held that a non-biological unmarried parent could seek custody of the child when her former partner’s actions deliberately created and fostered that parent-child relationship. *See id.* at 504-05.

⁸⁴ N.C. GEN. STAT. § 49A-1 (2016).

⁸⁵ 135 S. Ct. 2071 (2015).

⁸⁶ Beth Walton, *New Birth Certificate Rules Recognize Lesbian Mothers*, CITIZEN-TIMES, May 15, 2015, <http://www.citizen-times.com/story/news/local/2015/05/15/new-birth-certificate-rules-recognize-lesbian-mothersnew-birth-certificate-guidelines-welcome-news-lesbian-parents/27400819/>.

Safe Schools. North Carolina’s anti-bullying statute, passed in 2009, expressly prohibits bullying (including cyber-bullying) and harassment at school based on sexual orientation and gender identity, among other enumerated characteristics.⁸⁷ The law protects both students and school employees from bullying and harassment.⁸⁸

Gender Marker and Name Changes. North Carolina allows individuals to change the gender marker on their birth certificate and driver’s license, but requires proof of sex reassignment surgery.⁸⁹ The law does not define “sex reassignment surgery,” but requires a physician to certify that the individual has undergone such a procedure.⁹⁰ North Carolina also allows individuals to change their names on their birth certificate⁹¹ and driver’s license,⁹² but both require court orders, impose several administrative requirements, and require fees.

Other protections. Finally, North Carolina also lacks a number of protections for LGBT people that have been passed in other states, including a hate crimes law that includes sexual orientation or gender identity,⁹³ a law that prohibits health insurance providers from discriminating based on sexual orientation or gender identity,⁹⁴ a law that requires such providers to offer coverage for transition-specific medical care,⁹⁵ or a ban on conversion therapy.⁹⁶

C. Public Opinion

Out of all states, North Carolina ranks 36th in its level of support for LGBT people and issues. Of the sixteen states in the South, North Carolina ranks fourth with Kansas, Missouri, and Virginia having greater acceptance scores.

Andrew Flores, PhD, of the Williams Institute, created an LGB Social and Political Climate index in order to differentiate states and regions in the U.S.⁹⁷ As Figure 1 shows, the LGB Social and Political Climate Index ranges from 45 in West Virginia to 92 in the District of

⁸⁷ N.C. GEN. STAT. ANN. § 115C-407.15 (2015).

⁸⁸ *Id.*

⁸⁹ The legal requirements for changing the gender marker on a birth certificate are codified at N.C. GEN. STAT. § 130A-118(b)(4).

⁹⁰ *Id.*

⁹¹ *Id.* § 130A-118. The name change requires a court order changing the name, submitting an application, and payment of applicable fees.

⁹² N.C. GEN. STAT. § 101-5. Requirement include: getting fingerprints by the Sheriff’s Department; a Criminal Record Checks from the State and Federal Bureaus of Investigation, each for a fee, *Id.* §§ 101-2, 101-4; a petition to the county court, which requires publishing a notice at the courthouse for ten days and submission of two notarized affidavits of character, 20 C.F.R. § 422.110; and applications to the Social Security Administration and the DMV. N.C. GEN. STAT. § 20-7.1.

⁹³ N.C. GEN. STAT. § 14-3(c).

⁹⁴ At least 16 states and the District of Columbia have such laws (research on file with the authors).

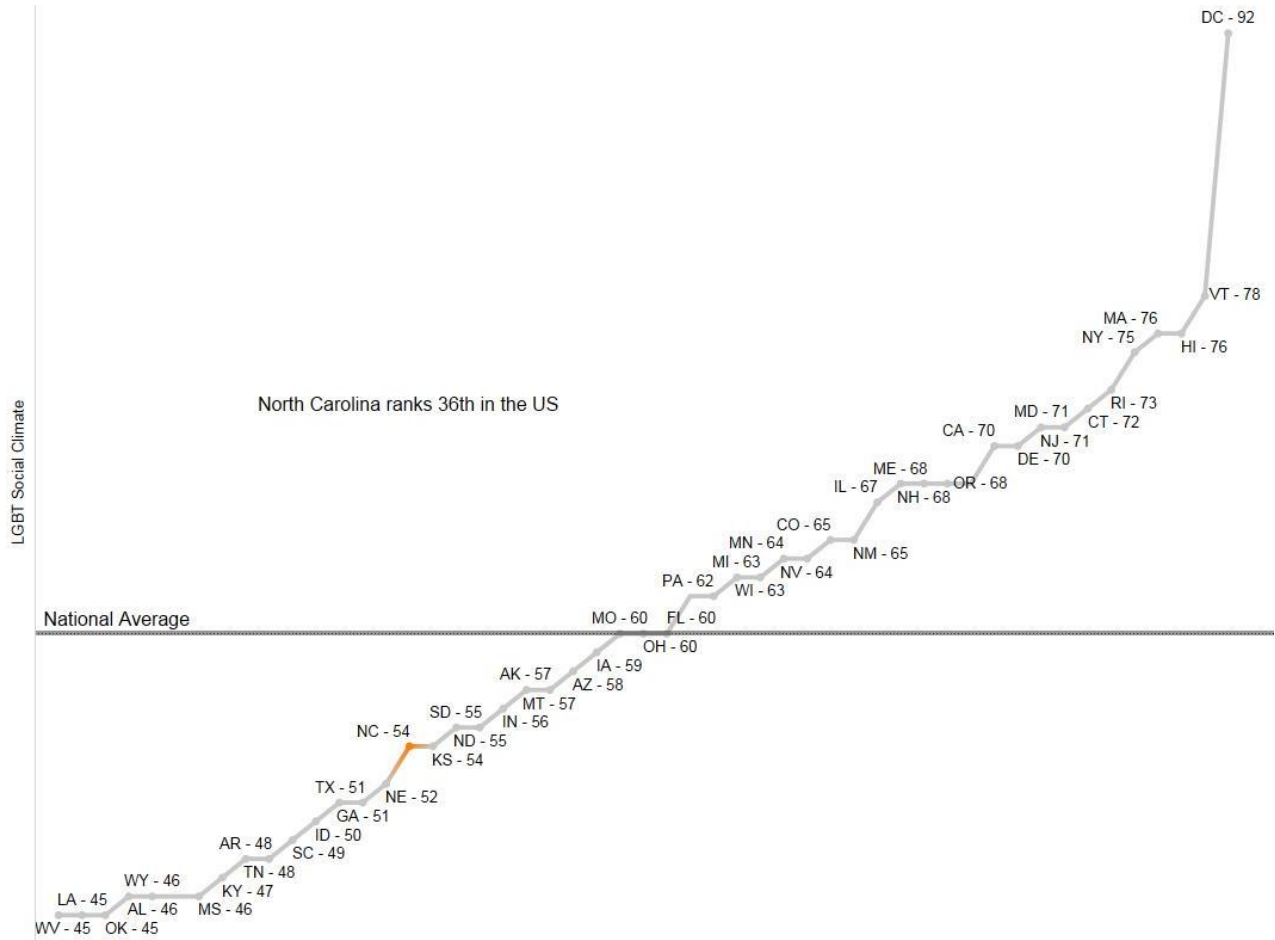
⁹⁵ At least 15 states and the District of Columbia have such laws (research on file with the authors).

⁹⁶ Four states in the U.S. and the District of Columbia have such bans, which generally prohibit therapists and other medical professionals from trying to change a youth’s sexual orientation or gender identity (research on file with the authors).

⁹⁷ HASENBUSH ET AL., *supra* note 1 at 5.

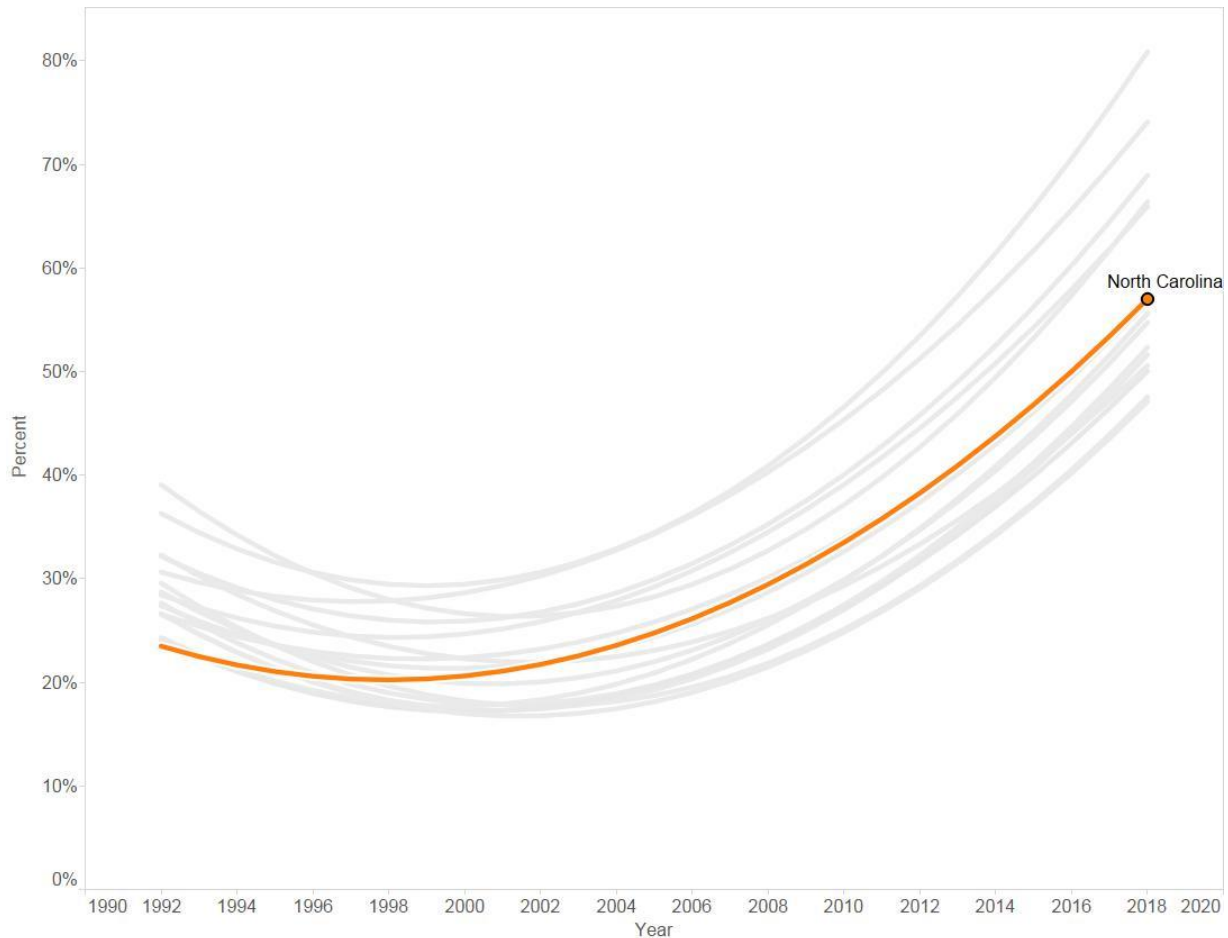
Columbia. North Carolina has a climate score of 54, placing the state below the national average of 60.

Figure I.d. LGBT Social & Political Climate Index



However, attitudes in North Carolina, like in other parts of the U.S., have positively changed over time. Figure 2 plots the trends in acceptance of marriage equality among the southern states highlighting North Carolina's dramatic increase from 1992 to the present day.⁹⁸

Figure I.e. Support for same-sex marriage in the South



In 1992, only 23% of North Carolina residents supported marriage equality, and attitudes did not substantially change until the early 2000s. Afterward, support began to rise to a present day estimate of 50% supporting marriage equality. If these trends continue in this way, then it is projected that 57% would support marriage equality by 2018.

⁹⁸ Changes in support for marriage equality are rooted in two causes: generational change and attitude change. ANDREW R. FLORES & SCOTT BARCLAY, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, TRENDS IN PUBLIC SUPPORT FOR MARRIAGE FOR SAME-SEX COUPLES BY STATE (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Trends-in-Public-Support-for-Same-Sex-Marriage-2004-2014.pdf>. Less than half of the changes over time are due to younger and more accepting generations replacing older ones. Gregory B. Lewis and Charles W. Gossett, *Changing Public Opinion on Same-Sex Marriage: The Case of California*, 36 POLITICS & POLICY 4 (2008).

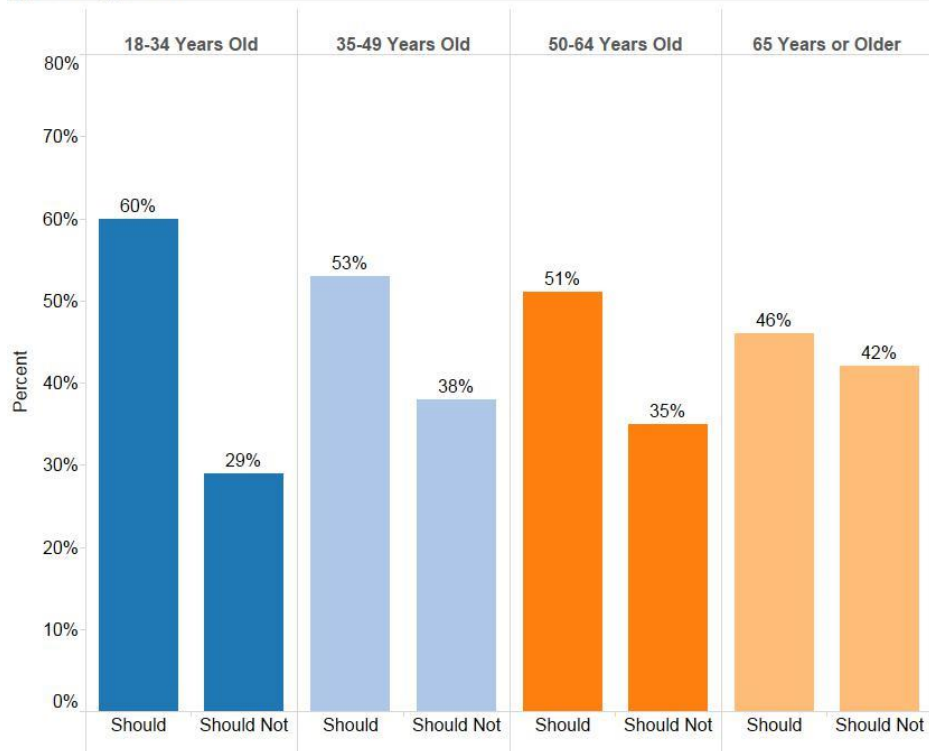
One major source of attitude change is personally knowing LGBT people because it can reduce LGBT prejudice. Personal contact with LGBT people may be a source of greater support for LGBT rights.⁹⁹ An April 2016 survey of North Carolina registered voters found that 86% of them know someone who is gay or lesbian and 25% know someone who is transgender.¹⁰⁰

Compared to national surveys, North Carolina registered voters are about as likely as others to know someone who is LGB. Of the available data, however, it appears that rates of knowing transgender people are greater in North Carolina than the national average.¹⁰¹

Figure I.f. LGBT people should be protected against discrimination by age groups

Source: SurveyUSA, April 2016

The new law specifically protects against discrimination based on a person's sex, race, religion, or nationality. It does not protect gays, lesbians, bisexuals, and transgender individuals against discrimination. Which is your view? Gays, lesbians, bisexuals and transgender individuals should also be protected or gays, lesbians, bisexuals and transgender individuals should not be specifically protected.



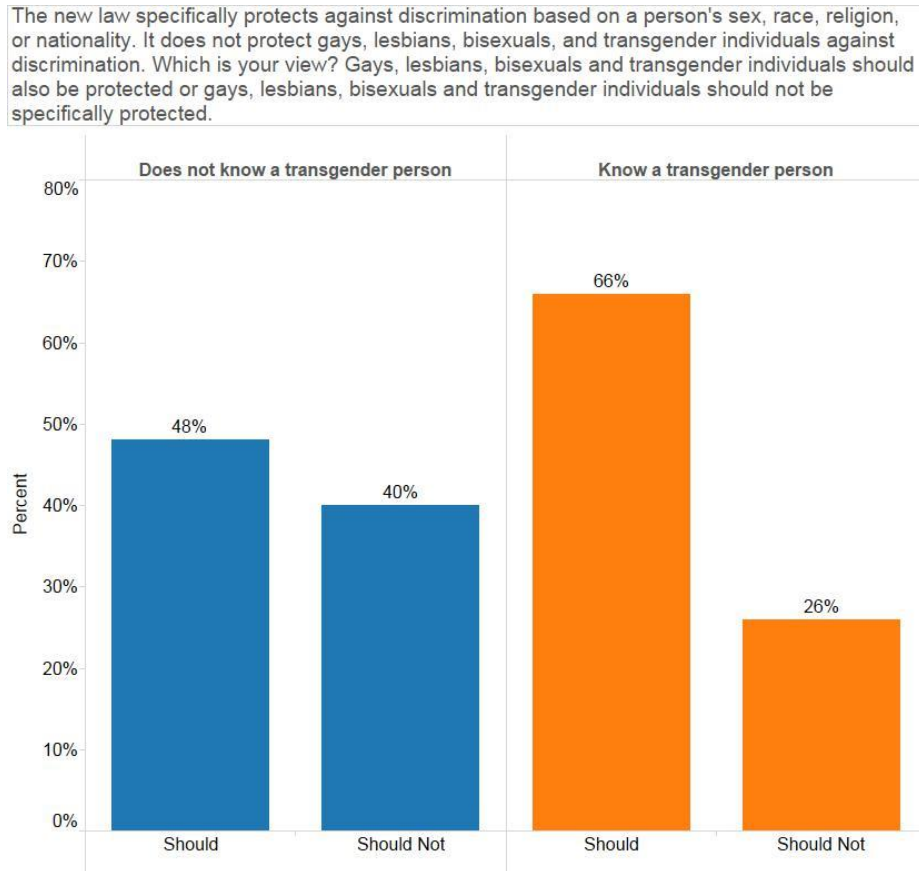
⁹⁹ See, e.g., Gregory B. Lewis, *The Friends and Family Plan: Contact with Gays and Support for Gay Rights*, 39 POLICY STUDIES J. 217 (2011).

¹⁰⁰ Results of SurveyUSA Election Poll #22836, SURVEY USA, Apr. 12, 2016, <http://www.surveyusa.com/client/PollPrint.aspx?g=7fa42c9f-a1bc-4cee-b3a4-26c8cd2c3a40&d=0>.

¹⁰¹ A note of caution should be made on drawing a complete comparison. The North Carolina survey asked “Do you personally know someone who is transgender?” compared to national surveys that have asked if people had close friends or family members who are transgender.

Previous estimates indicate that about 70% or more of North Carolina residents support LGBT-inclusive non-discrimination laws.¹⁰² An April 2016 survey¹⁰³ of North Carolina registered voters suggests that there is a clear majority of support but not as broad as previous estimates for North Carolina residents. Among registered voters, 52% think that sexual orientation and gender identity should be included as characteristics protected from discrimination while 36% of registered voters do not. Younger voters are vastly more supportive of including sexual orientation and gender identity protections in non-discrimination laws than older voters. Sixty percent of the 18-34-year-old voters believe LGBT people should be protected compared to 46% of voters who are 65 and older. While age matters, larger shares of every age group think that LGBT people should be protected than not be protected.

Figure I.g. LGBT people should be protected from discrimination by contact



Support for LGBT protections is also greatest among registered voters who know transgender people. Sixty-six percent of registered voters who know transgender people want LGBT

¹⁰² BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN NORTH CAROLINA (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/NC-Nondiscrimination-Oct-2014.pdf>; Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, 2015 RESEARCH & POLITICS 1 (2015).

¹⁰³ The April 2016 survey was conducted by SurveyUSA. They interviewed 900 North Carolina adults from 04/08/16 through 04/11/16. Of those contacted, 779 were registered to vote. This survey was conducted using a mixed mode over landline telephone, cell phone, and online. Respondents reachable on a home telephone were interviewed with a recorded voice. Cell phone interviews were conducted with a live voice or carried out online using a smart phone device.

protections compared to 48% of voters who do not know a transgender person. Even though voters who reported knowing a transgender person were only one-fourth of the electorate, those who have this contact are much more supportive of LGBT protections.

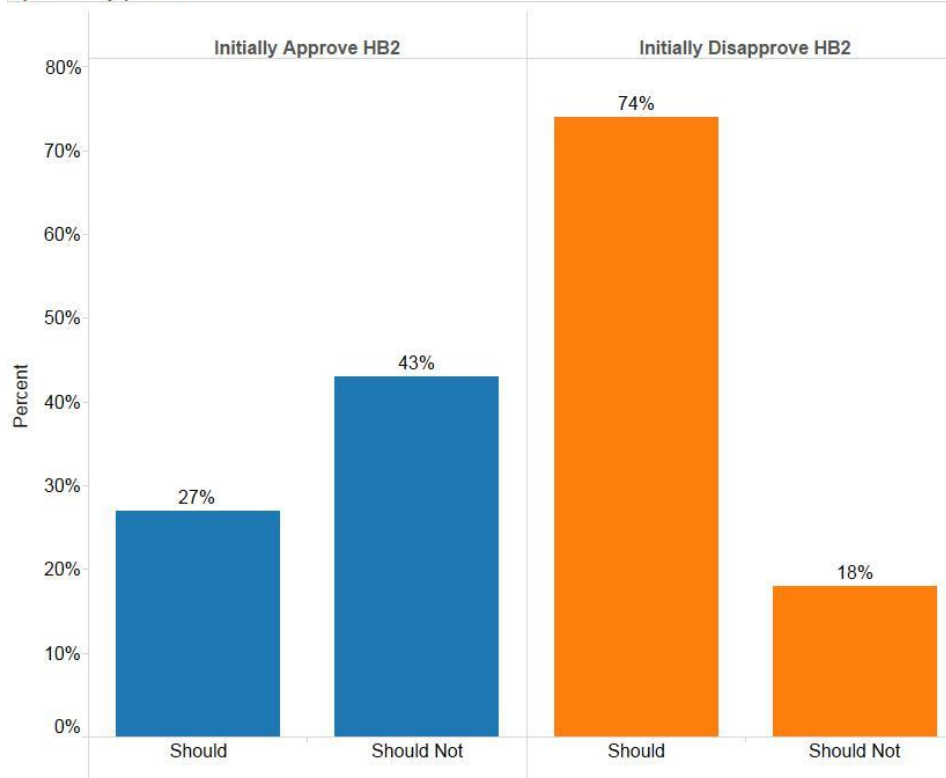
An April 2016 survey of registered voters in North Carolina found that 50% of registered voters oppose HB2 and only 38% support it. Voters who know a lot about HB2 (42% of voters) are slightly more opposed to it, with 55% opposed.¹⁰⁴ Opposition to HB2 was also higher among those who support non-discrimination protections for LGBT people, among Democrats and Independents, and among those who personally know a transgender person.

Among voters who opposed HB2, 74% believe that LGBT people should be protected compared to 27% of those who approved of HB2. This clear divide suggests that many people are aware of what HB2 is, and that their approval of the law is marked by their beliefs that LGBT people should or should not be protected from discrimination.

Figure I.h. LGBT people should be protected from discrimination by HB2 opinion

Source: SurveyUSA, April 2016

The new law specifically protects against discrimination based on a person's sex, race, religion, or nationality. It does not protect gays, lesbians, bisexuals, and transgender individuals against discrimination. Which is your view? Gays, lesbians, bisexuals and transgender individuals should also be protected or gays, lesbians, bisexuals and transgender individuals should not be specifically protected.

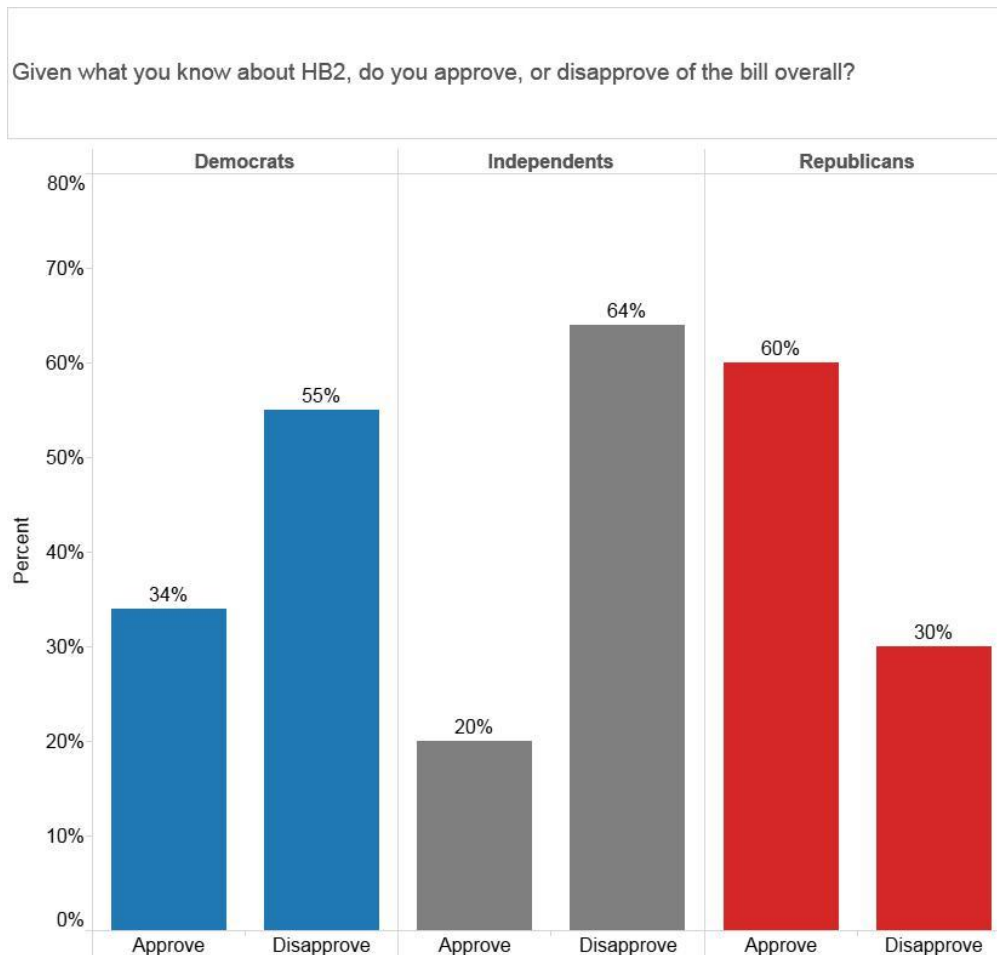


¹⁰⁴ About 59% of registered voters who know transgender people know a lot about HB2 compared to 32% of people who do not know a transgender person.

Support for HB2 is clearly related to the political parties with which voters identify. Republican voters tend to support the law with 60% supportive, compared to only 34% of Democrats and 20% of Independents. Roughly two-thirds of North Carolina voters are Democrats and Independents. Voters who do not identify with either political party tend to be the most opposed to HB2, which is unexpected because nationally, Democrats tend to be the most supportive of LGBT rights.

Figure I.i. Approval of HB2 among North Carolina registered voters by partisanship

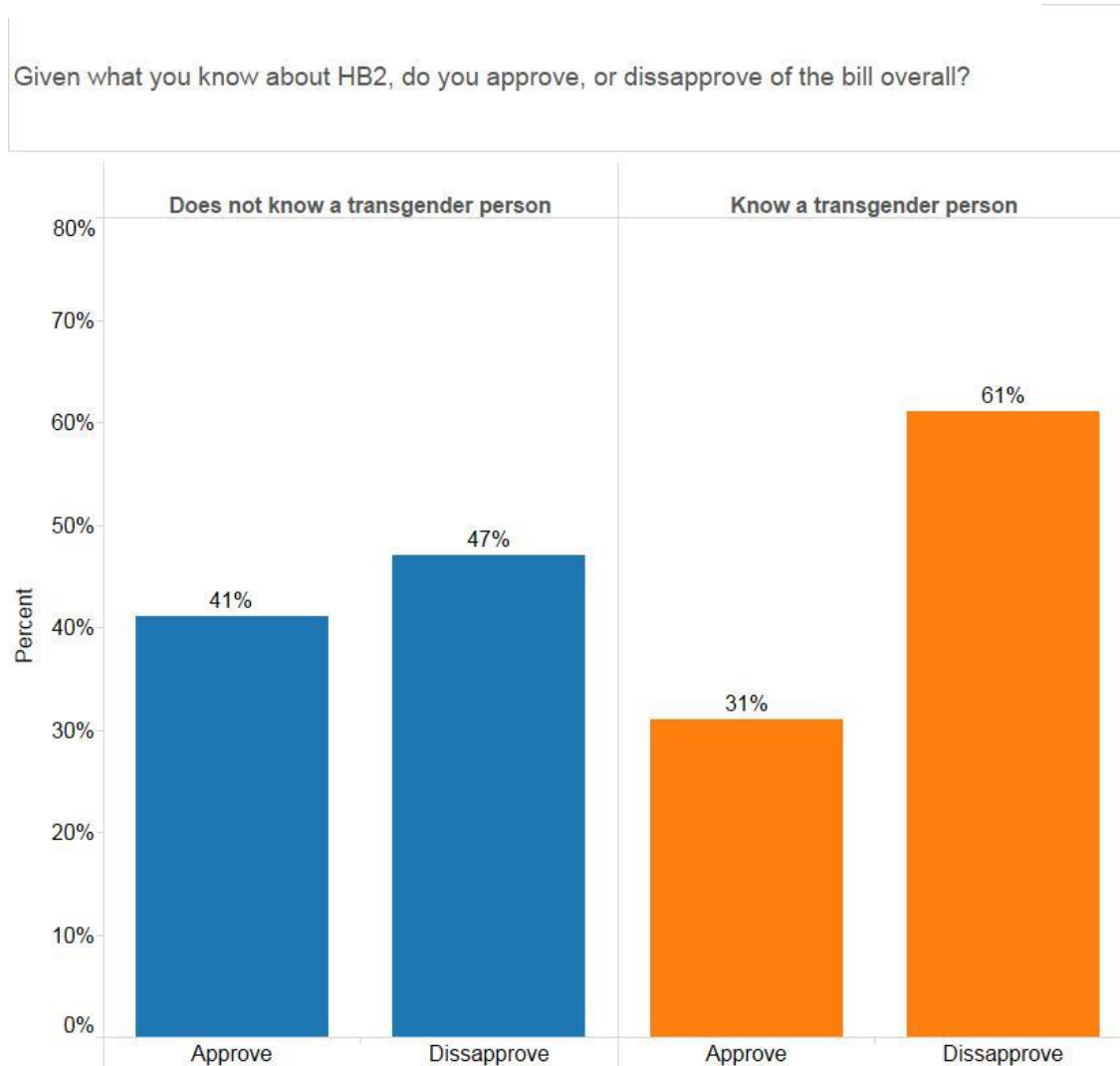
Source: SurveyUSA, April 2016



Opinions on HB2 also strongly relate to personally knowing transgender people. Among voters who know transgender people, 61% oppose HB2, and the gap between support and opposition is 30 percentage points. Among voters who do not know transgender people, only 47% are opposed, and the gap between support and opposition is six percentage points. In short, voters who know a transgender person are 1.7 times more likely to oppose HB2 than voters who do not.

Figure I.j. Approval of HB2 among North Carolina registered voters by contact

Source: SurveyUSA, April 2016

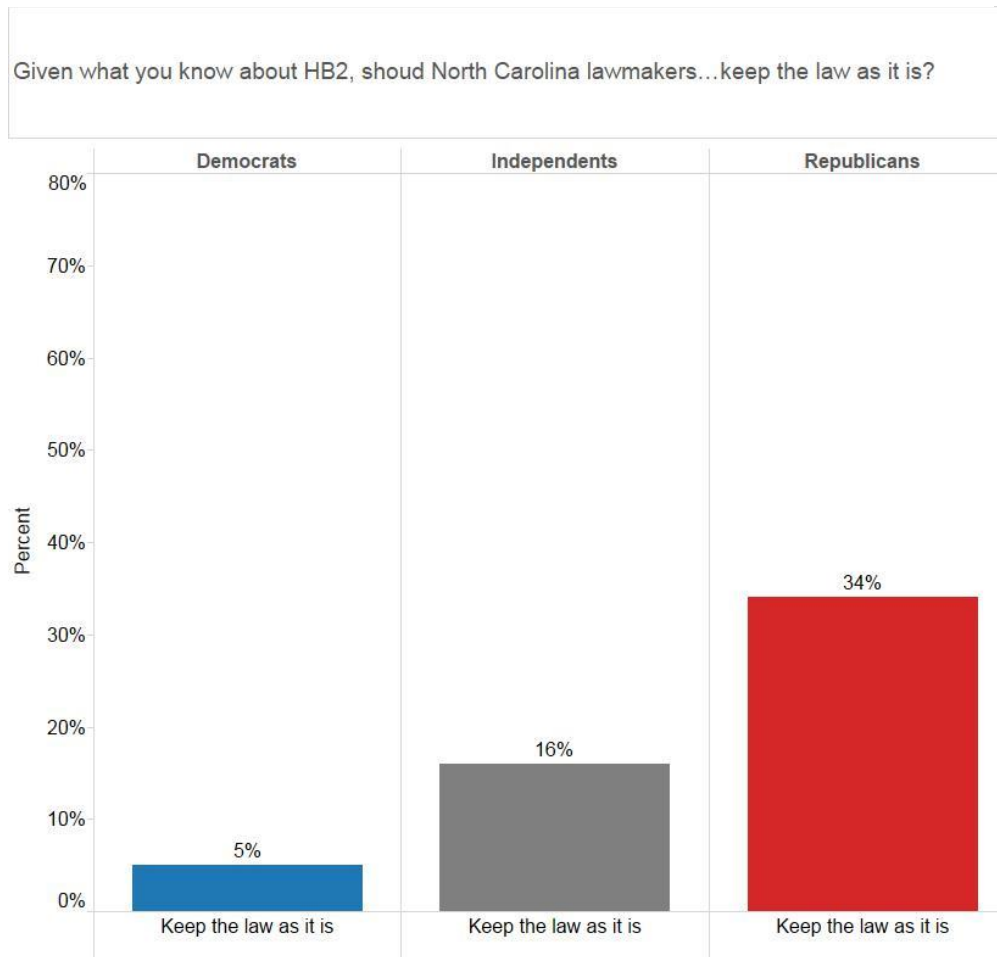


The April 2016 survey found that 37% of voters think HB2 should be repealed in its entirety, 20% think most of HB2 should be repealed except for the bathroom provision, 19% think there are other changes that should be made to HB2, and 18% think HB2 should remain as it currently is. Even among supporters of HB2, only 37% of them believe that the law should remain as it currently is.

Majorities of every partisan grouping think that there should be at least some changes to HB2. Five percent of Democratic voters think HB2 should stay intact with no changes, and 16% of Independent voters think the same. While Republican voters may have been the only partisans to have a majority in support of HB2, a minority (34%) of them think HB2 should remain as it currently is.

Figure I.k. Beliefs that HB2 should remain in place as it is by partisanship

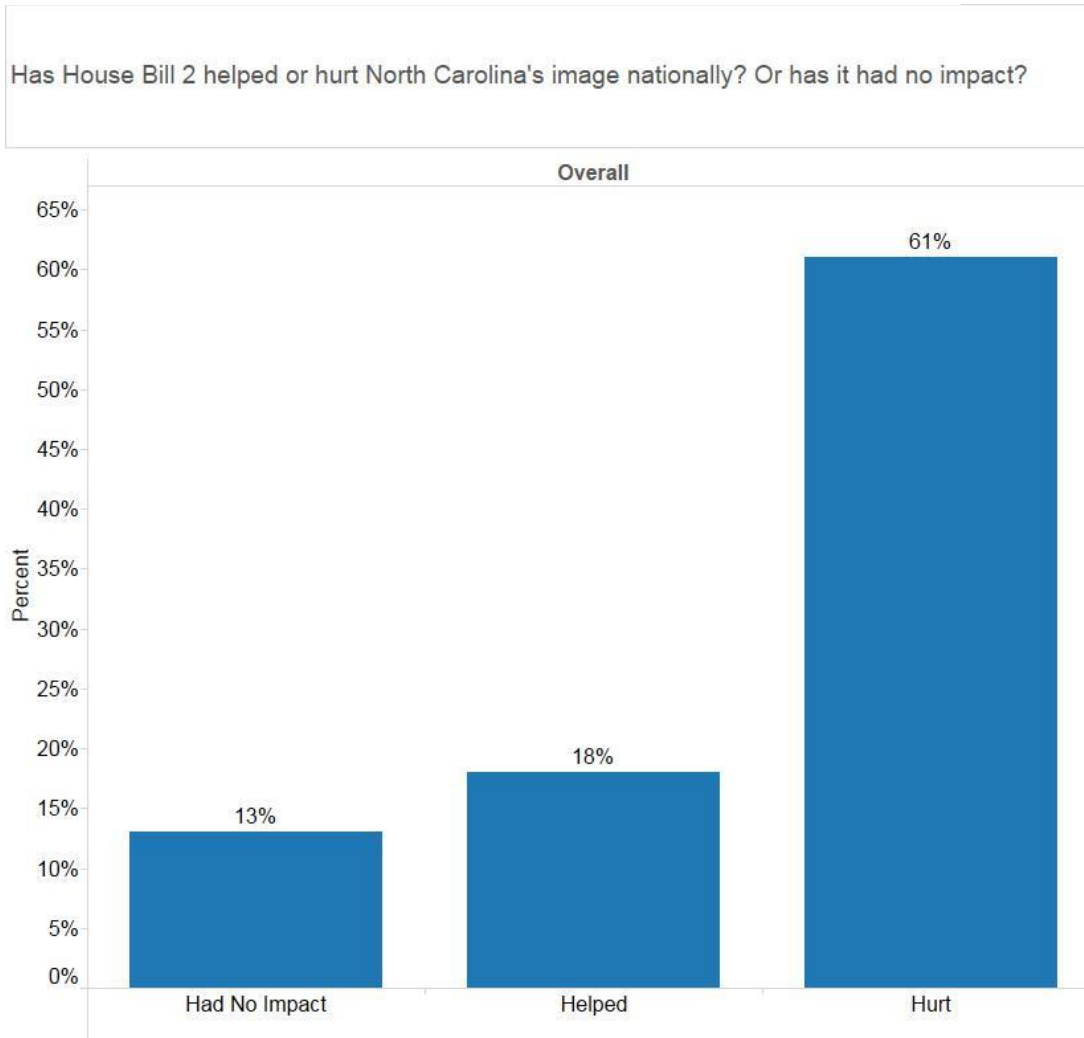
Source: SurveyUSA, April 2016



In reaction to HB2, 61% of North Carolina voters say the law has hurt the state's image to the rest of the country. Only 18% believe the law has helped the state's image, and 13% think HB2 has had no impact.

Figure I.I. Beliefs that HB2 has hurt North Carolina's image

Source: SurveyUSA, April 2016



Similarly, 61% of North Carolina voters think HB2 has hurt North Carolina's ability to attract and keep businesses while only 11% believe that it has helped and 19% think the law has had no impact.

SECTION II. DISCRIMINATION

By discriminating against transgender people, HB2 conflicts with federal laws, laws of a number of states and localities, the laws of other countries such as Great Britain, the corporate policies of most large companies in the U.S., and the norms of most people in the U.S. As a result of the conflicts with non-discrimination laws, policies, and norms, North Carolina is already experiencing or risking the following economic impacts:

- Potential Loss of Federal Grants
- Costs of Defending Litigation and Enforcement Actions Based on Federal Laws
- Loss of Government Travel and Private Tourism
- Loss of Business Investment

A. Potential Loss of Federal Grants

HB2 requires state and local government entities and public educational institutions to restrict use of restrooms according to biological sex. This policy is in conflict with several federal laws, and, if enacted, could lead to litigation, administrative enforcement, and other actions that could result in costs and lost revenue to the State of North Carolina. On May 4, 2016, the Department of Justice notified Governor Pat McCrory that HB2 violates Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, and the Violence Against Women Act.¹⁰⁵ The Department of Justice stated in the notice that state officials have until May 9, 2016 to confirm that they will not enforce HB2.¹⁰⁶

The potential loss of federal funding includes the following:¹⁰⁷

- Loss of federal educational funding of up to \$4.7 billion annually as a result of Title IX violations;
- Loss of federal contracts to state and local government entities of an estimated \$35 million to \$65 million annually as a result of Executive Order 13672 violations;
- Loss of federal funding to support NCWorks of up to \$88 million annually as a result of violation of the Workforce Innovation and Opportunity Act;
- Loss of federal grants authorized by the Violence Against Women Act of an estimated \$5 million to \$5.6 million or more annually;
- Loss of federal funding from the U.S. Department of Health and Human Services as a result of Affordable Care Act Violations; and

¹⁰⁵ Jim Morrill, *US Justice Department: HB2 Violates Federal Civil Rights Act*, CHARLOTTEOBSERVER.COM, May 4, 2016, <http://www.charlotteobserver.com/news/politics-government/article75601912.html>.

¹⁰⁶ Id.

¹⁰⁷ See CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE FISCAL IMPACT OF NORTH CAROLINA'S HB2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/The-Fiscal-Impact-of-North-Carolina%E2%80%99s-HB2.pdf>.

- Loss of federal funding from the U.S. Department of Housing and Urban Development as a result of violations of the Equal Access Rule promulgated under the Housing Act of 1949.

B. Costs of Litigation and Enforcement Actions

By creating conflicts with federal law, HB2 also exposes state and local governments to litigation costs, including a challenge to the law and individual enforcement actions. Days after HB2 was enacted, legal organizations filed suit against state government officials and the University of North Carolina in federal district court on grounds that the law violates the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment and Title IX.¹⁰⁸ The State of North Carolina will incur the costs of defending the law in court against the challenge.

Further, all seven of the federal laws discussed in Section II.A allow individuals to file administrative complaints of discrimination.¹⁰⁹ For example, under Title IX, any individual is permitted to file a complaint alleging that a school policy violates the law; the person need not have experienced discrimination under the policy.¹¹⁰ Similarly, any individual may file a complaint under the Workforce Innovation and Opportunity Act if he or she believes that any specific class of individuals has been subjected to discrimination.¹¹¹ Complaints filed under the laws trigger administrative enforcement procedures, such as investigations and compliance reviews.¹¹² These procedures may be burdensome to state and local entities, particularly those that are under-resourced and understaffed.

¹⁰⁸ Complaint, Carcaño v. McCrory, No. 1:16-cv-236 (M.D.N.C. Mar. 28, 2016).

¹⁰⁹ Office for Civil Rights, *How to File a Discrimination Complaint with the Office for Civil Rights*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html> (last visited Mar. 31, 2016); Office of Federal Contract Compliance Programs, *Executive Order 11246*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ofccp/regs/compliance/fs11246.htm> (last visited Mar. 31, 2016); 29 C.F.R. § 38.70 (2015); U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, FREQUENTLY ASK QUESTIONS: NONDISCRIMINATION GRANT CONDITION IN THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 9 (2014), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>; 42 U.S.C. § 2000e-5(b); Office for Civil Rights, *OCR Enforcement Under Section 1557 of the Affordable Care Act Sex Discrimination Cases*, DEP'T OF HEALTH AND HUMAN SERVICES, <http://www.hhs.gov/civil-rights/for-individuals/section-1557/ocr-enforcement-section-1557-aca-sex-discrimination/index.html> (last visited Apr. 14, 2016); 77 Fed. Reg. 5671 (Feb. 3, 2012); U.S. Dep't of Hous. & Urban Dev., *Filing Your Housing Discrimination Complaint Online*, HUD.GOV, http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination (last visited May 3, 2016).

¹¹⁰ Office for Civil Rights, *How to File a Discrimination Complaint with the Office for Civil Rights*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html> (last visited Mar. 31, 2016).

¹¹¹ 29 C.F.R. § 38.70 (2015).

¹¹² OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CASE PROCESSING MANUAL 17-28 (2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>; OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S. DEP'T OF LABOR, FEDERAL CONTRACT COMPLIANCE MANUAL (2014), *available at* http://www.dol.gov/ofccp/regs/compliance/fccm/FCCM_FINAL_508c.pdf; 29 C.F.R. §§ 38.70-38.101 (2015). U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, FREQUENTLY ASK QUESTIONS: NONDISCRIMINATION GRANT CONDITION IN THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 9 (2014),

In addition, all seven federal laws allow the Department of Justice (or another federal agency) to bring suit against entities that fail to comply with the laws.¹¹³ Further, three of these laws, Title IX, Title VII, and the Affordable Care Act, provide a private right of action allowing individuals who have been discriminated against to file lawsuits alleging discrimination directly in court.¹¹⁴ State and local government entities are not immune from suits brought under Title IX and Title VII, as the U.S. Supreme Court has held that Congress validly abrogated states' Eleventh Amendment sovereign immunity under both laws.¹¹⁵ The same would likely be true for suits brought under the Affordable Care Act, since the statute expressly incorporates the scope and enforcement of Title IX protections.¹¹⁶

A case recently filed under Title IX in Virginia demonstrates that parents and legal organizations are willing to take schools to court for not allowing transgender students to use the restroom consistent with their gender identity.¹¹⁷ In addition, employees may file lawsuits under Title VII if their employers refuse to allow them to use the restroom consistent with their gender identity. Several federal courts and the U.S. Equal Employment Opportunity Commission have held that gender identity discrimination is a form of sex discrimination prohibited by Title VII.¹¹⁸ The Equal Employment Opportunity Commission and the Department of Justice have specifically interpreted Title VII to require employers to provide employees access to workplace restrooms and changing facilities consistent with their gender identity.¹¹⁹ In line with these interpretations, the Department of Justice has issued a notification to Governor Pat McCrory stating that HB2 violates the non-discrimination requirements of Title VII.¹²⁰

With thousands of transgender youth and adults in North Carolina, the costs and burden associated with litigation and administrative enforcement could be significant.

<https://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>; 42 U.S.C. § 2000e-5(b); 80 Fed. Reg. 54192 (Sept. 8, 2015); 77 Fed. Reg. 5671 (Feb. 3, 2012).

¹¹³ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CASE PROCESSING MANUAL 28 (2015), *available at* <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>; Exec. Order. No. 11,246, § 209(2)-(4), 3 C.F.R. 339 (1964-1965) (as amended); 29 U.S. § 3248(c); 42 U.S.C. §§ 13925(b)(13)(C); 3789d(c)(2)(E); 42 U.S.C. § 2000e-5(f); 80 Fed. Reg. 54,191-54,192 (Sept. 8, 2015); 42 U.S.C. § 5309.

¹¹⁴ *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979); 80 Fed. Reg. 54,192 (Sept. 8, 2015).

¹¹⁵ *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60 (1992); *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976).

¹¹⁶ 42 U.S.C. § 18116; 80 Fed. Reg. 54192 (Sept. 8, 2015).

¹¹⁷ In that case, a Virginia district court found in favor of the school district, and on appeal, the Fourth Circuit ruled that the trial court improperly denied deference to the Department of Education's interpretation of Title IX that requires transgender students be given permission to use shared restrooms in conformity with their gender identity. The case has been remanded to the trial court to be reviewed under the Department of Education's interpretation of Title IX. *G.G. v. Gloucester County Sch. Bd.*, No. 15-2056 (4th Cir. Apr. 19, 2016), *available at* <http://www.ca4.uscourts.gov/Opinions/Published/152056.P.pdf>.

¹¹⁸ *Glenn v. Brumby*, 663 F.3d 1312m 1317 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729, 733 (6th Cir. 2005); *City of Salem*, 378 F.3d 566 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 307-08 (D.D.C. 2008); *Macy v. Holder*, EEOC App. No. 012012821, 2012 WL 1435995, at *1 (Apr. 20, 2012).

¹¹⁹ Attorney General Memorandum, Dec. 15, 2014, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*; *Lusardi v. McHugh*, EEOC App. No. 0120133395 (Apr. 1, 2015).

¹²⁰ *See* Section II.A, *supra*.

C. Impact of Government Travel Bans and Loss of Sports Events, Concerts, Conferences, and Tourism

As a result of HB2, the state will potentially lose tens of millions in economic activity due to state and local government travel bans, conferences, sporting events, and concerts being pulled from the state, and a loss of tourism. This economic activity would have supported jobs in the state and generated state and local tax revenue.

To date, at least 5 states, the District of Columbia,¹²¹ and 21 localities have adopted travel bans as a result of HB2, prohibiting all taxpayer-funded government travel to the state. These states and localities include: Connecticut,¹²² New York State,¹²³ Washington State,¹²⁴ Minnesota,¹²⁵ Vermont,¹²⁶ New York City,¹²⁷ Los Angeles,¹²⁸ San Francisco,¹²⁹ Atlanta,¹³⁰ Seattle,¹³¹ Chicago,¹³² Philadelphia,¹³³ Boston,¹³⁴ Portland,¹³⁵ Madison,¹³⁶ Dane County, Wisc.,¹³⁷

¹²¹ Andrew Giambrone, *Bowser Bans Official Travel to North Carolina for D.C. Government Employees*, WASHINGTONCITYPAPER.COM, Apr. 1, 2016, <http://www.washingtoncitypaper.com/blogs/citydesk/2016/04/01/bowser-bans-official-travel-to-north-carolina-for-d-c-government-employees/>.

¹²² Conn. Exec. Order No. 52 (Mar. 31, 2016), available at http://portal.ct.gov/Departments_and_Agencies/Office_of_the_Governor/Press_Room/Press_Releases/2016/03-2016/Gov__Malloy_Signs_Executive_Order_Banning_State-Funded_Travel_to_North_Carolina/.

¹²³ N.Y. Exec. Order No. 155 (Mar. 28, 2016), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_155_0.pdf.

¹²⁴ Walker Orenstein, *Washington Governor Bans State Travel to North Carolina*, WASHINGTONPOST.COM, Mar. 29, 2016, https://www.washingtonpost.com/business/washington-governor-bans-state-travel-to-north-carolina/2016/03/29/85702366-f611-11e5-958d-d038dac6e718_story.html.

¹²⁵ *Governor Bans Nonessential Travel to North Carolina*, MPRNEWS.ORG, Apr. 2, 2016, <http://www.mprnews.org/story/2016/04/02/governor-bans-nonessential-travel-to-north-carolina>.

¹²⁶ Associated Press, *Vermont Governor Bans State Travel to North Carolina*, WASHINGTONTIMES.COM, Mar. 29, 2016, <http://www.washingtontimes.com/news/2016/mar/29/vermont-governor-bans-state-travel-to-north-caroli/>.

¹²⁷ Jason Axelrod, *Over 20 Cities Ban Publicly-Funded Travel to North Carolina, Mississippi*, AMERICANCITYANDCOUNTY.COM, Apr. 19, 2016, <http://americancityandcounty.com/administration/over-20-cities-ban-publicly-funded-travel-north-carolina-mississippi>.

¹²⁸ Id.

¹²⁹ Niraj Chokshi, *San Francisco Mayor Bars City Workers' Travel to North Carolina over Transgender Bathroom Law*, WASHINGTONPOST.COM, Mar. 26, 2016, <https://www.washingtonpost.com/news/morning-mix/wp/2016/03/26/san-francisco-mayor-bars-city-workers-travel-to-north-carolina-over-transgender-bathroom-law/>.

¹³⁰ *Atlanta Mayor Bans Travel to North Carolina*, FOX5ATLANTA.COM, Apr. 4, 2016, <http://www.fox5atlanta.com/news/117023493-story>.

¹³¹ Associated Press, *The Latest: NY Governor, Seattle Mayor Ban Travel to NC*, ABCNEWS.GO.COM, Mar. 28, 2016, <http://abcnews.go.com/US/wireStory/latest-lawsuit-carolina-anti-discrimination-law-37975011>.

¹³² Greg Hinz, *Emanuel to Ban City Travel to North Carolina in Gay Rights Flap*, CHICAGOBUSINESS.COM, Mar. 30, 2016, <http://www.chicagobusiness.com/article/20160330/BLOGS02/160339966/emanuel-to-ban-city-travel-to-north-carolina-in-gay-rights-flap>.

¹³³ David Chang, *Philly Mayor Jim Kenney Bans City-Funded Travel to North Carolina, Mississippi in Aftermath of Controversial LGBT Laws*, NBCPhiladelphia.com, Apr. 20, 2016, <http://www.nbcphiladelphia.com/news/local/Mayor-Jim-Kenney-Philadelphia-LGBT-North-Carolina-Mississippi--376470201.html>.

Providence,¹³⁸ Dayton,¹³⁹ Cincinnati,¹⁴⁰ Columbus,¹⁴¹ Franklin County, Oh.,¹⁴² Cuyahoga County, Oh.,¹⁴³ Summit County, Oh.,¹⁴⁴ Royal Oak, Mich.,¹⁴⁵ Washtenaw County, Mich.,¹⁴⁶ Wilton Manors, Fla.,¹⁴⁷ and West Palm Beach.¹⁴⁸ The California legislature is currently considering a similar ban that would apply to North Carolina and any other states to pass laws that discriminate against LGBT people.¹⁴⁹

In addition to the government travel bans, private individuals might also choose not to travel to North Carolina as a result of HB2. For example, Great Britain has issued a travel advisory to the LGBT community, stating that LGBT travelers to the U.S. may be affected by laws in North Carolina and Mississippi, which may discourage overseas travelers from visiting the state.¹⁵⁰ The High Point Furniture Market has stated that it expects that “hundreds, and perhaps thousands” of its customers will not attend its annual event in North Carolina this year.¹⁵¹ In April 2016, the

¹³⁴ Andrew Ryan & Meghan E. Irons, *Boston City Council Passes Travel Ban to North Carolina*, BOSTONGLOBE.COM, Mar. 30, 2016, <https://www.bostonglobe.com/2016/03/30/boston-city-council-passes-travel-ban-north-carolina/UxprMRTkT5Jwv9IqneZjYN/story.html>.

¹³⁵ Nate Hansen, *Portland City Council Passes North Carolina Travel Ban*, KGW.COM, Mar. 30, 2016, <http://www.kgw.com/news/politics/portland-city-council-passes-north-carolina-travel-ban/109169329>.

¹³⁶ Bill Novak, *Paul Soglin Bans City Staff Travel to North Carolina, Citing ‘State-Sanctioned LGBT Discrimination’*, WISCONSIN STATE J., Apr. 18, 2016, http://host.madison.com/wsj/news/local/govt-and-politics/paul-soglin-bans-city-staff-travel-to-north-carolina-citing/article_b19bfd6-c018-5c3d-b4ef-f3f6b4eee8b7.html.

¹³⁷ Id.

¹³⁸ *Providence Mayor Elorza Bans City Funded Travel to North Carolina and Mississippi*, 630WPRO.COM, Apr. 15, 2016, <http://www.630wpro.com/2016/04/15/providence-mayor-elorza-bans-city-funded-travel-to-north-carolina-and-mississippi/>.

¹³⁹ Associated Press, *City of Dayton Bans Government Travel to North Carolina, Mississippi*, WYSO.ORG, Apr. 11, 2016, <http://wyso.org/post/city-dayton-bans-government-travel-north-carolina-mississippi#stream/0>.

¹⁴⁰ Sharon Coolidge, *Cincinnati Set to Ban Government Travel to N.C., Miss.*, CINCINNATI.COM, Apr. 11, 2016, <http://www.cincinnati.com/story/news/politics/2016/04/11/cincinnati-set-ban-government-travel-nc-miss/82887850/>.

¹⁴¹ Lucas Sullivan, *Columbus, Franklin County to Curtail Travel to North Carolina*, DISPATCH.COM, Apr. 22, 2016, <http://www.dispatch.com/content/stories/local/2016/04/17/columbus-travel-ban.html>.

¹⁴² Id.

¹⁴³ Karen Farkas, *Cuyahoga County Bans Non-Essential Government Travel to North Carolina*, CLEVELAND.COM, Apr. 6, 2016, http://www.cleveland.com/cuyahoga-county/index.ssf/2016/04/cuyahoga_county_executive_bans_official_travel_to_north_carolina.html.

¹⁴⁴ *N.C. Travel-Ban Count Mounts, Now at 18 Cities*, 12NEWS.COM, Apr. 14, 2016, <http://www.12news.com/news/nation-now/nc-travelban-count-mounts-now-at-18-cities/134115094>.

¹⁴⁵ Id.

¹⁴⁶ Ryan Stanton, *Washtenaw County Joining Fight against North Carolina’s Anti-LGBT Law*, MLIVE.COM, Apr. 21, 2016, http://www.mlive.com/news/ann-arbor/index.ssf/2016/04/washtenaw_county_joining_fight.html.

¹⁴⁷ *The City of Wilton Manors Becomes First Broward City to Ban Government Travel to North Carolina*, MISSISSIPPI, PRNEWswire.COM, Apr. 15, 2016, <http://www.prnewswire.com/news-releases/the-city-of-wilton-manors-becomes-first-broward-city-to-ban-government-travel-to-north-carolina-mississippi-300252405.html>.

¹⁴⁸ Jimmie Johnson, *West Palm Beach Mayor Bans Work-Related Travel to NC*, WPFb.COM, Mar. 31, 2016, <http://www.wpbf.com/news/west-palm-beach-mayor-bans-workrelated-travel-to-nc/38768808>.

¹⁴⁹ A.B. 1887, 2015-2016 Ca. Leg., Reg. Sess. (Ca. 2016).

¹⁵⁰ Peter Holley, *Britain Issues Warning for LGBT Travelers Visiting North Carolina and Mississippi*, WASHINGTONPOST.COM, Apr. 20, 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/04/20/britain-issues-warning-for-lgbt-travelers-visiting-north-carolina-and-mississippi/>.

¹⁵¹ WNCN Staff, *High Point Furniture Market Opens, Concerns about HB2 Remain*, WNCN.COM, Apr. 17, 2016.

Center for American Progress compiled a list of all events and conferences that had been cancelled or may be cancelled as a result of HB2¹⁵² including:

- Bruce Springsteen cancelled his Greensboro concert.¹⁵³
- The Charlotte Regional Visitors Authority reported that the city has lost 13 conventions as a result of HB2.¹⁵⁴
- The Greater Raleigh Convention and Visitors Bureau reported that four groups cancelled conferences scheduled in Wake County, which would have brought an economic boost of \$732,000.¹⁵⁵ In addition, 16 other groups were rethinking their plans hold events there. The Bureau estimated that the events would have an economic impact of \$24 million.¹⁵⁶
- The NCAA stated that they may consider moving tournament games scheduled in North Carolina in 2017 and 2018 as a result of HB2.¹⁵⁷
- The NBA expressed concern over HB2, saying the law “runs counter to its values,” but did not state whether it would move its All-Star Game scheduled next year in Charlotte.¹⁵⁸
- ESPN, too, said that it values “diversity and inclusion” in response to HB2, and stated that it will evaluate all its options when deciding where to host its Summer X Games.¹⁵⁹

Domestic and international travelers spent \$21.0 billion in North Carolina during 2013, directly supporting 206,700 jobs.¹⁶⁰ These jobs composed 5.1% of total state non-agricultural employment in 2013.¹⁶¹ While the counties most supported by domestic and international travel in North Carolina were Mecklenburg County (\$4.6 billion), Wake County (\$1.9 billion), and Guilford County (\$1.2 billion), forty of North Carolina’s 100 counties received over \$100 million in domestic travelers’ expenditures in 2013 and 34 counties indicated that one thousand or more jobs were directly supported by domestic travelers during 2013.¹⁶² On average, every \$101,395 spent by domestic and international travelers in North Carolina during 2013 supported

¹⁵² Shabab Ahmed Mirza, Sarah McBride, Laura E. Durso, North Carolina’s Discriminatory H.B. 2 Threatens More Than Half Billion Dollars in Economic Activity, Apr. 13, 2016, americanprogress.org, <https://www.americanprogress.org/issues/lgbt/news/2016/04/13/135391/north-carolinas-discriminatory-h-b-2-threatens-more-than-half-billion-dollars-in-economic-activity/>.

¹⁵³ *A Statement from Bruce Springsteen on North Carolina*, BRUCESPRINGSTEEN.COM, Apr. 8, 2016, <http://brucespringsteen.net/news/2016/a-statement-from-bruce-springsteen-on-north-carolina>.

¹⁵⁴ David Perlmutter, *13 Groups Drop Plans for Charlotte Events, More Could Come Over HB2*, CHARLOTTEOBSERVER.COM, Apr. 8, 2016, <http://www.charlotteobserver.com/news/local/article70867152.html>.

¹⁵⁵ *Id.*; *Raleigh Visitors Bureau Says HB2 is Affecting Wake Economy*, NEWSOBSERVER.COM, Apr. 11, 2016, <http://www.newsobserver.com/news/business/article71223992.html>.

¹⁵⁶ *Id.*

¹⁵⁷ Katerine Peralta & Rick Rothacker, *Red Hat, Biogen, NCAA Speak Out on NC Law Restricting LGBT Protections*, NEWSOBSERVER.COM, Mar. 24, 2016, <http://www.newsobserver.com/news/business/article68093347.html>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ U.S. TRAVEL ASS’N, *THE ECONOMIC IMPACT OF TRAVEL ON NORTH CAROLINA COUNTIES 2* (2014).

¹⁶¹ *Id.*

¹⁶² *Id.*

one job.¹⁶³ Accordingly, even a modest impact on travel to North Carolina can impact economic activity and job creation in many parts of the state.¹⁶⁴

As a result of government travel bans and the loss of private tourism, the state will likely also experience a loss in sales tax revenue. In addition to North Carolina's combined average tax rate of 6.9%,¹⁶⁵ 81 counties and 96 municipalities in North Carolina have been authorized to collect additional lodging taxes.¹⁶⁶ In 2014, travel spending in North Carolina generated an estimated \$1.7 billion in state and local sales tax revenue.¹⁶⁷

D. Loss of Business Investment

Several businesses have taken actions in response to HB2 that will reduce corporate investment in North Carolina, and will result in a loss of new jobs for North Carolina workers. The lost investment would have supported 1,250 new jobs for North Carolina residents, and the at-risk funding would support an additional 550 jobs. The new jobs would have paid over \$40 million annually in salaries. Investment that has been lost includes:

- PayPal canceled plans to build a \$3.6 million dollar facility that would have brought 400 new jobs to North Carolina with an annual payroll of nearly \$20.4 million.¹⁶⁸
- Deutsche Bank froze plans to create 250 new jobs at its Cary, North Carolina facility.¹⁶⁹ The jobs would have paid an annual average salary of \$85,600 for a total economic impact of \$21.4 million annually.¹⁷⁰
- A tech company that had planned to bring 500 jobs to Buncombe County said it would only continue with its plan if changes were made to HB2.¹⁷¹]
- Lionsgate cancelled plans to film a new television show in North Carolina that would have supported more than 100 workers in the state.¹⁷²

¹⁶³ Id.

¹⁶⁴ Id.

¹⁶⁵ Scott Drenkard & Jared Walczak, *State and Local Sales Tax Rates in 2016* TAX FOUNDATION 7, http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation_FF504.pdf (last visited Apr. 12, 2016).

¹⁶⁶ MAGELLAN STRATEGY GROUP, 2016 PROFILE OF NORTH CAROLINA OCCUPANCY TAXES AND THEIR ALLOCATION 4 (2106),

http://c.ymcdn.com/sites/www.ncrla.org/resource/resmgr/Advocacy/UPDATED_NC_Occupancy_Tax_Pro.pdf.

¹⁶⁷ VISIT NORTH CAROLINA, FAST FACTS: 2014 IMPACT OF VISITOR SPENDING 1 (2015),

<http://partners.visitnc.com/uploads/fast-facts/2014-Visitor-Spending-Fast-Facts.pdf>.

¹⁶⁸ Ken Elkins and Ashley Fahey, *PayPal Inc. Opening Global Operations Center in Charlotte, Creating 400 Jobs and Investing \$3.6M*, BIZJOURNALS.COM, Mar. 18, 2016,

<http://www.bizjournals.com/charlotte/news/2016/03/18/sourcespaypal-to-announce-300-jobs-in-new.html>; Dan Schulman, *PayPal Withdraws Plan for Charlotte Expansion*, PAYPAL.COM, Apr. 5, 2016,

<https://www.paypal.com/stories/us/paypal-withdraws-plan-for-charlotte-expansion>.

¹⁶⁹ David Bracken & Paula A. Specht, *Economic Impact of HB2 Mushrooms in the Triangle*, newsobserver.com, Apr. 12, 2016, <http://www.newsobserver.com/news/business/article71314817.html> .

¹⁷⁰ Id.

¹⁷¹ Mark Barrett, *Chamber CEO: HB2 May End Buncombe Chance at 500 Jobs*, CITIZEN-TIMES.COM, Apr. 8, 2016, <http://www.citizen-times.com/story/news/local/2016/04/08/chamber-ceo-hb2-may-end-buncombe-chance-500-jobs/82787748/>.

In addition, several other companies are reconsidering activities they had planned in North Carolina because of HB2, including:

- Braeburn Pharmaceuticals announced that it would reconsider its planned expansion into North Carolina.¹⁷³ The expansion would create 52 new jobs over five years, and amount to an investment of \$20 million or more.¹⁷⁴
- Red Ventures also said it would reconsider its expansion into the state, which would bring 500 new jobs.¹⁷⁵

The lost economic activity would have supported hundreds of jobs and generated sales and income tax revenue in the state.

¹⁷² Assoc. Press, *Lionsgate Takes 100 Jobs from NC due to HB2*, FOX46CHARLOTTE.COM, Apr. 4, 2016, <http://www.fox46charlotte.com/news/local-news/116956922-story>.

¹⁷³ Estimates of Braeburn's investment range from \$20 million to \$27.6 million. Mirza, McBride & Durso, *supra* note 152; *Pharmaceutical Company May Not Expand in Durham after HB2 Passage*, WNCN.COM, Mar. 31, 2016.

¹⁷⁴ Id.

¹⁷⁵ Ken Elkins, *Red Ventures Reconsiders Job Growth at Charlotte Office after HB 2*, BIZJOURNALS.COM, Apr. 5, 2016, http://www.bizjournals.com/charlotte/blog/outside_the_loop/2016/04/red-ventures-reconsiders-staff-up-at-charlotte.html.

SECTION III. DIVERSITY: IMPLICATIONS FOR EMPLOYEE PRODUCTIVITY, RETENTION, AND RECRUITMENT

A growing body of research finds that supportive workplace policies and practices have a positive impact on employer outcomes—what has been termed “the business case for diversity.”¹⁷⁶ While this research has primarily focused on the inclusive policies and environments of individual firms, it also suggests that state economies benefit from more inclusive legal and social environments. In making decisions about whether to be “out” or not at work, LGBT people must consider not only the practices of their current employer but also regional industry norms that can affect their future career; not only their corporate environment, but also that of the community in which they and their family live.

Research suggests that an LGBT workforce in North Carolina that feels discriminated against is less likely to be out at work, more likely to be distracted on the job, and less likely to be committed to staying in North Carolina. Moreover, LGBT and non-LGBT workers from outside of the state may be less likely to accept job offers from employers in North Carolina. To this extent, HB2 is a step away from a policy landscape and social climate for North Carolina that would improve recruiting workers to the state, retaining workers already in the state, and improving workplace productivity.

A. The Business Case for Diversity

Over the past two decades, many employers have moved ahead of legal requirements in adopting non-discrimination policies to protect LGBT employees and in creating more inclusive workplace environments.¹⁷⁷ In doing so, both employers and LGBT advocates have articulated the business case for diversity, drawing on research initially related to racial and gender diversity, but now more frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies in part because of the positive impact such policies have on the bottom line. As of 2015, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination and 75% included gender identity.¹⁷⁸ Further, 64% offered domestic partner benefits and 40% had transgender-inclusive benefits

¹⁷⁶ M.V. LEE BADGETT, LAURA DURSO, ANGELIKI KASTANIS, & CHRISTY MALLORY, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE BUSINESS IMPACT OF LGBT SUPPORTIVE WORKPLACE POLICIES, (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-May-2013.pdf>.

¹⁷⁷ M.V. LEE BADGETT, MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN (2001); NICOLE C. RAEBURN, CHANGING CORPORATE AMERICA FROM INSIDE OUT: LESBIAN AND GAY WORKPLACE RIGHTS (2004).

¹⁷⁸ DARYL HERRSCHAFT ET AL., HUMAN RIGHTS CAMPAIGN, DEGREES OF EQUALITY: A NATIONAL STUDY EXAMINING WORKPLACE CLIMATE FOR LGBT PEOPLE 5 (2009), https://issuu.com/hrcworkplace/docs/hrc_degrees_of_equality_2009; DEENA FIDAS & LIZ COOPER, HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX 2016: RATING AMERICAS WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY 7 (2016), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI-2016-FullReport.pdf>.

policies.¹⁷⁹ Of the 18 Fortune 1000 companies based in North Carolina, 10 include sexual orientation in their non-discrimination policies, and 9 also include gender identity: Bank of America Corp., BB&T Corp., Duke Energy Corp., Hanesbrands Inc., Laboratory Corporation of America Holdings, Lowe's Companies Inc., Reynolds American Inc., Quintiles Transnational, VF Corp., and Nucor Corp. (sexual orientation only).¹⁸⁰

Small businesses in North Carolina also support discrimination protections for LGBT people. In response to a 2013 national poll conducted by Small Business Majority, 67% of small businesses supported state-level protections.¹⁸¹ Although individual state results are not available, Small Business Majority has stated that the findings from the 100 North Carolina respondents were consistent with the national findings.¹⁸² More recent national polls have reached similar findings, with the majority of small business owners supporting federal and state laws that would protect against discrimination on the basis of sexual orientation or gender identity.¹⁸³

Two Williams Institute studies have found that the business case for diversity motivates many employers to adopt LGBT-supportive policies. A 2011 study found that when enacting non-discrimination policies, 92% of the leading companies in the U.S. did so based on a general argument that diversity is good for business, and 53% made that link specifically to LGBT-supportive policies and practices.¹⁸⁴ Similarly, a 2013 Williams Institute study found that over 60% of corporate respondents that offered transition-related health care coverage to their employees did so because of the business benefits.¹⁸⁵ Some of the specific business-related outcomes that motivate employers to adopt LGBT-supportive policies include:

- recruiting and retaining talented employees,
- sparking new ideas and innovations,
- attracting and serving a diverse customer base, and

¹⁷⁹ DEENA FIDAS & LIZ COOPER, *supra* note 178.

¹⁸⁰ *Id.*

¹⁸¹ Virginia Bridges, *Poll: NC Small-Business Owners Support Gay Rights*, NEWSOBSERVER.COM, June 4, 2013.

¹⁸² *Id.*

¹⁸³ A 2015 national poll found that two-thirds (66%) of small businesses say business owners shouldn't be able to deny goods or services to someone who is lesbian, gay, bisexual or transgender based on the owner's religious beliefs. Further, 6 in 10 small business owners oppose firing or refusing to hire someone who is LGBT based on the owner's religious beliefs and 8 in 10 support a federal law to protect LGBT individuals against discrimination in public accommodations, such as restaurants, hotels and other businesses that are open to the public a majority support federal and state laws that would protect against employment discrimination on the basis of sexual orientation or gender identity. SMALL BUSINESS MAJORITY, OPINION POLL: SMALL BUSINESS OWNERS OPPOSE DENYING SERVICES TO LGBT CUSTOMERS BASED ON RELIGIOUS BELIEFS (2015), <http://www.smallbusinessmajority.com/small-business-research/downloads/071315-National-RFRA-and-ND-poll.pdf>.

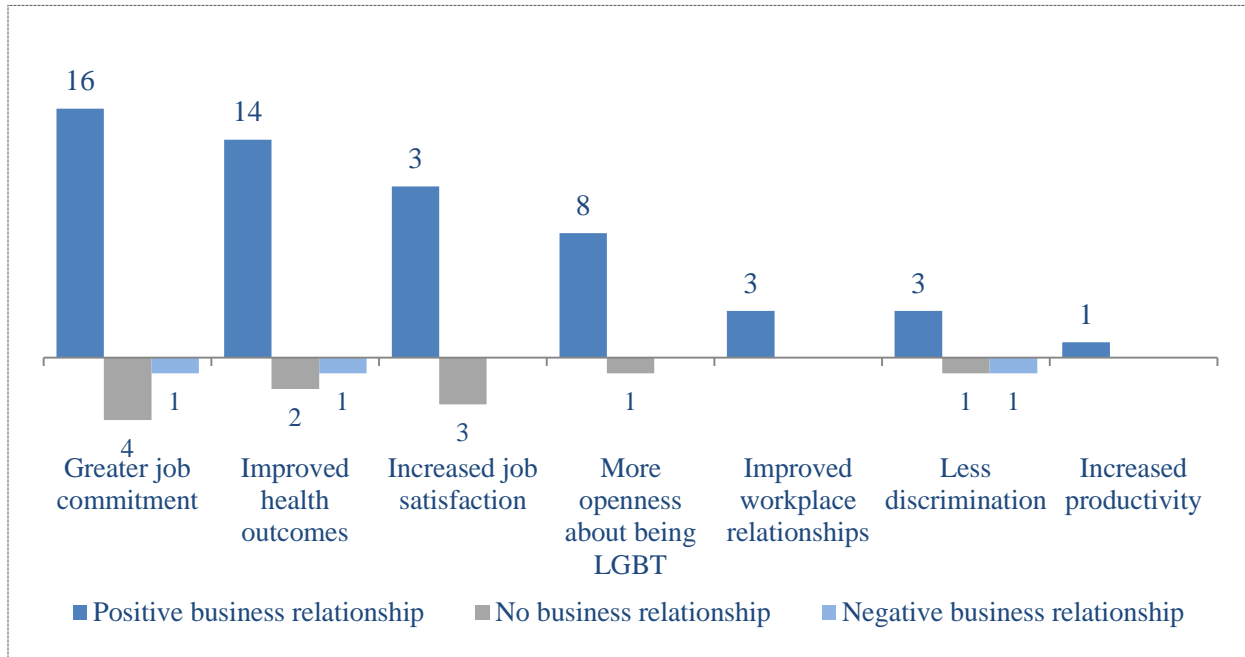
¹⁸⁴ BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES, (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

¹⁸⁵ JODY L. HERMAN, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, COSTS AND BENEFITS OF PROVIDING TRANSITION-RELATED HEALTH CARE COVERAGE IN EMPLOYEE HEALTH BENEFIT PLANS: FINDINGS FROM A SURVEY OF EMPLOYERS 3 (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Cost-Benefit-of-Trans-Health-Benefits-Sept-2013.pdf>.

- enhancing employee productivity.¹⁸⁶

Academic research conducted over the past two decades also supports the business case for LGBT inclusion. In 2013, the Williams Institute reviewed 36 academic studies examining the effects of LGBT-supportive policies, and concluded that the research supports the existence of many positive links between LGBT-supportive policies or workplace climates and outcomes that will benefit employers.¹⁸⁷

Figure II.a. Number of studies conducted prior to 2013 showing relationship between LGBT-supportive policies or workplace climates and individual-level outcomes



Similarly, a 2014 review of 52 academic articles found that LGBT employees who had experienced discrimination had more negative job attitudes, felt lower levels of organizational commitment, and felt they had fewer opportunities.¹⁸⁸ The review also found that LGBT-supportive policies reduced discrimination and increased LGBT employees’ openness about their sexual orientation and gender identity at work, leading to better mental health outcomes, higher levels of organizational citizenship behaviors, and increased job satisfaction among LGBT employees.¹⁸⁹

In addition, a growing body of research has more directly linked LGBT-supportive policies and workplace environments to bottom line gains, including improved productivity, profitability, and

¹⁸⁶ Id.; SEARS & MALLORY, *supra* note 184.

¹⁸⁷ BADGETT, DURSO, KASTANIS & MALLORY, *supra* note 176.

¹⁸⁸ Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

¹⁸⁹ Id.

stock prices when compared to firms without such policies.¹⁹⁰ For example, a 2013 study of approximately 300 firms that adopted same-sex domestic partnership benefits policies between 1990 and 2006 showed a 10% average stock price increase over that period—a performance better than 95% of all U.S. professional mutual funds—as well as significant improvement in operating performance relative to companies that did not adopt such policies.¹⁹¹

In 2015, based in part on this growing body of research, 379 large corporations in the U.S. filed an amicus brief in the historic marriage equality case *Obergefell v. Hodges*,¹⁹² laying out the business case for diversity in general, and for LGBT inclusion specifically:

Today, diversity and inclusion are a given. They are among the core principles of amici in the conduct of their businesses. The value of diversity and inclusion in the workplace has been well-documented following rigorous analyses. Amici and others recognize that diversity is crucial to innovation and marketplace success. Members of the lesbian, gay, bisexual, and transgender (“LGBT”) community are one source of that diversity.¹⁹³

The remainder of this section looks more closely at the research supporting three areas of the case for business diversity: employee productivity, retention, and recruitment.

1. Productivity

Research supports that having more LGBT-inclusive workplace policies leads to employee-level outcomes that, in turn, improve workers’ productivity. Specifically, studies indicate that LGBT-supportive policies and supportive workplace environments are associated with less

¹⁹⁰ CREDIT SUISSE ESG RESEARCH, *LGBT: THE VALUE OF DIVERSITY* (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, and economic profit generation, and that stocks of companies who have LGBT people in senior roles outperform those who do not); Feng Li and Venky Nagar, *Diversity and Performance*, 59 *MGMT. SCI.* 529 (2013) (finding improved operating returns on assets (ROA) after companies adopt domestic partner benefits for same-sex couples); Janell L. Blazovich, Kristin A. Cook, Janet McDonald Huston, & William R. Strawser, *Do Gay-Friendly Corporate Policies Enhance Firm Performance?* 35-36 (Apr. 2013) (unpublished manuscript, available online) (finding that “firms with gay-friendly policies benefit on key factors of financial performance, which . . . increase the investor perception of the firm as proxied by stock price movements.”). See also BADGETT, DURSO, KASTANIS & MALLORY, *supra* note 176 at 23 (“A . . . study found that the more robust a company’s LGBT friendly policies, the better its stock performed over the course of four years (2002-2006), compared to other companies in the same industry over the same period of time.”); Garrett D. Voge, *Investor Valuation: LGBTQ Inclusion and the Effect on a Firm’s Financials* (unpublished manuscript, available at the University of Arizona Campus Repository) (2013) <http://arizona.openrepository.com/arizona/handle/10150/297778> (finding that institutional investors value LGBT-supportive corporate policies as evaluated by stock price increases after release of LGBT Corporate Equality Index report by the Human Rights Campaign).

¹⁹¹ Li and Nagar, *supra* note 190.

¹⁹² 576 U.S. __ (2015).

¹⁹³ Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 576 U.S. __ (2015) (Nos. 14-556, 14-562, 14-571, 14-574), *available at* http://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_379_Employers_and_Organizations_Representing_Employers.pdf.

discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to improved psychological health, increased productivity, and job satisfaction.¹⁹⁴

When LGBT people are not fully themselves at work, they are less engaged and less productive.¹⁹⁵ A 2013 study found that 41% of LGBT employees remained closeted¹⁹⁶ and many believed that covering or down playing their sexual orientation at work helped their careers.¹⁹⁷ Being closeted can negatively impact employee morale and productivity. The 2016 *Out in the World* study found that over 1 in 4 LGBT employees (26%) who were not out at work said they felt nervous or sad at work, and almost 1 in 5 (19%) said that hiding their LGBT identity caused them to be less ambitious and to not work as hard.¹⁹⁸ In addition, over 1 in 4 (27%) who were not out at work reported that hiding their identity held them back from speaking up or sharing an idea.¹⁹⁹

Similarly, a 2014 study of LGBT workers found that of those who felt they did not work for a supportive employer, 15% had stayed home from work as a result, 30% felt unhappy or depressed at work, and 30% felt distracted at work.²⁰⁰ These negative workplace experiences also caused them to avoid specific projects (9%), clients (17%), co-workers (27%), and work-related social events (24%)— all of which can negatively impact productivity.²⁰¹

Research has also linked experiences of workplace discrimination specifically to health outcomes that impact productivity and absences from work. For example, a 2013 study of 397

¹⁹⁴ BADGETT, DURSO, KASTANIS & MALLORY., *supra* note 176.

¹⁹⁵ STEPHEN FROST, *THE INCLUSION IMPERATIVE: HOW REAL INCLUSION CREATES BETTER BUSINESS AND BUILDS BETTER SOCIETIES* (2014) (finding that “when gay people remain in the closet, they are 10% less productive than when they feel able to be themselves”).

¹⁹⁶ SYLVIA ANN HEWLETT, TODD SEARS, KAREN SUMBERG & CHRISTINA FARGNOLI, *THE POWER OF “OUT” 2.0: LGBT IN THE WORKPLACE* (2013). Similarly, Out Now's LGBT 2020 study of U.S. employees found that 24% of lesbians, 30% of gay men, 40% of bisexuals, and 55% of transgender employees believed that coming out could impact future promotions. OUT NOW GLOBAL, *LGBT 2020: LGBT DIVERSITY SHOW ME THE BUSINESS CASE* (2015). In a study by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, 71% of transgender people in the US said they hid their gender or gender transition to avoid discrimination. JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN & MARA KEISLING, NAT. CTR. FOR TRANSGENDER EQUALITY & NATIONAL GAY & LESBIAN TASK FORCE, *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 3* (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

¹⁹⁷ HEWLETT ET AL., *supra* note 196.

¹⁹⁸ SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE 20* (2016). Additionally, a survey of 319 LG working professionals in Taiwan found that disclosure of sexual orientation was related to greater job effectiveness, as determined by the employees own ratings of their work performance. Yuan-Hui Tsai, Sheng-Wuu Joe, Wei-Te Liu, Chieh-Peng Lin, Chou-Kang Chiu & Chaio-Chih Tang, *Modeling Job Effectiveness in the Context of Coming Out as a Sexual Minority: A Socio-Cognitive Model*, 9 *REV. MANAG. SCI.* 197 (2015).

¹⁹⁹ HEWLETT & YOSHINO, *supra* note 198 at 14.

²⁰⁰ DEENA FIDAS, LIZ COOPER & JENNA RASPANTI, HUMAN RIGHTS CAMPAIGN, *THE COST OF THE CLOSET AND THE REWARDS OF INCLUSION 22* (2014), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Cost_of_the_Closet_May2014.pdf.

²⁰¹ *Id.*

racially diverse young men who have sex with men found that 15% reported at least one form of workplace discrimination in the past year.²⁰² Those who reported these experiences were more likely to also report poorer health outcomes, a higher number of days that their physical or mental health was not good, and limited functionality.²⁰³

While discrimination and hiding LGBT identity can impair productivity, LGBT-supportive workplace policies and environments have been associated with “greater workplace engagement, improved relationships between LGBT employees and their co-workers and supervisors, greater contributions, and improved employer loyalty from LGBT employees.”²⁰⁴ The 2016 *Out in the World* study found that 84% of LGBT respondents at supportive companies were willing “to go the extra mile” compared to just 73% of employees at unsupportive companies.²⁰⁵

Some studies also suggest that when LGBT employees are out at work, teams that include both LGBT and non-LGBT workers may be more productive and more competent. For example, in one study, researchers used a controlled experiment designed to test whether individuals’ performance improved if a team member disclosed that they were gay.²⁰⁶ The test found that participants whose teammate disclosed that they were gay performed better than those who suspected that their teammate was gay, but were not told.²⁰⁷ Similarly, the 2016 *Out in the World* study found that on workplace teams where no one represented the target consumer’s sexual orientation, only 27% of respondents said their team understood that consumer. In contrast, on teams where at least one person shared the target consumer’s orientation, 68% of respondents said their team understood that market.²⁰⁸

In short, a poor legal and social climate can mean that workers are distracted, absent, or in poor health. Since the state of North Carolina, through its agencies and universities, is one of the largest employers in the state, with over 126,000 employees,²⁰⁹ the loss in productivity for the state itself could be significant. Further, a negative legal and social climate in the state could lead to productivity losses for in-state businesses as well.

²⁰² José A. Bauermeister et al., *Sexuality-Related Work Discrimination and its Association with the Health of Sexual Minority Emerging and Young Adult Men in the Detroit Metro Area*, 11 SEXUALITY RESEARCH AND SOC. POLICY 1 (2014).

²⁰³ Id. Furthermore, the likelihood of reporting poorer health outcomes increased if participants had experienced more work-related discrimination as a result of their sexual identity. Id.

²⁰⁴ BADGETT, DURSO, KASTANIS & MALLORY., *supra* note 176.

²⁰⁵ HEWLETT & YOSHINO, *supra* note 198 at 22, 63.

²⁰⁶ Benjamin A. Everly, Margaret J. Shih & Geoffrey C. Ho, *Don’t Ask, Don’t Tell? Does Disclosure of Gay Identity Affect Partner Performance?*, 48 J. EXPERIMENTAL SOCIAL PSYCH. 407 (2012).

²⁰⁷ Id. at 409.

²⁰⁸ HEWLETT & YOSHINO, *supra* note 198 at 22, 63.

²⁰⁹ 2014 Annual Survey of Public Employment & Payroll: State Government Employment and Payroll Data, U.S. Census Bureau, <https://www.census.gov/govs/apes/> (last visited May 1, 2016).

2. Retention

Research also indicates that LGBT workers are less committed to their employers and more likely to leave when they are working in less supportive environments. The 2016 *Out in the World* survey found that 22% of LGBT respondents reported that hiding their sexual orientation or gender identity in the workplace made them feel less loyal to their employer or consider quitting.²¹⁰ Also, 84% of LGBT employees at supportive companies said that they were proud to work for their company, compared to just 68% at unsupportive companies.²¹¹

Even when LGBT employees are out at work but face corporate leadership that pressures them to downplay or cover their LGBT identity, they feel less committed to their employers. A 2013 study found that 83% of LGBT employees reported that they cover their LGBT identity by, for instance, making certain decisions about their appearance or not talking about their same-sex spouse at work.²¹² Of employees who felt pressure to cover their identity from corporate leadership, over half felt that the expectation impacted their commitment to the organization.²¹³

Not surprisingly, LGBT people in unsupportive environments also report higher rates of intending to leave their jobs.²¹⁴ A 2011 study found that closeted LGBT employees who feel isolated at work are 73% more likely than out employees to plan to leave their job within three years.²¹⁵ Similarly, a 2014 survey of LGBT workers who experienced a negative workplace found that 22% had searched for a different job because the environment was not accepting and 9% had actually left a job for that reason.²¹⁶ Recent research also suggests that those in same-sex

²¹⁰ HEWLETT & YOSHINO, *supra* note 198 at 20.

²¹¹ *Id.* at 22. Similarly, a survey of 12,177 employees in Greece, including 606 LGB employees, found that employees who were open about being LGB at work were more satisfied with their jobs than those who were not. Overall, LGB respondents reported less job satisfaction than their heterosexual counterparts. Nick Drydakis, *Effect of Sexual Orientation on Job Satisfaction: Evidence from Greece*, 54 *INDUST. REL.* 162, 176 (2015). Also, a 2012 study found that LGBT people who had sponsors supporting them at work, indicating a more supportive workplace climate, were less likely to feel stalled in their careers than LGBT employees without sponsors (37% versus 29%). HEWLETT ET AL., *supra* note 196.

²¹² KENJI YOSHINO & CHRISTIE SMITH, *UNCOVERING TALENT: A NEW MODEL OF INCLUSION* (2013), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclusion-uncovering-talent-paper.pdf>.

²¹³ *Id.*

²¹⁴ BADGETT ET AL., *supra* note 176 at 22; Belle R. Ragins, Romila Singh, John M. Cornwell, *Making the Invisible Visible: Fear and Disclosure of Sexual Orientation at Work*, 92 *J. APPLIED PSYCHOL.* 1103, 1114 (2007) (study showing that LGBT employees who feared negative consequences to disclosure of their sexual orientation reported greater turnover intentions and less organizational commitment); Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 *J. APPLIED PSYCHOL.* 17, 23 (2001) (“[R]esults demonstrated that treatment discrimination toward sexual minorities was associated negatively with the job satisfaction . . . and organizational commitment . . . of lesbian and gay employees.”).

²¹⁵ SYLVIA ANN HEWLETT & KAREN SUMBERG, *THE POWER OF OUT* (2011).

²¹⁶ FIDAS ET AL., *supra* note 200 at 22. In 2007, a national survey of people who had quit or been laid off since 2002 found that gay and lesbian professionals cited workplace unfairness as the only reason they left their employer almost twice as often as straight white men. Blazovich et al., *supra* note 190 at 4.

couples are more mobile (more likely to move from one state to another) than those in different-sex couples, and therefore can be more responsive to changes in state law and policy.²¹⁷

If HB2, by adding to a challenging legal landscape and social climate, causes LGBT employees to leave North Carolina, the government as an employer and businesses within the state will share the costs. When a worker leaves a job, costs include a loss in productivity due to the unfilled position, the costs of hiring and training a new employee, and lower initial rates of productivity of the new employee.²¹⁸ A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.²¹⁹ This rate was very consistent for most types of workers, except for executives and highly skilled positions, which have much greater turnover costs – up to 213% of annual salary.²²⁰

Based on the average annual mean wage in North Carolina,²²¹ public and private employers are at risk of losing approximately \$8,800, on average, for each LGBT employee that leaves the state or changes jobs because of the negative environment that HB2 helps to create.²²²

3. Recruitment

HB2 may also make it difficult for employers to recruit talented employees from other parts of the county to North Carolina. Since younger and more highly educated²²³ people tend to be more supportive of LGBT rights, with over 70% of millennials supporting marriage equality,²²⁴ the negative impact of HB2 will disproportionately affect younger, more highly skilled job candidates.

Research has shown that LGBT-supportive policies and workplace environments are important to LGBT employees. A survey published in 2010 found that 77% of LGBT respondents said that it was important that they work for a company with a written non-discrimination policy that included sexual orientation, and 80% said it was important for their employer to offer equal

²¹⁷ Michael J. Rosenfeld & Byung-Soo Kim, *The Independence of Young Adults and the Rise of Interracial and Same-Sex Unions*, 70 AM. SOCIOLOGICAL REV. 541 (2005).

²¹⁸ HEATHER BOUSHEY & SARAH JANE GLYNN, CTR. FOR AM. PROGRESS, THERE ARE SIGNIFICANT BUSINESS COST TO REPLACING EMPLOYEES (2012), <https://www.americanprogress.org/issues/labor/report/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/>.

²¹⁹ Id.

²²⁰ Id.

²²¹ The annual mean wage in North Carolina is \$44,170. *May 2015 State Occupational Employment and Wage Estimates: North Carolina*, Bureau of Labor Stats., http://www.bls.gov/oes/current/oes_NC.htm#00-0000 (last visited May 6, 2016).

²²² Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in North Carolina. Id.; BOUSHEY & GLYNN, *supra* note 218.

²²³ Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994), Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact* 3 POLITICS, GROUPS, AND IDENTITIES 398 (2015).

²²⁴ *Gay Marriage*, PEWRESEARCH.ORG, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited May 3, 2016).

health insurance benefits to all employees.²²⁵ Similarly, a 2012 survey of white collar professionals found that 77% of LGBT respondents said they take into account a company's LGBT-friendly benefits and 70% said they evaluate a company's reputation in the LGBT community when looking for a job.²²⁶

Surveys also show that LGBT employees prefer to work in states with more supportive laws and social environments. For example, in response to a 2014 poll, 73% of gay and lesbian respondents said they would prefer a job with an employer in a state where marriage was available to same-sex couples, and 43% said they would consider changing jobs if their employer required them to transfer to a state where same-sex marriages were not recognized.²²⁷

Many non-LGBT jobseekers also value LGBT-supportive policies and practices. In response to the *Out in the World* survey, 72% of respondents who were *not* LGBT, but considered themselves allies, said they would be more likely to accept a job at a company that is supportive of LGBT employees than one that is not.²²⁸ In a 2010 poll, 66% of non-LGBT respondents found it important that an employer offer equal health insurance benefits to LGBT co-workers.²²⁹ Studies have also suggested that many non-LGBT employees in creative and highly skilled professions may be attracted to cities or states that are more inclusive of LGBT people.²³⁰

Over 60% of North Carolina voters (61%) already feel that HB2 has hurt the state's image to the rest of the country. Only 18% believe the law has helped the state's image, and 13% think HB2 has had no impact. Similarly, 61% of North Carolina voters think HB2 has hurt North Carolina's ability to attract and keep businesses, while only 11% believe that it has helped. Thus, HB2 may already be having an impact on the ability of North Carolina, as one of the largest employers in the state, and of in-state businesses to attract the best and brightest employees.

²²⁵ Harris Interactive, *Majority of Americans Believe Gay and Lesbian Couples in Committed Relationships Should Receive Equal Workplace Benefits as Heterosexual Married Couples*, PRNEWSWIRE.COM, Oct. 4, 2010, <http://www.prnewswire.com/news-releases/majority-of-americans-believe-gay-and-lesbian-couples-in-committed-relationships-should-receive-equal-workplace-benefits-as-heterosexual-married-couples-104293928.html>.

²²⁶ HEWLETT ET AL., *supra* note 196 at 29.

²²⁷ Out & Equal et al., *Most Americans Say Employers Should Never Discriminate, Even on Religious Grounds*, HARRIS POLL, Oct. 30, 2014, http://media.theharrispoll.com/documents/FINAL_2014_Out_Equal_Workplace_Survey_Release_10.30.2014.pdf.

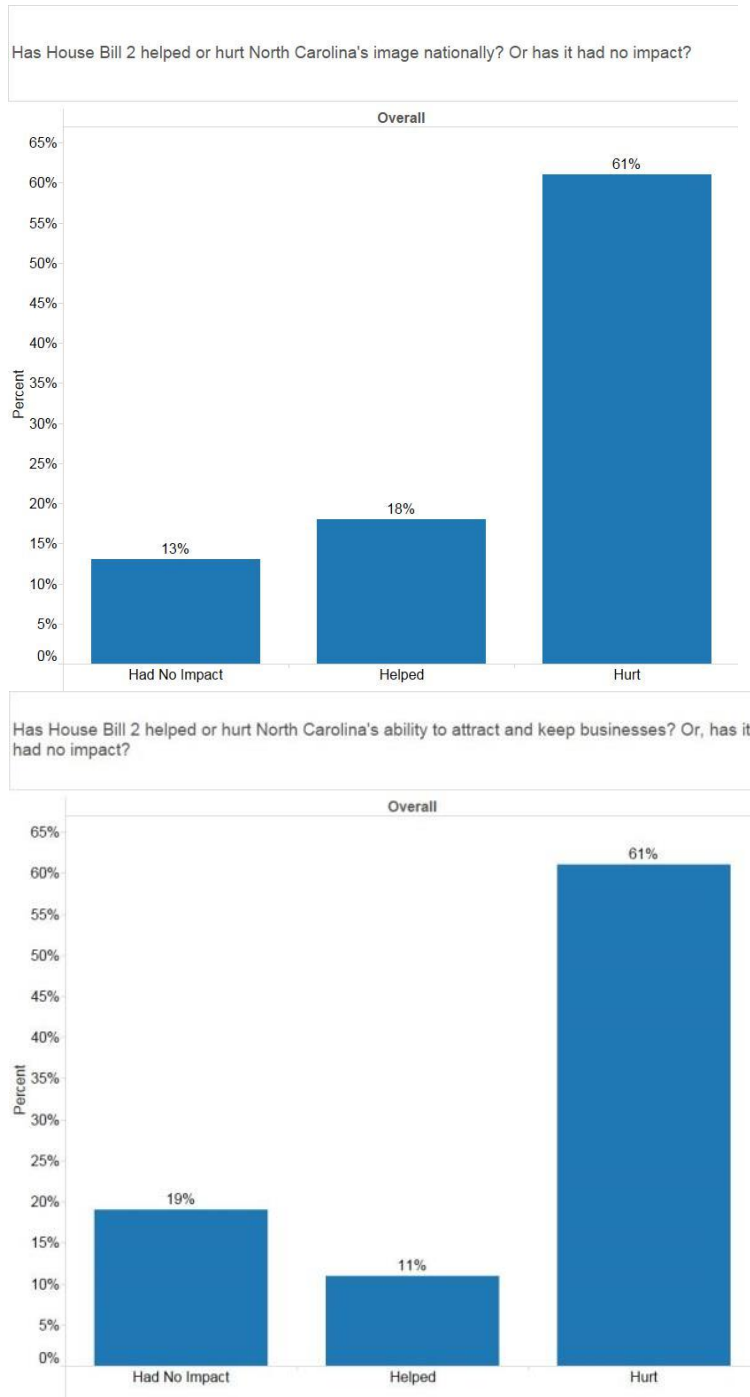
²²⁸ HEWLETT & YOSHINO, *supra* note 198.

²²⁹ Harris Interactive, *supra* note 225.

²³⁰ For example, a 2015 study found a significant increase in patents and patent citations for firms headquartered in states that had passed LGBT inclusive non-discrimination laws compared to firms headquartered in states that had not. The result was even more pronounced for firms in those states that previously had not implemented their own LGBT inclusive corporate non-discrimination policies. The authors further showed that what explained the result was that following the adoption of these supportive laws, the adopting states experienced a greater inflow of inventors from other states who had higher rate of patent applications. Huasheng Gao & Wei Zhang, *Does Workplace Diversity Foster Innovation? Evidence from U.S. State Employment Non-Discrimination Acts* (Aug. 2015) (unpublished manuscript), *available at* <http://www.ntu.edu.sg/home/hsgao/GaoZhang20150813.pdf>.

Figure II.b. Beliefs that HB2 has hurt North Carolina's image and ability to attract and keep businesses

Source: SurveyUSA, April 2016



SECTION IV. DEVELOPMENT

The final approach we apply to the legal and economic implications of HB2 draws from the pioneering framework developed in a study by USAID and the Williams Institute that addresses how the exclusion of LGBT people can have economic impacts.²³¹ After considering several theoretical frameworks related to economic development, Badgett and her co-authors explore both a micro and a macro level analysis to assess possible links between discrimination against LGBT people, as well as exclusion of LGBT people, and economic harms. In her micro-level analysis, she considers five types of exclusion of LGBT people and explains how they might be linked to harmful economic outcomes:

- 1) Police abuse and over-incarceration;
- 2) Higher rates of violence;
- 3) Workplace harassment and discrimination;
- 4) Health disparities; and
- 5) Discrimination and bullying of LGBT students in schools.²³²

After considering these, Badgett concludes that “human rights violations experienced by LGBT people diminish economic output and capacity at the micro-level. When LGBT people are targets of violence, denied equal access to education, stigmatized in communities, and discouraged from pursuing the jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy.”²³³

Turning to the macro-level, Badgett finds a correlation between greater protections of legal rights for sexual and gender identity minorities and economic development in emerging economies, measured by per capita GDP.²³⁴ Looking at an index of a set of legal protections for LGBT people, and controlling for other factors that influence economic development, she finds that “the impact of an additional right on per capita GDP is . . . about 3% of the average GDP per capita in our sample.”²³⁵ Notably, she finds that non-discrimination laws in particular “have an especially strong correlation with GDP per capita. The importance of

²³¹ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>.

²³² Id. at 2.

²³³ Id. at 6.

²³⁴ Id. at 10.

²³⁵ Id. at 45. Badgett does not draw a firm conclusion about the direction of the causal link between greater legal protections and equality for LGBT people and economic growth for her macro-level analysis. While further research and more data are needed, she does conclude that the micro-level findings “support the idea that exclusion leads to lower levels of development and are consistent with the macro-level findings.”

nondiscrimination laws could be related to their stronger connection to the treatment of LGBT people in the workplace and other settings that have direct economic relevance.”²³⁶

While Badgett has focused on national economies, each of the five areas she identifies above have a correlation with the lived experiences of, and lack of protections for, LGBT people in North Carolina. We look at three of the five areas outlined by Badgett: 1) bullying in schools; 2) workplace and other forms of discrimination; and 3) health disparities for LGBT people—drawing on new data analysis specific to North Carolina for each, and illustrating the magnitude of some of the resulting costs. Before we turn to the analysis, five important points:

First, we are mapping out economic impacts in each of these areas due to discrimination and stigma against LGBT people in North Carolina in general, not specifically as these effects relate to HB2. As Section I shows, LGBT people already face a challenging legal landscape and social climate in North Carolina. That said, HB2 is a step away from addressing some of the economic impacts resulting from an already challenging environment.

Second, we illustrate just a few of the economic impacts created by a challenging legal landscape and social climate for LGBT people in North Carolina. This report is not intended to quantify the total amount of harmful economic impacts related to discrimination and stigma against LGBT people in the state.

Third, while Badgett’s five areas provide a useful way to understand, document, and measure the challenges that LGBT people face throughout their lives, the areas interact with each other and all can be drivers towards the same negative outcomes for LGBT people. For example, LGBT people are more likely to be poor because of school bullying and workplace discrimination, health disparities, and higher rates of incarceration and violent crime victimization. Because these factors overlap and interact, the few economic impacts we illustrate cannot be aggregated.

Fourth, not all of the disparities we identify can be addressed just by focusing on discrimination and stigma directed at LGBT people. LGBT people do not come with only a sexual orientation and a gender identity, but with multiple intersecting identities including race, ethnicity, age, disability, and gender. While a singular focus on homophobia and transphobia will not entirely eliminate these disparities, an approach that embraces eliminating the disparities for LGBT people, no matter what their cause, will improve the lives of many non-LGBT people as well. For example, eliminating gender, racial, and ethnic wage gaps in the U.S. would both eliminate

²³⁶ Id. at 3.

the poverty gap between same-sex couples and different sex-couples, and lift many non-LGBT people out of poverty as well.²³⁷

Finally, as Badgett and other scholars emphasize, to move this analysis beyond this exploratory framework and the illustrations of economic impact below, we need more data collection that includes measures of sexual orientation and gender identity and more research about the lived experiences of LGBT people and the effectiveness of legal protections.²³⁸ The value of this data collection is illustrated by our use of three data sets in this section specific to LGBT people in North Carolina that were unavailable just a few years ago—data from the Youth Risk Behavior Survey (YRBS), the Behavioral Risk Factor Surveillance System (BRFSS), and the National Transgender Discrimination Survey (NTDS).

A. Education and Youth

Discrimination, harassment, and bullying of young LGBT people can have lifelong personal consequences which can ultimately have a negative impact on the economy.²³⁹ Family rejection and victimization of LGBT youth in educational settings has been linked to higher rates of depression, suicidality, school absenteeism, and substance abuse. Given these disparities, it is not surprising that LGBT youth are more likely to perform poorly at school or drop out, become involved in the juvenile justice system, and enter foster care or become homeless. As a result, early experiences of discrimination and harassment may not only shape the economic lives of LGBT people, but also have a negative effect on a state's economy. As Badgett has explained, "exclusion of LGBT people in educational and training contexts would reduce their opportunities to develop human capital and would therefore diminish future economic output."²⁴⁰

To the extent that North Carolina's legal landscape and social climate foster an environment that is not inclusive of LGBT youth, the state is likely to experience losses in human capital. HB2 contributes to this negative environment by explicitly sending a negative message to all LGBT youth in the state, failing to protect them, and, more specifically, by forbidding transgender students from using restrooms and other facilities consistent with their gender identity. Data from the 2013 Youth Risk Behavior Survey in North Carolina indicate that LGBT youth face high rates of bullying and experience negative health outcomes as a result— despite an existing state anti-bullying law that prohibits bullying based on sexual orientation and gender identity.

²³⁷ M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

²³⁸ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 231 at 49.

²³⁹ M.V. LEE BADGETT, THE ECONOMIC COST OF HOMOPHOBIA & THE EXCLUSION OF LGBT PEOPLE: A CASE STUDY OF INDIA 20 (2014), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2015/02/03/000477144_20150203155141/Rend ered/PDF/940400WP0Box380usion0of0LGBT0People.pdf.

²⁴⁰ *Id.*

This section presents data on experiences of LGBT youth in North Carolina, and reviews research that links these experiences to negative outcomes for LGBT youth that, in turn, can lead to future reductions in economic output.

1. Discrimination, Harassment, and Bullying of LGBT Youth

a. Middle School and High School

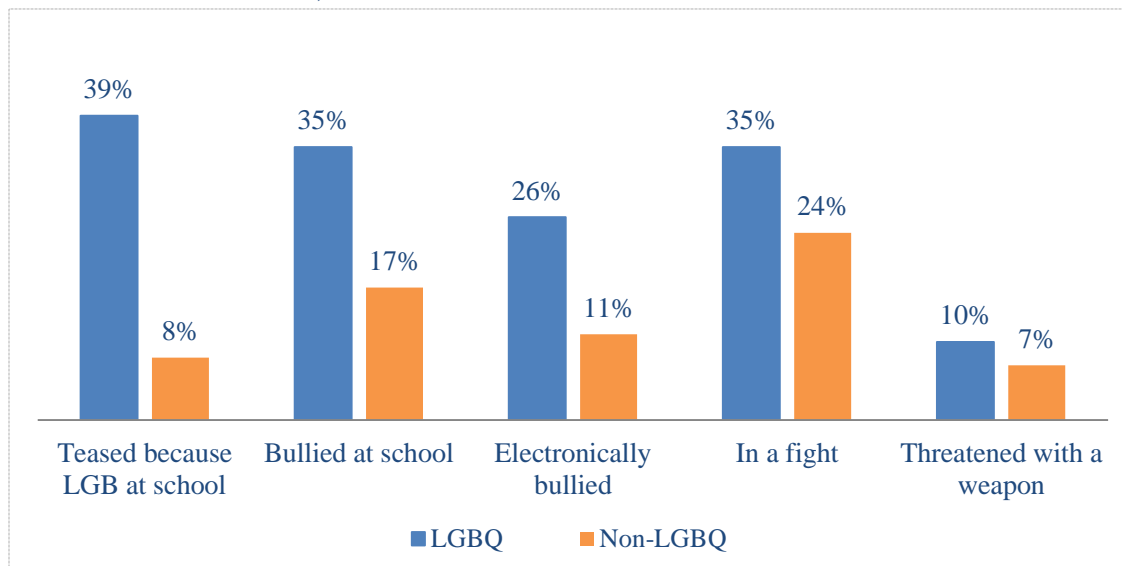
Data from several sources indicate that LGBTQ youth in North Carolina face teasing, bullying, and other threats at school.

As described in Section I.A.2, since 2013 the North Carolina Youth Risk Behavior Survey (YRBS) has allowed high school students, grades 9 through 12, to identify themselves as lesbian, gay, bisexual, questioning (“not sure”), or heterosexual.²⁴¹ We analyzed data from the 2013 YRBS to assess how the experiences of LGBQ students in North Carolina differ from those of non-LGBQ students. In this section, we use YRBS data to provide the prevalence of certain health and wellbeing indicators for LGBQ and non-LGBQ youth in North Carolina. Our unweighted sample includes 149 LGBQ youth and 1697 non-LGBT youth. We present n's and weighted proportions. We used sampling weights provided by YRBS.

We find that LGBQ youth in North Carolina report much higher rates of being teased and bullied than non-LGBQ youth and report receiving less support and encouragement from teachers.

Figure IV.a. Teasing & bullying of high school students in North Carolina during the 12 months prior to the survey, by sexual orientation

Source: North Carolina YRBS, 2013



²⁴¹ See N.C. YOUTH RISK BEHAVIOR SURVEY: HIGH SCHOOL 2013 SURVEY RESULTS (2014), <http://www.nhealthyschools.org/docs/data/yrbs/2013/statewide/high-school.pdf>.

More than one-third of LGBQ high school students (38.8%) in North Carolina reported they had been teased because someone thought they were LGB in the 12 months prior to the survey, as did 7.7% of those who didn't identify as LGBQ. LGBQ students were twice as likely as non-LGBQ students to report being bullied in the 12 months prior to the survey (34.6% v. 17.3%). LGBQ students in North Carolina were also over twice as likely as non-LGBQ students to report being electronically bullied (26.4% v. 10.5%). In addition, LGBQ students were more likely than non-LGBQ students to report being in a fight in the 12 months prior to the survey (34.8% v. 23.8%) and to having been threatened with a weapon such as a gun, a knife, or a club while on school property (9.9% v 6.5%).

Table IV.a. Teasing & bullying of high school students in North Carolina during the 12 months prior to the survey, by sexual orientation

Source: North Carolina YRBS, 2013

In the past 12 months, have you been...	LGBQ	Non-LGBQ	OR for LGB (95% CI)
Teased because LGB at school	38.8%	7.7%	7.54 (7.36, 7.73)
Bullied at school	34.6%	17.3%	2.52 (2.47, 2.59)
Electronically bullied	26.4%	10.5%	3.07 (2.99, 3.15)
In a fight	34.8%	23.8%	1.71 (1.67, 1.75)
Threatened with weapon at school	9.9%	6.5%	1.58 (1.52, 1.64)

Despite the increased risk of teasing, bullying, and violence while at school, LGBQ students felt less supported by their teachers. While 60.2% of non-LGBQ students in North Carolina either agreed or strongly agreed that their teachers really cared about them and gave them a lot of encouragement, only 48.4% of LGBQ students felt that level of support from their teachers. These negative experiences also likely contributed to the fact that LGBQ students were almost three times as likely as non-LGBTQ students to report missing school because they felt unsafe. Of the LGBQ students, 15.6% reported that they did not go to school one or more days in the month prior to the survey because they felt unsafe at school or on their way to school, compared to 5.7% of non-LGBQ students.

Table IV.b. Support of teachers & missed school because unsafe among North Carolina high school students, by sexual orientation

Source: North Carolina YRBS, 2013

	LGBQ	Non-LGBQ	OR for LGB; 95% CI
Teachers care about and encourage me	48.4%	60.2%	0.62 (0.61, 0.64)
Missed school in the past 30 days because felt unsafe	15.6%	5.7%	3.06 (2.96, 3.16)

North Carolina's YRBS for middle school students also includes a question about bullying based on perceived sexual orientation (though the survey does not ask students to identify their sexual orientation). In response to the 2013 YRBS, 19% of middle school students said they had been

teased or bullied in the prior year because someone thought they were LGB.²⁴² Middle school students were more likely to report being the target of anti-LGB bullying and teasing than high school students (11% of all high school students said they had been teased or bullied because someone thought they were LGB).²⁴³

Similar findings of LGBT bullying and harassment are reflected in the 2013 GLSEN National School Climate Survey of 199 LGBT middle and high school students in North Carolina. Seventy-eight percent of LGBT student respondents said that they had experienced verbal harassment based on their sexual orientation in the year prior to the survey, and 57% said they had experienced verbal harassment based on their gender expression.²⁴⁴ Many students also reported experiencing sexual harassment (64%), cyber bullying (51%), and physical harassment (30%). Most of the students who experienced harassment did not report it to staff (61%) or their families (58%).²⁴⁵ Of those who reported incidents to school authorities, only 20% said that the report resulted in effective intervention.²⁴⁶

Additionally, in response to the National Transgender Discrimination Survey, 88% of respondents from North Carolina who identified as transgender while in grades K-12 reported experiencing harassment at school, and 28% reported experiencing physical assault at school because of their gender identity.²⁴⁷

The findings from the North Carolina YRBS are also consistent with national data.²⁴⁸ For example, a meta-analysis of YRBS data found that across sites, on average, LGBTQ youth reported being threatened or injured with a weapon at school more than twice as often as their non-LGBTQ counterparts.²⁴⁹

²⁴² N.C. YOUTH RISK BEHAVIOR SURVEY: MIDDLE SCHOOL 2013 20 (2014), <http://www.nchealthyschools.org/docs/data/yrbs/2013/statewide/middle-school.pdf>.

²⁴³ N.C. YOUTH RISK BEHAVIOR SURVEY: HIGH SCHOOL, *supra* note 241.

²⁴⁴ GLSEN, SCHOOL CLIMATE IN NORTH CAROLINA 1 (2014), <http://www.glsen.org/sites/default/files/GLSEN%202013%20North%20Carolina%20State%20Snapshot.pdf>.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY AND LESBIAN TASK FORCE, FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, NORTH CAROLINA RESULTS, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_state/ntds_state_nc.pdf (last visited May 3, 2016).

²⁴⁸ *E.g.*, HUMAN RIGHTS CAMPAIGN, GROWING UP LGBT IN AMERICA: HRC YOUTH SURVEY REPORT KEY FINDINGS 16-17 (2012), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf; HUMAN RIGHTS CAMPAIGN & LEAGUE OF UNITED LATIN AM. CITIZENS, SUPPORTING AND CARING FOR OUR LATINO LGBT YOUTH 20-22 (2012), <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/LatinoYouthReport-FINAL.pdf>; KATAYOON MAJD, JODY MARKSAMER & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 61-62 (2009), http://www.equityproject.org/pdfs/hidden_injustice.pdf.

²⁴⁹ Laura Kann, Emily O'Malley Olsen, Tim McManus, Steve Kinchen, David Chyen, William A. Harris & Howell Wechsler, *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9–12 — Youth Risk Behavior Surveillance, Selected Sites, United States, 2001–2009*, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 11 (2011).

b. Higher Education

Two public universities in North Carolina, the University of North Carolina Chapel Hill and North Carolina State University, have conducted campus climate surveys to measure LGBT inclusion on their campuses. The University of North Carolina's survey of 416 LGBT and non-LGBT faculty, staff, and students found evidence of harassment based on sexual orientation and gender identity on campus.²⁵⁰ Of the respondents who identified as LGBQ, 28% reported experiencing verbal harassment and 26% reported fearing for their physical safety because of their sexual orientation.²⁵¹ Among transgender respondents, 32% reported experiencing verbal harassment and 36% reported fearing for their physical safety because of their gender identity or expression.²⁵² Many did not think the school had adequately addressed issues related to sexual orientation (28%) and gender identity (35%).²⁵³ In addition, respondents were concerned that being involved with LGBT issues or campus groups would negatively impact their careers.²⁵⁴

The North Carolina State University survey of 166 LGBT students, recent alumni, faculty, and staff also found evidence of animus toward LGBT people on campus.²⁵⁵ Three-quarters of student/alumni respondents reported hearing derogatory remarks about LGBT people on campus, along with 46% of faculty/staff respondents.²⁵⁶ Thirteen percent of students/alumni and 9% of faculty/staff reported hearing derogatory LGBT-related remarks directed at them.²⁵⁷ Students also reported feeling uncomfortable in public spaces on campus (29%) and in residence halls (27%) because of their sexual orientation or gender identity.²⁵⁸

c. Family Rejection

For many youth, the challenges they face at school are compounded by unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBTQ youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.²⁵⁹ For example, in one telling study about the challenges

²⁵⁰ TERRI L. PHOENIX, *CAMPUS CLIMATE: REGARDING SEXUAL ORIENTATION, GENDER IDENTITY, AND GENDER EXPRESSION 3* (2011), <http://provost.unc.edu/files/2012/09/campusclimaterreport.pdf>. Twenty-eight percent of those who had experienced or witnessed harassment said that the harassers were university employees.

²⁵¹ *Id.* at 8.

²⁵² *Id.*

²⁵³ *Id.* at 11.

²⁵⁴ *Id.*

²⁵⁵ JUSTINE HOLLINGSHEAD, REBECCA JAEGER-MEYER & LESLIE WARE, *NC STATE UNIVERSITY 2012 TO 2013 GAY, LESBIAN, BISEXUAL AND TRANSGENDER (GLBT) CLIMATE SURVEY REPORT 6* (2013), <https://oied.ncsu.edu/faculty/wp-content/uploads/2013/03/Climate-Survey-Full-Report-Fall-2013-Accessible.pdf>.

²⁵⁶ *Id.* at 7.

²⁵⁷ *Id.* at 21.

²⁵⁸ *Id.* at 16-17.

²⁵⁹ *E.g.*, Darrel Higa, Marilyn J. Hoppe, Taryn Lindhorst, Shawn Mincer, Blair Beadnell, Diane M. Morrison, Elizabeth A. Wells, Avry Todd & Sarah Mountz, *Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 *YOUTH SOC'Y* 1, 8 (2012); Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 *NEV. L.J.* 774, 788 (2006); Anthony R. D'Augelli, Arnold H. Grossman & Michael T. Starks, , *Parents Awareness of*

LGBT youth faced, they ranked non-accepting families as the most important problem in their lives (26%), followed by school and bullying problems (21%), and fear of being open about being LGBT (18%).²⁶⁰ In contrast, non-LGBT identified youth ranked classes/exams/grades (25%), college/career (14%), and financial pressures related to college or job (11%) as the most important problems in their lives.²⁶¹

2. Health Disparities among LGBT Youth

Studies of LGB youth and young adults confirm that they, like older adults, experience negative physical and mental health outcomes related to discrimination and unsupportive environments. For example, a 2011 study of youth in Oregon found that, in general, LGB youth were more likely to have attempted suicide than heterosexual youth, and that LGB youth in unsupportive environments were at a 20% greater risk of attempting suicide than LGB youth in supportive environments.²⁶² Similar studies have linked unsupportive environments to depression and suicidality,²⁶³ high levels of stress,²⁶⁴ tobacco use,²⁶⁵ and illicit drug use²⁶⁶ in LGB youth and young adults. A 2011 meta-analysis of 18 studies found that compared to non-LGB youth, LGB youth were more likely to report depression and more than twice as likely to think about suicide, over three times more likely to report that they had attempted suicide, and more than four times as likely to have attempted suicide such that they needed medical attention.²⁶⁷ Studies have also

Lesbian, Gay, and Bisexual Youths' Sexual Orientation, 67 J. MARRIAGE & FAMILY 474 (2005); Les Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RESEARCH 329 (2004); Brian N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 733 (2002); Bryan E. Robinson, Lynda Henley Walters & Patsy Skeen, *Responses of Parents to Learning that their Child is Homosexual and Concern over AIDS: A National Survey*, 1 J. HOMOSEXUALITY 59, 67 (1989); CHRISTY MALLORY, BRAD SEARS, AMIRA HASENBUSH & ALEXANDRA SUSMAN, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ENSURING ACCESS TO MENTORING PROGRAMS FOR LGBTQ YOUTH (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Access-to-Youth-Mentoring-Programs.pdf>.

²⁶⁰ HUMAN RIGHTS CAMPAIGN, GROWING UP LGBT IN AMERICA, *supra* note 248 at 2.

²⁶¹ *Id.*

²⁶² Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 27 PEDIATRICS 896 (2011).

²⁶³ Another study found that LGBT youth who were rejected by their families in adolescence were 5.9 times more likely to report high levels of depression and 8.4 times more likely to have attempted suicide than LGBT youth who had not been rejected. Caitlin Ryan, David Huebner, Rafael M. Diaz & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009).

²⁶⁴ Mark L. Hatzenbuehler & Katie A. McLaughlin, *Structural Stigma and Hypothalamic-Pituitary-Adrenocortical Axis Reactivity in Lesbian, Gay, and Bisexual Young Adults*, 47 ANN. BEHAV. MED. 39 (2014).

²⁶⁵ Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

²⁶⁶ Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Sexual Orientation Disparities in Adolescent Drug Use*, 46 ADDICTIVE BEHAVIORS 14 (2015).

²⁶⁷ Michael P. Marshal, Laura J. Dietz, Mark S. Friedman, Ron Stall, Helen Smith, James McGinley, Brian C. Thoma, Pamela J. Murray, Anthony D'Augelli & David A. Brent, *Suicide and Depression Disparities Between*

linked high levels of victimization at school to higher levels of illicit drug use and sexual risk behaviors.²⁶⁸

Of particular relevance to HB2, a 2016 study found that transgender people who had been denied access to college bathrooms that matched their gender identity were 1.45 times more likely to have attempted suicide than those who were not denied bathroom access, and those who had been denied access to campus housing that matched their gender identity were 1.64 times more likely to have attempted suicide than those who had not been denied access.²⁶⁹ In addition, a 2010 study found that transgender respondents who had experienced gender-related abuse in their youth reported significantly higher rates of major depression and suicidality during that period of their lives than those who had not had such experiences.²⁷⁰

Our analysis of 2013 North Carolina YRBS data indicates that LGB youth in North Carolina are experiencing similar effects related to discrimination, harassment, bullying, and family rejection.

a. Depression and Suicidality

LGBQ students in North Carolina reported much higher rates of feeling isolated, depressed, and suicidal than non-LGBQ students.²⁷¹

While over two-thirds of non-LGBQ students disagreed or strongly disagreed with the statement that they felt alone in their life, only 46.5% of LGBQ students could similarly reject that statement. Just over half of LGBQ students (56.8%) agreed or strongly agreed with the statement “I feel good about myself” compared with over three-fourths of non-LGBQ students (76.9%). During the year prior to the survey, 54.1% of LGBQ students reported feeling so sad or hopeless every day for over two weeks that they stopped doing some of their usual activities. That was twice the rate of non-LGBQ students (26.6%). An affirmative answer to the question is part of the definition of major depressive disorder.²⁷²

Sexual Minority and Heterosexual Youth: A Meta-Analytic Review, 49 J. ADOL. HEALTH 115 (2011). Kann et al., *supra* note 249 at 12-15.

²⁶⁸ Daniel E. Bontempo & Anthony D’Augelli, *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths’ Health Risk Behavior*, 30 J. ADOL. HEALTH 362 (2002); Kann et al., *supra* note 249 at 11.

²⁶⁹ Kristie L. Seelman, *Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality*, J. HOMOSEXUALITY 1 (2016).

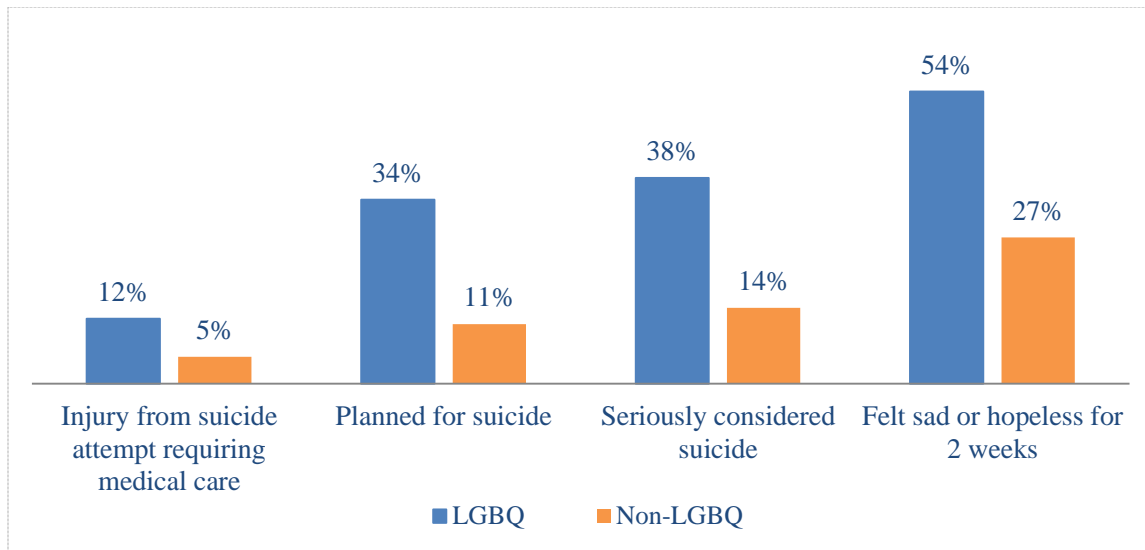
²⁷⁰ Larry Nuttbrock, Sel Hwahng, Walter Bockting, Andrew Rosenblum, Mona Mason, Monica Macri & Jeffrey Becker, *Psychiatric Impact of Gender-Related Abuse Across the Life Course of Male-to-Female Transgender Persons*, 47 J. SEX. RES. 12 (2010).

²⁷¹ The calculations that follow of student isolation, depression and suicidality were conducted by Williams Institute researchers using North Carolina YRBS data from survey results.

²⁷² See *Diagnostic Criteria for Major Depressive Disorder and Depressive Episodes*, PSNPALOALTO.COM, <http://www.psnpalalto.com/wp/wp-content/uploads/2010/12/Depression-Diagnostic-Criteria-and-Severity-Rating.pdf> (last visited May 4, 2016).

Figure IV.b. Depression and suicidality among North Carolina high school students in the 12 months prior to the survey, by sexual orientation

Source: North Carolina YRBS, 2013



LGBQ students in North Carolina were over two and a half times more likely to have seriously considered suicide in the year prior to the survey when compared to non-LGBQ students. More than a third of LGBQ students (37.7%) reported seriously considering suicide in the year prior to the survey, 33.5% had made plan about how to do it, and 11.6% reported being injured from a suicide attempt in a way that had to be treated by a doctor or a nurse. By comparison, 14.3% of non-LGBQ students in North Carolina reported seriously considering attempting suicide in the past 12 months, 10.6% had made a plan about how to do it, and 4.8% reported being injured from a suicide attempt that had to be treated by a doctor or a nurse.

Table IV.c. Isolation, depression, and suicidality among North Carolina high school students in the 12 months prior to the survey, by sexual orientation

Source: North Carolina YRBS, 2013

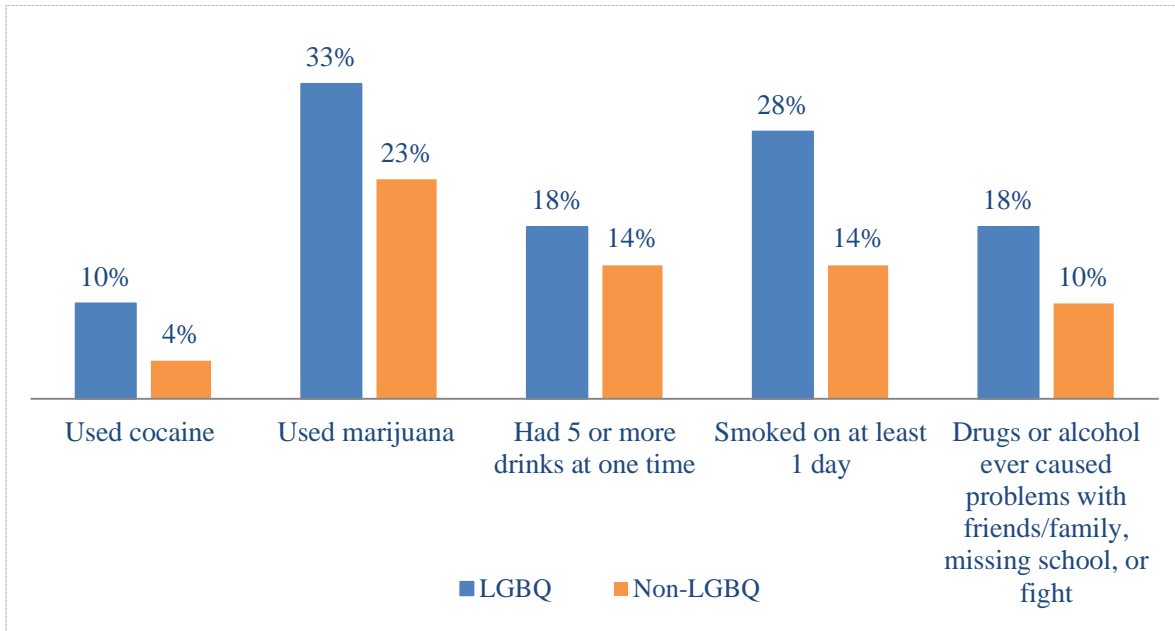
	LGBQ	Non-LGBQ	OR for LGB; 95% CI
Disagree feel alone in life	46.5%	68.4%	0.40 (0.39, 0.41)
Agree "I feel good about myself"	56.8%	76.9%	0.39 (0.39, 0.40)
Felt sad or hopeless for 2 entire weeks in past 12 months	54.1%	26.6%	3.25 (3.18, 3.32)
Seriously considered suicide in past 12 months	37.7%	14.3%	3.62 (3.54, 3.71)
Made a plan for suicide in the past 12 months	33.5%	10.6%	4.22 (4.12, 4.33)
Injury from suicide attempt requiring medical care	11.6%	4.8%	2.61 (2.52, 2.71)

b. Substance Use

LGBQ students in North Carolina were also more likely to report smoking, drinking, and substance abuse than non-LGBQ students.²⁷³

Figure IV.c. Substance abuse among North Carolina high school students in the 30 days prior to the survey, by sexual orientation

Source: North Carolina YRBS, 2013



For example, LGBQ students were over twice as likely to report having smoked one or more cigarettes in the month prior to the survey (28.2% v. 13.9%) and were also more likely to report that they had smoked on 20 or more days in the month prior to the survey (8.0% v. 4.8%). Over 44.1% of LGBQ students had had a drink in the month before the survey compared to 31.1% of non-LGBQ students. And 18.1% of LGBQ students reported having had 5 or more drinks in a row, or within a couple of hours, in the month prior to the survey compared to 14.0% of non-LGBQ students. LGBQ students were also more likely to report having used marijuana (32.7% v. 23.0%) in the month prior to the survey, and were over twice as likely as non-LGBQ students to report using cocaine in the month prior to the survey (9.9% v. 4.4%). When asked if alcohol or drugs had impacted their lives by getting into trouble with family and friends, missing school, or getting into fights, almost one in five LGBQ students (18.0%) reported those consequences compared with less than 1 in 10 (9.5%) non-LGBQ students.

²⁷³ The calculations that follow of student use of alcohol, tobacco, and other drugs were conducted by Williams Institute researchers using North Carolina YRBS data from survey results.

Table IV.d. Substance abuse among North Carolina high school students in the 30 days prior to the survey, by sexual orientation

Source: North Carolina YRBS, 2013

	LGBQ	Non-LGBQ	OR for LGB; 95% CI
Smoked on at least 1 day	28.2%	13.9%	2.42 (2.36, 2.48)
Smoked on 20 or more days	8.0%	4.8%	1.72 (1.65, 1.79)
Had an alcoholic drink	44.1%	31.1%	1.75 (1.71, 1.79)
Had 5 or more drinks at one time	18.1%	14.0%	1.35 (1.31, 1.39)
Used marijuana	32.7%	23.0%	1.64 (1.60, 1.67)
Used cocaine	9.9%	4.4%	2.41 (2.32, 2.50)

Drugs or alcohol had ever caused problems with friends or family, missing school, or getting in a fight	18.0%	9.5%	2.09 (2.02, 2.16)

The YRBS findings of health-related disparities for LGBT youth in North Carolina are consistent with analysis of national YRBS data. A report by the U.S. Centers for Disease Control and Prevention, which analyzed YRBS data collected from 2001 through 2009 in seven states and six large urban areas, found evidence of disparities in mental health and health risk behaviors in LGBQ youth.²⁷⁴ In terms of mental health, like LGBQ youth in North Carolina, the LGBQ youth in the CDC analysis were, in general, more likely to report that they felt so sad or hopeless that they stopped doing their usual activities for a period of time,²⁷⁵ that they had seriously considered suicide,²⁷⁶ that they had made a suicide plan,²⁷⁷ and that they had made a suicide attempt that resulted in an injury that had to be treated by a doctor or nurse.²⁷⁸ In terms of substance use, LGBQ youth in the CDC report, similarly to LGBQ youth in North Carolina, reported higher rates of smoking cigarettes,²⁷⁹ drinking alcohol,²⁸⁰ binge drinking,²⁸¹ marijuana use,²⁸² and cocaine use.²⁸³

²⁷⁴ U.S. Ctr. for Disease Control & Prevention, *Sexual Identity, Sex of Sexual Contacts, and Health-Risk Behaviors Among Students in Grades 9-12 – Youth Risk Behavior Surveillance, Selected Sites, United States, 2001-2009*, 60 MORBIDITY AND MORTALITY WEEKLY REPORT 1(2011), available at <http://www.cdc.gov/mmwr/pdf/ss/ss60e0606.pdf>.

²⁷⁵ The prevalence on this measure across sites ranged from 19.3% to 29.0% (median: 24.8%) among heterosexual students, from 28.8% to 52.8% (median: 41.3%) among gay or lesbian students, from 47.2% to 62.9% (median: 56.3%) among bisexual students, and from 33.3% to 50.7% (median: 37.6%) among unsure students. Id. at 12.

²⁷⁶ The prevalence on this measure across sites ranged from 9.9% to 13.2% (median: 11.7%) among heterosexual students, from 18.8% to 43.4% (median: 29.6%) among gay or lesbian students, from 35.4% to 46.2% (median: 40.3%) among bisexual students, and from 17.5% to 40.4% (median: 27.3%) among unsure students. Id. at 13.

²⁷⁷ The prevalence on this measure across sites ranged from 8.0% to 11.9% (median: 10.0%) among heterosexual students, from 15.8% to 37.1% (median: 21.2%) among gay or lesbian students, from 30.0% to 37.7% (median: 35.7%) among bisexual students, and from 17.8% to 31.7% (median: 20.9%) among unsure students. Id.

²⁷⁸ The prevalence on this measure across sites ranged from 0.9% to 3.4% (median: 2.2%) among heterosexual students, from 7.0% to 15.7% (median: 12.6%) among gay or lesbian students, from 8.3% to 15.9% (median: 11.3%) among bisexual students, and from 4.4% to 16.8% (median: 8.4%) among unsure students. Id. at 14.

²⁷⁹ The prevalence of those reporting that they had smoked cigarettes on at least one day in the past 30 days, across sites, ranged from 8.5% to 19.3% (median: 13.6%) among heterosexual students, from 20.0% to 48.2% among gay

3. Impact on Education and Economic Potential of LGBTQ Youth

Given the negative impacts of victimization and rejection on the health of LGBTQ youth, it is not surprising that LGBTQ youth also are more likely to skip school, become involved in the juvenile justice system, and enter foster care or become homeless. All of these outcomes make it more likely that the LGBT youth impacted won't finish high school or get a college degree and more likely that they will be unemployed or underemployed. The cost to individual lives is great, and that cost translates to an economic impact for North Carolina.

a. School Outcomes

Research shows that bullying can lead to skipping school and low academic performance among LGBTQ youth.

Similar to our findings based on the 2013 North Carolina YRBS data, analyses of YRBS data from other states also show that bullying can lead to skipping school. For example, a meta-analysis of YRBS data published in 2011 reported that, on average, LGBQ students were almost three times as likely to report not going to school because of safety concerns as their non-LGBQ counterparts.²⁸⁴ Similarly, a 2014 analysis of pooled YRBS data from 13 sites found that LGB²⁸⁵ high school students reported significantly higher rates of skipping school because they felt unsafe.²⁸⁶ Studies based on convenience samples also indicate that many LGBTQ youth skip

or lesbian students (median: 30.5%), from 26.1% to 49.2% (median: 30.8%) among bisexual students, and from 9.9% to 29.6% (median: 18.2%) among unsure students. *Id.* at 16.

The prevalence of those reporting that they had smoked cigarettes on at least 20 days in the past 30 days, across sites, ranged from 2.6% to 8.5% (median: 5.1%) among heterosexual students, from 3.8% to 29.0% (median: 15.5%) among gay or lesbian students, from 8.0% to 30.7% (median: 16.7%) among bisexual students, and from 2.5% to 17.6% (median: 7.3%) among unsure students. *Id.*

²⁸⁰ The prevalence of those reporting that they had had an alcoholic drink in the past 30 days, across sites, ranged from 23.9% to 46.8% (median: 37.6%) among heterosexual students, from 32.1% to 65.3% (median: 15.5%) among gay or lesbian students, from 46.2% to 65.9% (median: 55.6%) among bisexual students, and from 19.5% to 42.2% (median: 35.1%) among unsure students. *Id.* at 20.

²⁸¹ The prevalence of those reporting binge drinking across sites ranged from 11.0% to 27.0% (median: 20.2%) among heterosexual students, from 20.4% to 50.4% (median: 26.1%) among gay or lesbian students, from 20.8% to 40.5% (median: 33.1%) among bisexual students, and from 10.3% to 41.6% (median: 20.8%) among unsure students. *Id.* at 22.

²⁸² The prevalence of those reporting marijuana use in the past 30 days, across sites, ranged from 11.9% to 26.6% (median: 21.8%) among heterosexual students, from 25.9% to 44.8% (median: 34.5%) among gay or lesbian students, from 28.4% to 47.8% (median: 36.8%) among bisexual students, and from 9.8% to 32.3% (median: 25.4%) among unsure students. *Id.* at 23.

²⁸³ The prevalence of those reporting cocaine use in the past 30 days, across sites, ranged from 0.7% to 3.7% (median: 1.8%) among heterosexual students, from 51.% to 20.8% (median: 16.6%) among gay or lesbian students, from 3.2% to 25.0% (median: 11.0%) among bisexual students, and from 3.9% to 27.1% (median: 11.1%) among unsure students. *Id.* at 25.

²⁸⁴ Kann et al., *supra* note 249 at 12.

²⁸⁵ The study defined LGB students as those students who reported in response to the survey that they had had sexual contact with others of the same-sex or both same-sex and different sex-partners. Stephen T. Russell, Bethany G. Everett, Margaret Rosario & Michelle Birkett, *Indicators of Victimization and Sexual Orientation among Adolescents: Analyses from Youth Risk Behavior Surveys*, 104 AM. J. PUBLIC HEALTH, 255, 256 (2014).

²⁸⁶ *Id.*

school due to bullying and harassment. A 2009 report by the National Education Association found that, nationwide, approximately half of LGBT students who said that they experienced frequent or severe verbal harassment because of their sexual orientation or gender identity missed school at least once a month, and around 70% who said they experienced frequent or severe physical harassment missed school more than once a month.²⁸⁷ The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.²⁸⁸ In response to the National Transgender Discrimination Survey, 88% of North Carolina respondents who expressed a transgender identity or gender non-conformity while in K-12 reported experiencing harassment at school,²⁸⁹ and 8% of those who had experienced harassment reported that it was so severe they had to drop out of primary, secondary, or higher education.²⁹⁰

Other studies have found that bullying of LGBTQ youth is related to poorer academic performance and higher rates of absenteeism.²⁹¹

b. Overrepresentation in Foster Care, Juvenile Justice System, and the Homeless Population

In addition, the challenging environments at home and at school for LGBT youth contribute to their overrepresentation in the child welfare system, the youth homeless population, and the juvenile justice system. A 2014 Williams Institute study found that 19% of youth in foster care in Los Angeles County are LGBTQ.²⁹² Studies conducted in 2012 and 2015 by the Williams Institute, the Palette Fund, and the True Colors Fund found that the group of service providers for homeless youth that responded to the survey estimated that between 20% and 40% of their

²⁸⁷ ROBERT KIM, NATIONAL EDUC. ASS'N, REPORT ON THE STATUS OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE IN EDUCATION: STEPPING OUT OF THE CLOSET, INTO THE LIGHT 30 (2009), <http://www.nea.org/assets/docs/HE/glbstatus09.pdf>.

²⁸⁸ Id.

²⁸⁹ NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY AND LESBIAN TASK FORCE, *supra* note 247 at 1.

²⁹⁰ Id.

²⁹¹ E.g., Joseph P. Robinson & Dorothy L. Espelage, *Bullying Explains Only Part of LGBTQ-Heterosexual Risk Disparities: Implications for Policy and Practice*, 41 EDUC. RESEARCHER 309 (2012); Alicia L. Fedewa & Soyeon Ahn, *The Effects of Bullying and Peer Victimization on Sexual-Minority and Heterosexual Youths: A Quantitative Meta-Analysis of the Literature*, 7 J. GLBT FAMILY STUDIES 398 (2011); Shelley L. Craig & Mark S. Smith, *The Impact of Perceived Discrimination and Social Support on the School Performance of Multiethnic Sexual Minority Youth*, YOUTH SOC'Y 1 (2011); ELIZABETH M. DIAZ & JOSEPH G. KOSCIW, GLSEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1332-1.pdf; MASS. DEP'T OF EDUC., MASSACHUSETTS HIGH SCHOOL STUDENTS AND SEXUAL ORIENTATION: RESULTS OF THE 2009 YOUTH RISK BEHAVIOR SURVEY, <http://www.mass.gov/cgly/YRBS09Factsheet.pdf> (last visited May 3, 2016); Jennifer Pearson, Chandra Muller & Lindsey Wilkinson, *Adolescent Same-Sex Attraction and Academic Outcomes: The Role of School Attachment and Engagement*, 54 SOC. PROBLEMS 523 (2007); Stephen T. Russell, Hinda Seif & Nhan L. Truong, *School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study*, 24 J. ADOL. 111 (2001).

²⁹² BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES 6 (2014).

clients were LGBT.²⁹³ A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth in public high school were homeless, compared to 3% of heterosexual youth.²⁹⁴

While studies suggest that approximately 7% of youth generally identify as LGBT,²⁹⁵ data from the National Survey of Youth in Custody indicates that 12.2% of youth in custody identify as LGBTQ.²⁹⁶ Another study youth found that LGBTQ youth made up 15% of detained youth.²⁹⁷ Studies have shown that LGBTQ youth are more likely to be detained for offenses such as running away, truancy, curfew violations, and “ungovernability”—charges that can indicate problems with bullying in school and family rejection.²⁹⁸ Research also shows that in some instances, LGBTQ youth have been punished for defending themselves against their harassers,²⁹⁹ and it shows evidence of selective enforcement against LGBTQ youth.³⁰⁰

In addition to the human toll, there are direct costs to the government and social service providers created by the overrepresentation of LGBTQ youth while they in these systems.³⁰¹ But the long-term result is that LGBTQ youth end up out of schools and in environments where they are less likely to continue their education and more likely to have lower paying jobs. For example, LGBTQ youth are overrepresented in the foster care system and research suggests they

²⁹³ LAURA DURSO & GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICES PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS* 3 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>; SOON KYU CHOI, BIANCA D.M. WILSON, JAMA SHELTON & GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *SERVING OUR YOUTH 2015: THE NEEDS AND EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH EXPERIENCING HOMELESSNESS* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>. See also WILSON ET AL., *supra* note 292.

²⁹⁴ Heather L. Corliss, Carol S. Goodenow, Lauren Nichols & S. Bryn Austin, *High Burden of Homelessness among Sexual-Minority Adolescents: Findings from a Representative Massachusetts High School Sample*, 9 AM. J. PUB. HEALTH 1683 (2011). For further research on homelessness among LGBTQ youth, see MALLORY ET AL., *supra* note 259.

²⁹⁵ Melissa Dunn & Jeff Krehely, *Supporting Gay and Transgender Youth Most in Need: White House Conference Turns Spotlight on Housing and Homeless Issues Impacting Gay and Transgender Population*, CTR. FOR AM. PROGRESS, March 9, 2012, <https://www.americanprogress.org/issues/lgbt/report/2012/03/09/11226/supporting-gay-and-transgender-youth-most-in-need/>.

²⁹⁶ ALLEN J. BECK & DAVID CANTOR, BUREAU OF JUSTICE STATS., U.S. DEP'T OF JUSTICE, *SEXUAL VICTIMIZATION IN JUVENILE FACILITIES REPORTED BY YOUTH*, 2012 20 (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

²⁹⁷ Laura Garnette et al., *Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth and the Juvenile Justice System*, in *JUVENILE JUSTICE: ADVANCING RESEARCH, POLICY, AND PRACTICE* 162 (Francine T. Sherman & Francine H. Jacobs eds., 2011).

²⁹⁸ MAJD ET AL., *supra* note 248 at 71; SHANNAN WILBER, CAITLIN RYAN & JODY MARKSAMER, CHILD WELFARE LEAGUE OF AMERICA, *BEST PRACTICE GUIDELINES FOR SERVING LGBT YOUTH IN OUT-OF-HOME CARE* 4 (2006), <http://familyproject.sfsu.edu/sites/sites7.sfsu.edu.familyproject/files/bestpracticeslgbtyouth.pdf>.

²⁹⁹ MAJD ET AL., *supra* note 248 at 77.

³⁰⁰ Katherine E. W. Himmelstein & Hannah Bruckner, *Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

³⁰¹ For an example of costs to the foster care system due to the overrepresentation of LGBT youth in foster care, and their increased likelihood of having multiple placements and being in congregate care, see WILSON ET AL., *supra* note 292 at 41.

are more likely than non-LGBTQ to age out of the system.³⁰² While some of those who age out transition successfully into adulthood, many do not. Research shows that of those who age out of foster care: more than 1 in 5 will become homeless after age 18; 1 in 4 will be involved in the justice system within two years of leaving the foster care system; only 58% will graduate high school by age 19 (compared to 87% of all 19 year olds); fewer than 3% will earn a college degree by age 25 (compared to 28% all 25 year olds); and at the age of 24, only half will be employed.³⁰³

Nationally, the Jim Casey Foundation estimates that these outcomes cost nearly \$8 billion for each annual cohort of youth aging out of foster care. The best available data suggest that LGBTQ youth make up one-fifth, if not more, of each annual cohort. And these outcomes mirror, and of course overlap with, the outcomes for youth who end up homeless and in the juvenile justice system—all resulting in significant “welfare and Medicaid costs, the cost of incarceration, lost wages and other significant costs to individuals and to society.”³⁰⁴

B. Discrimination & Poverty in the LGBT Community

Research has linked discrimination, harassment, violence, and stigma against LGBT people, and a lack of laws and policies protecting the LGBT community, to harmful economic impacts.³⁰⁵ This section considers how HB2 adds to an already challenging legal landscape and social climate for LGBT people in North Carolina. It ends with an illustration of just two of the impacts on the North Carolina state budget resulting from discrimination against transgender people.

Many of the links between discrimination in the workplace and larger economic impacts have already been explored in the previous section drawing from the business case for diversity. Workplace discrimination may cause LGBT people to be unemployed or underemployed, and those employed may be less productive at work. Discrimination also “reduces workers’ incentives to invest in training and education if, because of discrimination, more training doesn’t necessarily mean a promotion or higher wage.”³⁰⁶ And, a growing body of research

³⁰² Id. (finding that LGBTQ youth in foster care have a higher total number of placements, are more likely to be in congregated care, and are more likely to have experienced homelessness).

³⁰³ JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF: COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE 5 (2013), http://www.jimcaseyyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief_EMBARGOED%20until%20May%202016.pdf.

³⁰⁴ Id.

³⁰⁵ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES (2014), as 2-3, <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>.

³⁰⁶ Id. at 23.

indicates that workplace protections and a more inclusive environment are linked to better business outcomes.³⁰⁷

1. Employment Discrimination

Research shows the existence of continuing discrimination against LGBT workers in the U.S. and in North Carolina. For example, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.³⁰⁸ The NTDS,³⁰⁹ the largest survey to date of transgender adults in the U.S., found that 78% of respondents reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.³¹⁰

Surveys of LGBT individuals in North Carolina show similar results. For example, in response to the NTDS, 77% of the respondents from North Carolina reported experiencing harassment or mistreatment at work, 16% reported losing a job, 16% reported being denied a promotion, and 47% reported not being hired because of their gender identity.³¹¹ Additionally, analysis of public opinion data indicates that 81% of North Carolina residents, non-LGBT and LGBT, think that LGBT people experience discrimination in the state.³¹²

Instances of employment discrimination against LGBT people in North Carolina have also been documented in a number of court cases, community surveys, and the media.³¹³ For example, a

³⁰⁷ Id. at 45-46; Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

³⁰⁸ *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CENTER, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>. Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, 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>.

³⁰⁹ JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY, NATIONAL CENTER FOR TRANSGENDER EQUALITY & THE NATIONAL GAY AND LESBIAN TASK FORCE (2011), http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf. The NTDS study was based on a national convenience sample of 6,456 transgender and gender non-conforming people. The NTDS data set was used with the permission of The National Gay and Lesbian Task Force.

³¹⁰ Id. at 56.

³¹¹ FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY: NORTH CAROLINA RESULTS, NATIONAL CENTER FOR TRANSGENDER EQUALITY & THE GAY AND LESBIAN TASK FORCE, http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_state/ntds_state_nc.pdf (last visited May 5, 2016).

³¹² 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).

³¹³ Alan Duke & Joe Sutton, *Teacher Suspended for Showing Class Macklemore's 'Same Love' Video*, CNN.COM, Sept. 12, 2013, <http://www.cnn.com/2013/09/12/showbiz/same-love-teacher-suspended/>. (public school teacher reported that she was given a three-day suspension for showing students a popular music video that featured a song

2015 survey of LGBT people in Mecklenburg County by the Charlotte Non-Discrimination Ordinance Coalition³¹⁴ documented a number of instances of transgender people being discriminated against and harassed at work, including being forced to use restrooms that did not align with their gender identity.³¹⁵ Court cases and news stories also document several instances of LGBT teachers in North Carolina being harassed by supervisors and coworkers,³¹⁶ being transferred to other positions,³¹⁷ and even leaving the state because of the discrimination they faced.³¹⁸ Other LGBT state and local government workers have also faced discrimination in North Carolina. For example, when a transgender worker was fired from Charlotte maintenance facility in 2006,³¹⁹ City Attorney Mac McCarley responded that “transgendered individuals do not have any rights under federal employment discrimination laws.”³²⁰

2. Wage Gaps

Wage gap analysis has been a traditional method used by economists to measure employment discrimination against women, people of color, and LGBT people. In a meta-analysis of 31 studies on sexual orientation wage gaps, Professor Marieka Klawitter concluded that almost all

supporting marriage for same-sex couples); Derick Waller, *Gay Discrimination Bill Clears Senate Hurdle*, WNCN.COM, Nov. 5, 2013, <http://www.wncn.com/story/23888634/gay-discrimination-bill-clears-senate-hurdle> (Raleigh resident reported that she was fired from her job as a broadcast technician because of her sexual orientation).

³¹⁴ CHARLOTTE NON-DISCRIMINATION ORDINANCE COALITION, CHARLOTTE LGBT DISCRIMINATION SURVEY (2015), <http://keepncsafe.org/wp-content/uploads/CLT-LGBT-Discrimination-Survey-Resuts.pdf>.

³¹⁵ *Id.* at 1-3.

³¹⁶ *Dawkins v. Richmond Cty Schools*, No. 1:12CV414, 2012 WL 1580455 (M.D.N.C. May 4, 2012), *adopted by* *Dawkins v. Richmond Cty Schools*, No. 1:12-CV-2014 (M.D.N.C. Feb. 19, 2014) (teacher brought suit against public school district, alleging that his contract was not renewed because of his sexual orientation. According to the teacher, the school’s principal told him that he ““didn’t belong here,”” and reported that parents had complained about him teaching their children because he was gay. The teacher also stated that after news of his non-renewal spread, other teachers began to make homophobic comments and jokes about him; and that the principal was ““outraged”” when she found out that his partner visited him at the school. A district court allowed the teacher’s claim based on the equal protection clause of the U.S. Constitution to proceed.) A final disposition in the case was not available as of May 2016.

³¹⁷ Trial Motion, Memorandum and Affidavit, *Hensley v. Johnston County Bd. of Educ.*, No. 5:07-CV-231 F, 2007 WL 4717527 at *1-3 (E.D.N.C. Aug. 21, 2007) (public school teacher filed complaint stating she was transferred from her position following parent’s complaints about her perceived sexual orientation). In 2010, a federal district court allowed the teacher’s claim for discrimination based on disability (hearing impairment) to proceed, but the teacher voluntarily dismissed her suit a few months later. Stipulation of Voluntary Dismissal, *Hensley v. Johnston County Bd. of Educ.*, No. 5:07-CV-231 F at *1 (E.D.N.C. Aug. 8, 2011).

³¹⁸ Jason Wagner, *Why I Don’t Teach in North Carolina*, CHRONICLE (Duke Univ.), Sept. 20, 2011, <http://www.dukechronicle.com/articles/2011/09/21/why-i-dont-teach-north-carolina>.

³¹⁹ Franco Ordonez & Maria David, *Ex-City Worker Says She Was Fired for Sex Change*, CHARLOTTE OBS., Feb. 12, 2009, *available at*: <http://bit.ly/rEfNo>.

³²⁰ Matt Comer, *Transgender Worker Sues Charlotte for Job Discrimination*, Q-NOTES, Feb. 12, 2009, <http://bit.ly/Oe2jA>. In 2003, a chief of police in the state filed suit against a government official alleging that the official had disclosed the officer’s bisexuality, which led to his termination. The court denied the government official’s request to dismiss, but no further information about the case is available. *Bradley v. North Carolina Dept. of Transp.*, 286 F. Supp. 2d 697, 707 (W.D.N.C. 2003).

studies found an earnings penalty for gay men, with an average of -11%.³²¹ For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.³²² Klawitter concludes that her analysis “shows evidence consistent with possible discrimination—an earnings penalty—for gay men but not for lesbians.”³²³ A simple cross tabulation of median incomes in North Carolina suggests that gay men in North Carolina also may face a wage gap. The median income of men in same-sex couples in the state is 16% lower than the median income of men in different sex marriages.³²⁴

Klawitter posited several reasons to explain why gay men may face more discrimination in the workplace, including that straight men in the U.S. have less positive attitudes towards gay men than lesbians, and straight men are more likely to be in wage-determining senior positions than women.³²⁵ Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings³²⁶ and that other reviews of research have found that for lesbians who do not fit the norms for femininity, it is harder to find employment.³²⁷ A more recent study based on self-identified lesbians, as opposed to questions about sexual behavior, found a sizeable wage penalty.³²⁸ Finally, it is important to keep in mind that most lesbians still earn less than most gay and heterosexual men because of the gender wage gap.³²⁹

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps. A 2009 study found that in states with a sexual orientation non-discrimination law, men and women in same-sex couples had a wage premium (3% and 2% respectively) and they earned approximately 0.3% more for each year the policy was in effect.³³⁰ Similarly, two studies

³²¹ Marieka Klawitter, *Meta-Analysis of the Effects of Sexual Orientation on Earnings*, 54 *Indust. Rel.* 4, 13 (2014) (finding an average wage gap of -11% and a range of -30% to 0% for gay men).

³²² *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

³²³ *Id.* at 21.

³²⁴ ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, CENSUS SNAPSHOT: NORTH CAROLINA 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/NorthCarolinaCensus2000Snapshot.pdf>.

³²⁵ Klawitter, *supra* note 321 at 21-22. Klawitter also notes that, consistent with the hypothesis of discrimination for gay men, jobs in the private sector show larger earnings penalties for gay men than in more highly regulated government sector jobs, but this pattern is not observed for lesbians—who have significant earnings premiums in the private and non-profit sectors, but none in government employment.

³²⁶ *Id.* at 22.

³²⁷ LOTTA SAMELIUS & ERIK WÅGBERG, SIDA, SEXUAL ORIENTATION AND GENDER IDENTITY ISSUES IN DEVELOPMENT (2005), http://www.sida.se/contentassets/77a0ee7f307a4ff49fa0514d080748dc/sexual-orientation-and-gender-identity-issues-in-development_718.pdf.

³²⁸ Michael E. Martell & Mary Eschelback Hansen, *Self-Identified Sexual Orientation and the Lesbian Earnings Differential* (Apr. 2013) (unpublished manuscript, available at the American University repository) (2014), <http://wvau.american.edu/cas/economics/research/upload/2014-13.pdf>.

³²⁹ Badgett & Schneebaum, *supra* note 231.

³³⁰ Gary J. Gates, *Cal. Center for Pop. Research, The Impact of Sexual Orientation Anti-Discrimination Policies on the Wages of Lesbians and Gay Men* (2009), <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2009-010/PWP-CCPR-2009-010.pdf>.

published in 2011 found a significant impact of state non-discrimination laws on annual earnings³³¹ and evidence that state non-discrimination laws were associated with greater weeks worked for gay men, especially in private-sector jobs.³³² A 2015 study found that the enactment of state level non-discrimination laws increased wages by 4.2% and employment by 2% for gay men.³³³

3. Public Accommodations and Housing Discrimination

There is also evidence of ongoing discrimination against LGBT people in North Carolina in terms of public accommodations and housing. For example, in 2015 the Charlotte Non-Discrimination Ordinance Coalition conducted a community survey of LGBT individuals about their experiences of public accommodations discrimination in Mecklenburg County.³³⁴ Although based on a convenience sample of 146 respondents, 71% reported experiencing at least one form of discrimination.³³⁵ More specifically: 19% reported being denied service, 39% reported receiving poor service, and 39% reported being verbally harassed at a place of public accommodation because of their sexual orientation or gender identity.³³⁶ And over half (53%) of the 32 transgender respondents said they had been harassed, assaulted, or discriminated against when trying to use a public restroom.³³⁷

Similarly, in response to the National Transgender Discrimination Survey, half (50%) of the respondents from North Carolina reported that they were verbally harassed or disrespected at a place of public accommodation or service; 19% reported that they were denied equal treatment by a government agency or official, and 11% reported that they were refused medical care because of their gender identity.³³⁸ In addition, many transgender people in North Carolina

³³¹ Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 Soc. Forces 1005 (2011).

³³² Marieka M. Klawitter, *Multilevel Analysis of the Wffects of Antidiscrimination Policies on Earnings by Sexual Orientation*, 30 J. POL. ANALYSIS & MGMT. 334 (2011). See also Marieka M. Klawitter & Victor B. Flatt, *The Effects of State and Local Anti-Discrimination Policies on Earnings for Gays and Lesbians*, 17 J. POL. ANALYSIS & MGMT. 658 (1998).

³³³ Ian Burn, *Legal Differences in Non-Discrimination Laws and the Effect of Employment Protections for Gay Men* (Feb. 2015) (unpublished manuscript available at the Princeton University repository). The study also found that state non-discrimination laws with stronger damages, statute of limitations, and attorney's fees increase the positive impact on gay men's wages. Id.

³³⁴ Charlotte Non-Discrimination Ordinance Coalition, *Charlotte LGBT Discrimination Survey*, available at <http://keepmyncsafe.com/wp-content/uploads/CLT-LGBT-Discrimination-Survey-Resuts.pdf> (last visited May 5, 2016). Because the community survey was based on a convenience sample rather than a representative sample, the prevalence findings are most likely not generalizable to the LGBT population of North Carolina as a whole. Nonetheless, the survey provides information about the types of discrimination experienced by LGBT people in North Carolina.

³³⁵ Id. at 1.

³³⁶ Id.

³³⁷ Id.

³³⁸ FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY: NORTH CAROLINA RESULTS, *supra* note 311.

reported experiencing housing discrimination: 20% reported that they were denied a home or apartment, and 11% reported that they were evicted because of their gender identity.³³⁹

4. Intersectionality

A growing body of research supports that for LGBT people who face multiple types of discrimination, the resulting experiences and economic impacts are greater than the sum of the parts. For example, a 2015 study found that overall wage gap for gay men of color was greater than what the sum of the race and sexual orientation wage gaps would have predicted. The gap was even more pronounced “in the bottom three quartiles of earnings, indicating that the magnifying negative interaction effects of minority race and sexual orientation status is most pronounced for lower-income workers.”³⁴⁰ Recent research also sheds light on the multiple forms of discrimination faced by LGBT sub-populations within North Carolina. For example, a 2012 survey of 186 sexual minority immigrant Latino men and transgender women in North Carolina found that 55% reported experiencing discrimination based on their sexual identity.³⁴¹ In a similar 2008 survey of 190 sexual minority immigrant Latino men in rural North Carolina, 59% of respondents said they had experienced homophobia since coming to the U.S.³⁴²

5. Poverty in the LGBT Community

While national averages indicate that LGBT people may be more likely to have college education and have higher household incomes, those averages often mask that LGBT people are also disproportionately poor³⁴³ and that poverty is concentrated in certain sub-populations within the LGBT community such as female couples, people of color, transgender people, youth, and the elderly. For example, key findings from a 2013 study on poverty in the LGBT community include:

- 7.6% of lesbian couples are in poverty, compared to 5.7% of married different-sex couples;
- Over 1 in 5 of children of same-sex couples are in poverty, compared to 12.1% of children of married different-sex couples;

³³⁹ Id.

³⁴⁰ Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 *Indust. Rel.* 59, 96 (2015).

³⁴¹ Alice Ma et al., Presentation: Examining Perceived Discrimination on Depression among Latino Sexual Minorities and Transgender Women, *Am. Pub. Health Assoc.*, Nov. 3, 2015, <https://apha.confex.com/apha/143am/webprogram/Paper330466.html>.

³⁴² Paul A. Gilbert & Scott D. Rhodes, *Immigrant Sexual Minority Men in Rural North Carolina: An Exploration of Social Context, Social Behaviors, and Sexual Outcomes*, 61 *J. HOMOSEXUALITY* 1131, 1138 (2014).

³⁴³ M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBAUM, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, *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>.

- African American same-sex couples have poverty rates more twice that of married different-sex African American couples; and
- Lesbian couples who live in rural areas are much more likely to be poor (14.1%), compared to coupled lesbians in large cities (4.5%).

Similarly, research looking at the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than 1 in 4 LGBT adults (29%) experienced a time when they did not have enough money to feed themselves or their family and more than 4 in 10 LGB adults raising children (43%) received food stamps.³⁴⁴

Research has also found high rates of underemployment and unemployment among transgender people. Data from the NTDS shows that transgender people were four times more likely to have a household income of less than \$10,000 per year compared to the general population.³⁴⁵ Additionally, transgender people of color had an unemployment rate four times the national average and almost one in five reported being homeless at least one time in their life.³⁴⁶

In a 2013 study on poverty, Badgett et. al. suggest that both social climate and policy have a role to play in the higher poverty rates for LGB people: “LGB people who live in non-coastal regions of the U.S. or rural communities are more likely than those in urban and coastal regions to be in poverty. These geographic areas are more likely to have social climates that are less accepting of LGB identities, increasing the stress and discrimination that LGB people face. These locales may also be less likely to offer legal protections that would guard against major life events, such as job loss or health issues that often contribute to poverty.”³⁴⁷

Building off that thesis, a 2015 report by the Williams Institute linked greater socio-economic disparities for LGBT people to region, a lack of legal protections, and poor social climate.³⁴⁸ The report found that LGBT Americans face greater social and economic disparities in states without statewide laws prohibiting sexual orientation discrimination, and in regions of the country such as the South, with a poorer social climate and fewer legal protections.³⁴⁹ While same-sex couple

³⁴⁴ GARY J. GATES, FOOD INSECURITY AND SNAP (FOOD STAMPS) PARTICIPATION IN LGBT COMMUNITIES (2014), WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-in-LGBT-Communities.pdf>

³⁴⁵ GRANT ET AL., *supra* note 309 at 2-8.

³⁴⁶ *Id.*

³⁴⁷ BADGETT, DURSO & SCHNEEBaum, *supra* note 343 at 25.

³⁴⁸ AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

³⁴⁹ Press Release, Williams Inst. Univ. of Cal. Sch. of Law, LGBT Americans Face Greater Social and Economic Disparities in the South, Midwest, and Mountain States (Dec. 18, 2014) (available at <http://williamsinstitute.law.ucla.edu/press/press-releases/lgbt-divide/>). In the words of report author Gary Gates: “It’s not just that LGBT people in the Midwest and South are poorer because people in those regions tend to be poorer overall. In some cases the economic disadvantages that LGBT people have relative to non-LGBT people

households with children in all states face an income disadvantage when compared to their different-sex married counterparts, that income gap widens from \$4,300 in the states with protective laws states to \$11,000 in states without such laws.³⁵⁰

The report, *The LGBT Divide*, shows similar disadvantages for LGBT in North Carolina, including:

- Nearly half of LGBT adults (48%) in North Carolina report having a household income below \$24,000 compared to 28% of non-LGBT adults.³⁵¹ By comparison, 32% of all LGBT individuals in the U.S. report household incomes in this bracket.³⁵²
- Same-sex couples raising children have average household incomes of over \$10,000 less than different-sex married couples raising children in the state (\$74,206 for same-sex couples compared to \$84,753 for different-sex married couples).³⁵³
- One-third of LGBT adults report that they do not have enough money for food compared to one-fifth of non-LGBT adults.³⁵⁴
- Similarly, 30% of LGBT adults in North Carolina report not having enough money to meet their health care needs compared to 21% of non-LGBT adults.³⁵⁵

A North Carolina report based on data from the NTDS shows that transgender people in North Carolina are four times as likely to be poor (17% v. 4%) and twice as likely to be unemployed (14% v 7%) as the general population in the state.³⁵⁶ In addition, 18% of transgender people reported being homeless because of their gender identity.³⁵⁷ The authors of the report concluded that the higher rates of poverty and unemployment are “likely due to employment discrimination and discrimination in school.”³⁵⁸

6. Illustration of Economic Impacts

Discrimination in employment and other areas of life can result in LGBT people being unemployed, underemployed, less productive, and more reliant on government benefits and social services. Here we estimate the fiscal impact of discrimination in just two areas by estimating the costs associated with Medicaid participation and use of shelters that result from housing discrimination in North Carolina. HB2 is not the single cause of the economic

markedly increase in those regions. In others, the advantages that you see for LGBT people in other parts of the country either disappear or reverse.”

³⁵⁰ HASENBUSH ET AL., *supra* note 348.

³⁵¹ *Id.* at 37.

³⁵² *Id.* at 14.

³⁵³ *Id.* at 36.

³⁵⁴ *Id.* at 40.

³⁵⁵ *Id.* at 42.

³⁵⁶ FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY: NORTH CAROLINA RESULTS, *supra* note 15.

³⁵⁷ *Id.*

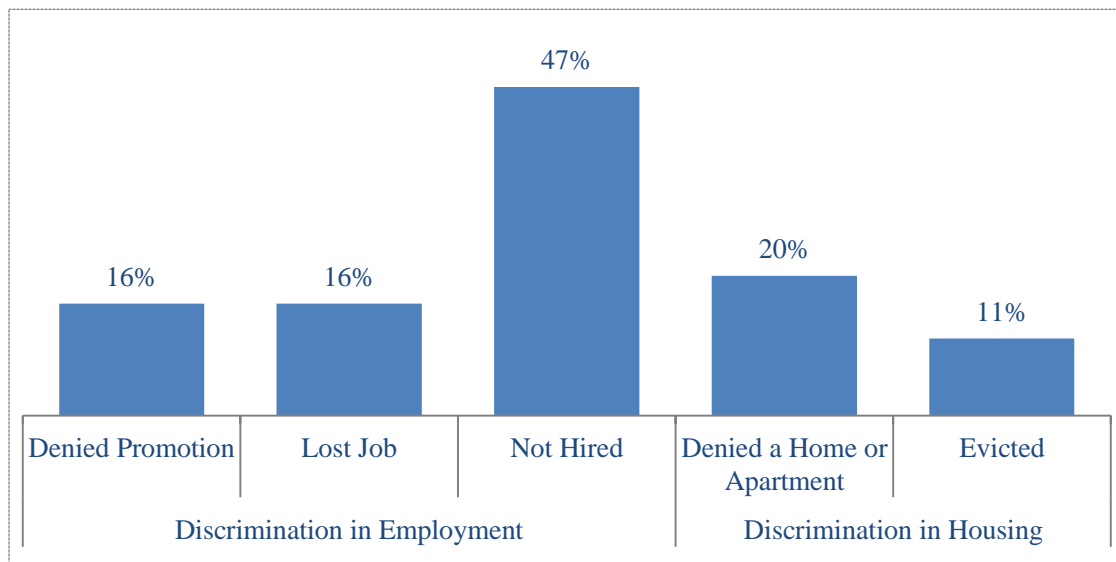
³⁵⁸ *Id.*

inequality faced by transgender people in North Carolina, but it is a significant step away from the laws, policies, and programs necessary to address it.

We estimate that there are approximately 22,400 adult residents of North Carolina who identify as transgender.³⁵⁹ We use prevalence findings from the NTDS to estimate how many of these transgender adults in North Carolina have experienced specific forms of gender identity discrimination and estimate the fiscal impact of those discrimination experiences.

Figure IV.d. Substance in employment and housing among NTDS respondents in North Carolina (n=121)

Source: National Transgender Discrimination Survey, 2010



Job loss, including as a result of anti-transgender bias, can result in economic insecurity and loss of a variety of benefits, such as health care coverage. People who experience job loss may become eligible for and enroll in Medicaid. Preliminary estimates from the Centers for Medicare and Medicaid Services find that in January 2016, 1.9 million people were enrolled in Medicaid or the Children’s Health Insurance Program (CHIP) in North Carolina.³⁶⁰

³⁵⁹ We use findings of the population of transgender adults in the United States from Gates (2011) as it is the best available data. We assume that the proportion of North Carolina residents who identify as transgender is similar to the proportion of adults who identify as transgender nationally. Our estimate of the transgender population of North Carolina may not fully account for those individuals whose gender identity or expression differs from traditional expectations based on their sex assigned at birth because some individuals may not use the term “transgender” to identify themselves. The U.S. Census Bureau estimated in the 2014 American Community Survey that 7,466,181 adults reside in the state of North Carolina. An estimated 0.3 percent of the U.S. adult population is believed to identify as transgender. GARY J. GATES, WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HOW MANY PEOPLE ARE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER? (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

³⁶⁰ *Keeping America Healthy*, MEDICAID.GOV, <https://www.medicaid.gov/medicaid-chip-program-information/by-state/north-carolina.html> (last visited May 2, 2016)

Based on findings from the NTDS, we estimate that 4.9% of transgender adults in North Carolina *who have* lost a job due to anti-transgender bias have enrolled in Medicaid.³⁶¹ An estimated 1.5% of transgender adults in North Carolina *who have not* experienced such discrimination have enrolled in Medicaid. We attribute the difference in Medicaid enrollment between these two groups to the elevated need for Medicaid coverage resulting from employment discrimination. Applying this figure (3.4%) to the population of transgender adults in North Carolina who have lost a job because of gender identity bias, we estimate that 123 transgender North Carolinians have enrolled in Medicaid because of employment discrimination on the basis of gender identity.³⁶² In 2011, average annual state spending per Medicaid enrollee in North Carolina was approximately \$1,844.³⁶³ Therefore, we estimate that employment discrimination experienced by transgender adults in North Carolina costs the state approximately \$227,000 annually in state Medicaid expenditures.

Individuals who are denied housing because of anti-transgender bias may experience homelessness and seek housing at a homeless shelter. We estimate that 4.2% of transgender adults in North Carolina *who have* been denied a home or apartment due to anti-transgender bias are currently experiencing homelessness.³⁶⁴ An estimated 0.5% of transgender adults in North Carolina *who have not* been denied a home or apartment due to anti-transgender bias are currently experiencing homelessness. Therefore, we believe that approximately 3.7% of

³⁶¹ Prevalence estimates for those who have lost a job due to bias and are currently enrolled in Medicaid are based on a combined sample of NTDS respondents from Georgia, North Carolina, South Carolina, and Tennessee. There were too few respondents from North Carolina for us to determine robust estimates with a sample of only North Carolina respondents. We compared all four neighboring states (Georgia, South Carolina, Tennessee, and Virginia) with North Carolina on a number of key variables and chose to exclude Virginia in this analysis because it varied substantially from the other states on most of these variables, including median income. Though Medicaid eligibility varies across these states, we believe the pooled states figure has created a more conservative estimate by narrowing the difference in Medicaid participation between the two groups in question (those who have and have not experienced job loss due to discrimination).

³⁶² According to the NTDS, 16% of transgender adults in North Carolina have experienced job loss due to anti-transgender bias, which we estimate to be 3,584 individuals. Multiplying this figure by 3.42 percent yields 123 transgender adults who are enrolled in Medicaid due to job loss resulting from anti-transgender bias.

³⁶³ Medicaid per enrollee figure available at *Medicaid Spending per Enrollee (Full or Partial Benefit)*, HENRY J. KAISER FAMILY FOUNDATION, <http://kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/> (last visited April 27, 2016). Further calculations to determine the state proportion of expenditures, based off the 2011 Federal Medical Assistance Percentage or FMAP (64.71%), were conducted by the authors. We believe this is a conservative estimate as the average per enrollee spending estimate includes Medicaid spending for eligible children who consistently have lower spending levels than adults. Though costs and program participation have changed, estimates of per enrollee spending from 2011 currently represent the best available data. We note that total Medicaid spending in North Carolina has increased since 2011, as has the number of state residents enrolled in Medicaid. Furthermore, the FMAP for North Carolina has increased, meaning the federal government provides a greater share of Medicaid expenditures. It is unclear how these changes since 2011 have impacted the per-enrollee state expenditure for Medicaid. North Carolina has not adopted Medicaid expansion under the Patient Protection and Affordable Care Act (ACA).

³⁶⁴ Prevalence estimates for those who have experienced housing discrimination and are currently experiencing homelessness are based on a combined sample of NTDS respondents from Georgia, North Carolina, South Carolina, and Tennessee. *See* note 361, *supra*.

transgender adults in North Carolina, or 164 individuals, may be currently experiencing homelessness because of housing discrimination based on gender identity.³⁶⁵

These individuals may seek temporary housing at a homeless shelter in the state. A 2010 study by the U.S. Department of Housing and Urban Development (HUD) estimated that the cost of housing an individual experiencing homelessness at a shelter for an average length of stay based on cost data from three cities (Des Moines, IA; Houston, TX; and Jacksonville, FL) is approximately \$2,100.³⁶⁶ This is likely a conservative estimate of costs to shelter facilities as the HUD estimate only considered those experiencing homelessness for the first time and individuals only, not families. Applying this estimate to the number of transgender residents of North Carolina who are likely to be currently experiencing homelessness due to housing discrimination (164), we estimate that housing discrimination may cost up to \$345,000 annually in housing program expenditures.

In short, we estimate that discrimination against transgender residents of North Carolina costs the state approximately \$227,000 annually in state Medicaid expenditures and housing discrimination costs approximately \$345,000 in housing program expenditures.³⁶⁷ Reducing or eliminating discrimination on the basis of gender identity in employment and housing can be a cost-saving measure for the state of North Carolina and local service providers. The costs that result from elevated enrollment in Medicaid and utilization of homeless shelters represent only two of a variety of costs that can accrue to the state and localities when transgender individuals face discrimination. To the extent that a state-wide prohibition against gender identity discrimination can reduce or eliminate bias in this area, the state of North Carolina and local service providers could save hundreds of thousands of dollars annually.

C. LGBT Health Disparities

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climates, have been shown to contribute to health disparities for LGBT people. Substantial research has documented that LGBT people experience disparities on a range of health outcomes, and health-related risk factors, compared to their non-LGBT counterparts.

³⁶⁵ According to the NTDS, 20% of transgender adults in North Carolina have been denied a home or apartment because of anti-transgender bias, which we estimate to total 4,480 individuals. Multiplying this figure by 3.66 percent yields 164 transgender adults who have experienced discrimination in housing and are currently experiencing homelessness.

³⁶⁶ The HUD estimate refers to costs to shelter facilities. In North Carolina, the state government does not provide financial support for shelter facilities. It administers funding provided by the federal government in the form of Emergency Solutions Grants (ESG). Facilities may also receive support from local governments, grants, charitable contributions, and other sources.

³⁶⁷ The North Carolina Department of Health and Human Services administers the federal Emergency Solutions Grant program and distributes this funding to grantees in the state to provide housing services, including emergency shelters for people experiencing homelessness. This funding totaled \$5,033,564 in FY2015. This federal funding and any additional funding from municipal and other sources are included in this estimate.

Research shows that LGB adults have high prevalence of mood³⁶⁸ and anxiety disorders,³⁶⁹ attempted suicide,³⁷⁰ and self-harm.³⁷¹ Studies also indicate that transgender people experience high prevalence of depression, anxiety disorders, and attempted suicide.³⁷² In addition, research also shows that LGBT people exhibit a higher prevalence of health-related risk factors, such as tobacco use, drug use, and alcohol disorders, than their non-LGBT counterparts.³⁷³ As described more fully in Section IV.B. below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in North Carolina indicate that LGB³⁷⁴ adults in the state experience the same types of disparities that have been documented nationally and in other states.

1. LGB Health Disparities in North Carolina

One source for assessing health disparities between LGB people and non-LGB people in North Carolina is the North Carolina Behavioral Risk Factor Surveillance System (BRFSS).³⁷⁵ In 2011, North Carolina added a measure of sexual orientation identity to its BRFSS.³⁷⁶ We present below a prior analysis of 2011 North Carolina BRFSS data by Derrick Matthews and Joseph

³⁶⁸ Michael King et al., Joanna Semlyen, Sharon See Tai, Helen Killaspy, David Osborn, Dmitri Popelyuk & Irwin Nazareth, *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 BMC Psychiatry 70 (2008); Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey, Esther D. Rothblum, *Mental Health of Lesbian, Gay*, 114 J. ABNORMAL PSYCH. 471 (2005).

³⁶⁹ King et al., *supra* note 368; Wendy B. Bostwick, Carol J. Boyd, Tonda L. Hughes & Sean Esteban McCabe, *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 AM. J. PUBLIC HEALTH 468 (2010).

³⁷⁰ King et al., *supra* note 368; Susan D. Cochran & Vickie M. Mays, *Relation between Psychiatric Syndromes and Behaviorally Defined Sexual Orientation in a Sample of the US Population*, 151 J. EPIDEMIOLOGY 516 (2000).

³⁷¹ Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay*, 114 J. ABNORMAL PSYCH. 471 (2005). For comprehensive reviews of research on LGBT health, see INSTITUTE OF MEDICINE, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* (2011); *THE HEALTH OF SEXUAL MINORITIES: PUBLIC HEALTH PERSPECTIVES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER POPULATIONS* (ILAN H. MEYER & MARY E. NORTHRIDGE, EDS. 2007).

³⁷² See INSTITUTE OF MEDICINE, *supra* note 371 at 193-97.

³⁷³ Cochran & Mays, *supra* note 370; AMERICAN LUNG ASSOC., *SMOKING OUT A DEADLY THREAT: TOBACCO USE IN THE LGBT COMMUNITY* (2010), <http://www.lung.org/assets/documents/research/lgbt-report.pdf>; Kelly E. Green & Brian A. Feinstein, *Substance Use in Lesbian, Gay, and Bisexual Populations: An Update on Empirical Research and Implications for Treatment*, 26 PSYCHOL. ADDICT. BEHAV. 265 (2012).

³⁷⁴ We are deliberate when using LGBT and LGB in this section. If we are using just LGB, it is because the underlying survey only had a measure of sexual orientation, and did not ask about gender identity.

³⁷⁵ *About BRFSS*, U.S. CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/brfss/about/index.htm> (last visited Apr. 28, 2016); Behavioral Risk Factor Surveillance System, N.C. HEALTH & HUMAN SVCS., <http://www.schs.state.nc.us/units/stat/brfss/> (last visited Apr. 28, 2016). Administered jointly by the CDC and the NC's Department of Health and Human Services, the North Carolina BRFSS is an anonymous survey of adults 18 years and older about a variety of health behaviors and preventive health practices.

³⁷⁶ Sexual orientation identity was assessed with the following item: "Do you consider yourself to be (1) heterosexual or straight, (2) homosexual, gay, or lesbian, (3) bisexual, (4) or something else." N.C. HEALTH & HUMAN SVCS., *NORTH CAROLINA 2014 QUESTIONNAIRE: BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM 50-51*, <http://www.schs.state.nc.us/schs/brfss/pdf/BRFSSQ14.pdf>.

Lee³⁷⁷ and our own analysis of the most recent available data from 2014. We note where the 2011 and 2014 analyses find similar results for LGB people, and where those results are consistent with research on health disparities for LGB people based on larger samples. Like Matthews and Lee, we conclude that the results “illustrate that as a whole, sexual orientation is a characteristic on which health disparities are patterned in North Carolina.”³⁷⁸

An analysis of the 2011 data published by Matthews and Lee in the *American Journal of Public Health* found disparities for LGB people related to substance abuse and depression.³⁷⁹ More specifically, they found:

- **Mental Health:** LGB men (34.9% v. 15.9%) and women (47.9 % v. 24.0%) were twice as likely to report five or more days of bad mental health in the month prior to the survey when compared to non-LGB men and women.³⁸⁰ Additionally, LGB men (32% v. 12.3%) and women (41.7% v. 21.4%) were approximately twice as likely to have been diagnosed with any depressive disorder.³⁸¹ Matthews and Lee noted that these differences “may be owing, in part, to state policies and an environment that stigmatizes or renders invisible sexual minority lives, creating psychosocial stress in the process.”³⁸²
- **Smoking:** Lesbian and bisexual (LB) women were more likely than non-LB women to be current smokers (33.7% v. 18.6%) or to have ever smoked 100 cigarettes (62.9% v. 39.1%).³⁸³ However, gay and bisexual (GB) men were less likely to be current smokers (13.8% v. 23.6%) than non-GB men or to have ever smoked 100 cigarettes (31.7% v. 55.8%), although the results for men were not statistically significant.³⁸⁴ They noted that “elevated rates of smoking may be attributable to a variety of LGB-specific factors, ranging from internalized homophobia to targeted advertising on the part of tobacco companies.”³⁸⁵

³⁷⁷ Derrick D. Matthews & Joseph G. L. Lee, *A Profile of North Carolina Lesbian, Gay, and Bisexual Health Disparities*, 106 AM. J. PUBLIC HEALTH 98 (2014).

³⁷⁸ Id. at 101.

³⁷⁹ Id. at 100-01. For their analysis, Matthews and Lee included people who identified as lesbian, gay, and bisexual, but excluded people who marked “something else.” They analyzed health conditions that previous research had identified as “LGB disparities responsible for substantial morbidity and mortality, related risk factors for poor health, and factors that have public health policy relevance.” Id. at 98. They adjusted for age but the small sample prevented them from controlling for other variables that may confound the relationship between sexual orientation and our outcomes. Id. at 100.

³⁸⁰ Id. at 100-01.

³⁸¹ Id.

³⁸² Id.

³⁸³ Id.

³⁸⁴ Id.

³⁸⁵ Id. at 103.

- **Drinking:** In the 30 days prior to the survey, while not statistically significant, LB women were more likely to have engaged in binge drinking³⁸⁶ than non-LB women (17.7% v. 9%), and GB men were less likely to have done so than non-GB men (14.8% v. 21. 3%).³⁸⁷

Matthews and Lee concluded that their findings of health disparities for LGB people in North Carolina were consistent with findings based on larger national surveys³⁸⁸

2. Analysis of 2014 North Carolina BRFSS Data

We also analyzed 2014 North Carolina BRFSS data to assess disparities between LGBQ and non-LGBQ adults for depression, smoking, and drinking. In our analyses we include individuals who identified as lesbian, gay, or bisexual (LGB) as well as people who said “something else,” which may include “queer” and other sexual minorities (Q), in response to the BRFSS sexual orientation question, resulting in an LGBQ sample.³⁸⁹ We were unable to include transgender individuals because the BRFSS does not include a measure of gender identity. Our sample included 123 LGBQ adults and 5,988 non-LGBQ (heterosexual) adults. LGBQ adults were younger than were their heterosexual counterparts and more likely to have a college degree. There were no significant differences in race/ethnicity, high school graduates, income, or employment status between LGBQ adults and non-LGBQ adults. We provide weighted percentages to describe the prevalence of certain health indicators for LGBQ and non-LGBQ people in North Carolina. We present odds ratios and 95% confidence intervals adjusted for age because the LGBQ sample is younger than the non-LGBQ sample and therefore likely to be healthier.

Mental Health. LGBQ adults in the 2014 BRFSS were more likely to have been diagnosed with a depressive disorder (including depression, major depression, dysthymia, or minor depression) by a health care professional when compared to non-LGBQ adults in North Carolina (34.3% v.

³⁸⁶ Binge drinking is defined as 4 or more drinks on occasion for women and 5 or more drinks on occasion for men. *Alcohol and Public Health*, U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/alcohol/data-stats.htm> (last visited on Apr. 28, 2016).

³⁸⁷ Matthews & Lee, *supra* note 377 at 100-01.

³⁸⁸ *Id.* at 101-02. In fact, they expressed surprise in not finding even more health disparities. In particular, noting that they were surprised to find that sexual minority men were less likely to have ever been a smoker than were their heterosexual counterparts, and to observe no differences in health care access between LGB and heterosexual populations.

³⁸⁹ Matthews and Lee did not include those who responded “something else” in their LGBQ sample. However, the inclusion of individuals who responded “something else” as sexual minorities is common when looking at data involving sexual minorities. This category may include individuals who identify with other sexual minority terms like “queer” or with no labels but who do not identify as “heterosexual or straight,” which is an option on the BRFSS sexual orientation question. We analyzed the data both with and without including the “something else” respondents and there was little difference in the prevalence of the reported health conditions between the two samples. Unlike Matthews and Lee, we combined all these responses into one LGBQ group and did not assess disparities based on gender or by considering bisexuals separately. Weighted estimates suggest that 2.25% of the NC respondents are LGBQ and 97.75% are non-LGBQ. We used respondents who identified as “heterosexual or straight” as the reference group for comparisons.

19.2%). They reported almost twice as many days of being in poor mental health in the month prior to the survey than non-LGBQ respondents (6.0 days v. 3.5 days). Also, more LGBQ than non-LGBQ respondents reported being limited in their activities because of mental, physical, or emotional problems (30.6% v. 22.3%). However, LGBTQ respondents reported a similar number of days in the month prior to the survey in which poor physical or mental health kept them from doing their usual activities (2.5 days vs. 2.8 days).

Figure IV.e. Health care characteristics of adults in North Carolina, by sexual orientation

Source: North Carolina BRFSS, 2014

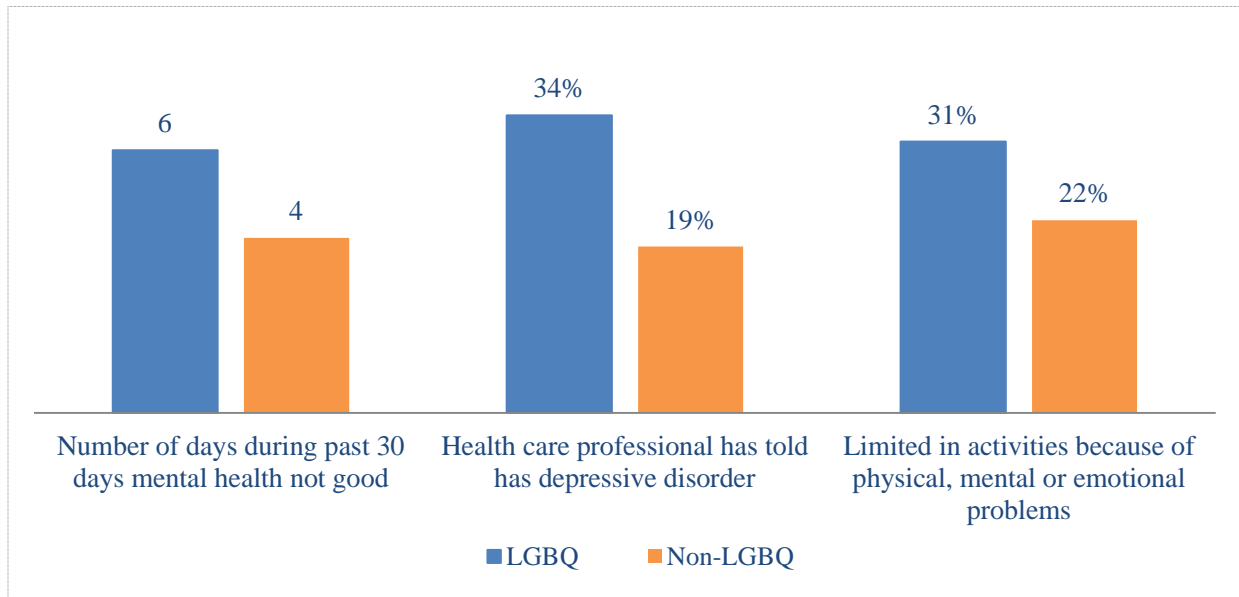


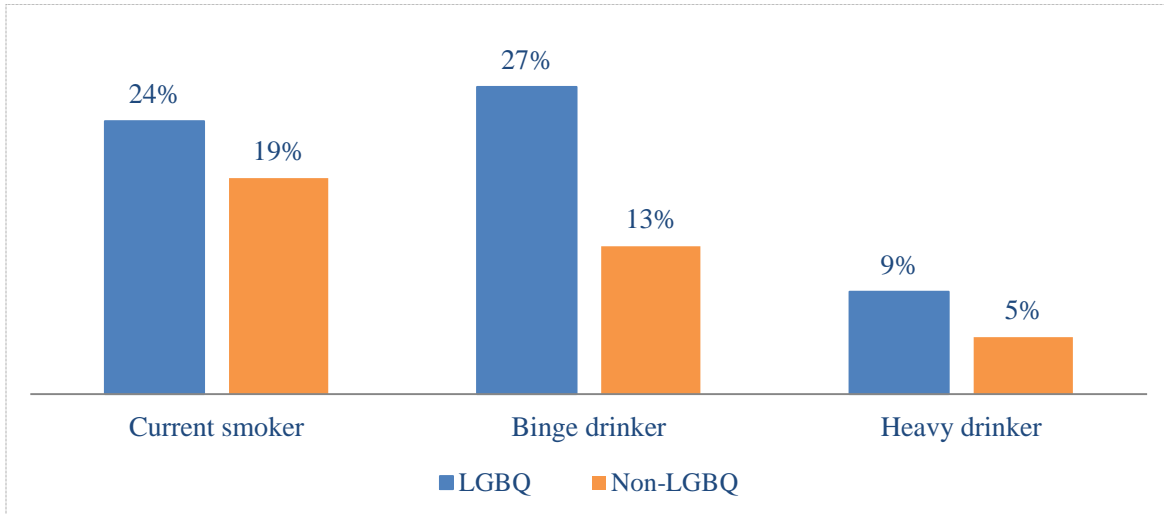
Table IV.e. Health care characteristics of adults in North Carolina, by sexual orientation Source:

North Carolina BFRSS, 2014

	LGBQ	Non-LGBQ	Statistics
Number of days during past 30 days mental health not good	6.0	3.5	Adjusted b = 2.28, p < .05
Number of days during the past 30 days poor physical or mental health kept you from doing your usual activities	2.5	2.8	Adjusted b = 0.14 (n.s.)
Health care professional told has depressive disorder	34.3%	19.2%	AOR (95% CI) = 2.31 (1.44, 3.71)
Limited in activities because of physical, mental, or emotional problems	30.6%	22.3%	AOR (95% CI) = 2.29 (1.34, 3.89)

Figure IV.f. Substance abuse among adults in North Carolina, by sexual orientation

Source: North Carolina BRFSS, 2014



Smoking. Almost one in four LGBQ adults in North Carolina (23.5%) were current smokers, compared to 19.3% of non-LGBQ adults, although the difference was not statistically significant.

Drinking. LGBQ adults in North Carolina were twice as likely as non-LGBQ adults to be binge drinkers (26.6% v. 13.3%). Binge drinking is defined as five or more drinks on at least one occasion in the past month for men and four or more drinks for women. While not statistically significant, the pattern remained for heavy drinking (8.9% v. 5.2%), defined as having more than two drinks per day for men and more than one drink per day for women.

Table IV.f. Substance abuse among adults in North Carolina, by sexual orientation

Source: North Carolina BRFSS, 2014

	LGBQ	Non-LGBQ	OR; CI 95%
Current smoker	23.5%	19.3%	1.12 (0.69, 1.82)
Binge drinker (5 or more drinks on at least one occasion in the past month for men, 4 or more for women)	26.6%	13.3%	1.73 (1.01, 2.96)
Heavy drinker (more than 2 drinks per day for men, 1 drink for women)	8.9%	5.2%	1.53 (0.72, 3.22)

Our findings are consistent with analyses of BRFSS data collected in other states. For example, an analysis of BRFSS data collected in 10 states³⁹⁰ in 2010 found that LGB individuals were

³⁹⁰ In 2010, 12 states had added a question about sexual orientation to their BRFSS surveys (Alaska, Arizona, California, Colorado, Maine, Massachusetts, Montana, New Mexico, North Dakota, Oregon, Washington, and Wisconsin), but data two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the

more likely to be current smokers than their non-LGB counterparts, and gay and bisexual men had higher rates of mental distress and life dissatisfaction than heterosexual men.³⁹¹ Two studies analyzing BRFSS data from Massachusetts³⁹² and Washington State³⁹³ similarly found disparities across a range of health outcomes and behaviors for LGB respondents, including poor physical and mental health, activity limitation, tension or worry, smoking, excessive drinking, and drug use.

3. Impact of Anti-LGBT Policies and Unsupportive Social Climates on LGBT Health

Empirical research has linked LGBT health disparities, including disparities in health-related risk factors, to anti-LGBT policies and unsupportive social climates. This connection has been recognized by the U.S. Department of Health and Human Services in *Healthy People 2010* and *Healthy People 2020*³⁹⁴ and the Institute of Medicine of the National Academies.³⁹⁵ Further, there is evidence suggesting that stigmatizing campaigns around the passage of anti-LGBT policies, or negative media messaging that draws attention to unsupportive social climates, may exacerbate these disparities.

The *minority stress model* suggests that unsupportive social climates, created by anti-LGBT prejudice, stigma, and discrimination, expose LGBT individuals to excess stress, which, in turn, causes adverse health outcomes, resulting in health disparities for sexual minorities and transgender individuals compared with heterosexuals.³⁹⁶ Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.³⁹⁷ This research has demonstrated that both interpersonal experiences of stigma and discrimination, such

study was based on data collected in the remaining 10 states. John R. Blosnich et al., *Health Inequalities among Sexual Minority Adults: Evidence from Ten U.S. States, 2010*, 46 AM. J. PREV. MED. 337, 338 (2014).

³⁹¹ Id. at 340.

³⁹² Kerith J. Conron, Matthew J. Mimiaga, Stewart J. Landers, *A Population-Based Study of Sexual Orientation and Gender Differences in Adult Health*, 100 AM. J. PUBLIC HEALTH 1953 (2010).

³⁹³ Julia A. Dilley et al., *Demonstrating the Importance and Feasibility of Including Sexual Orientation in Public Health Surveys: Health Disparities in the Pacific Northwest*, 100 AM. J. PUBLIC HEALTH 460 (2010).

³⁹⁴ *Healthy People 2020*, DEP'T OF HEALTH AND HUMAN SERV.,

https://www.healthypeople.gov/sites/default/files/HP2020_brochure_with_LHI_508_FNL.pdf (last visited May 5, 2016). Healthy People 2010 identified the gay and lesbian population among groups targeted to reduce health disparities in the United States. In explaining the reason for the inclusion of the gay and lesbian population as one of the groups requiring special public health attention, the Department of Health and Human Services noted, "The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety." DEPT. OF HEALTH AND HUMAN SVCS, OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

³⁹⁵ INSTITUTE OF MEDICINE, *supra* note 371 at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

³⁹⁶ Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULL. 674 (2009); INSTITUTE OF MEDICINE, *supra* note 371.

³⁹⁷ Id.; AM. PSYCH. ASSOC., *STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION* 8, 22 (2016).

as being fired from a job for being LGBT, and structural stigma, such as living in a state without LGBT-supportive laws, contribute to minority stress.³⁹⁸

A number of studies have found evidence of links between minority stress and negative mental health outcomes in LGB people, including higher prevalence of psychiatric disorders,³⁹⁹ including depression⁴⁰⁰ and psychological distress,⁴⁰¹ as well as loneliness, suicidal intention,⁴⁰² deliberate self-harm,⁴⁰³ and low self-esteem.⁴⁰⁴ Studies have also linked minority stress in LGB people to increased prevalence of high-risk health-related behaviors, such as tobacco use, drug use, and alcohol disorders.⁴⁰⁵

For example, a 2016 study by the American Psychological Association linked experiences of discrimination to increased stress and poorer health for LGBT people.⁴⁰⁶ The study found that LGBT adults reported higher average levels of stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% v. 23%) than adults who are non-LGBT.⁴⁰⁷ The study also found that many LGBT respondents had experienced discrimination. Nearly one-fourth (23%) of the LGBT adults reported that they had been unfairly stopped, searched,

³⁹⁸ See Mark L. Hatzenbuehler, Hee-Jin Jun, Heather L. Corliss & S. Bryn Austin, *Structural Stigma and Cigarette Smoking in a Prospective Cohort Study of Sexual Minority and Heterosexual Youth*, 47 ANN. BEHAV. MED. 48 (2014).

³⁹⁹ E.g., Katie A. McLaughlin, Mark L. Hatzenbuehler & Katherine M. Keyes, *Responses to Discrimination and Psychiatric Disorders among Black, Hispanic, Female, and Lesbian, Gay, and Bisexual Individuals*, 100 AM. J. PUBLIC HEALTH 1477 (2010); Ellen D.B. Riggle, Sharon S. Rostosky & Sharon G. Horne, *Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election*, 6 SEXUALITY RESEARCH & SOCIAL POLICY 80 (2009).

⁴⁰⁰ E.g., Robyn Zakalik & Meifen Wei, *Adult Attachment, Perceived Discrimination Based on Sexual Orientation, Depression in Gay Males: Examining the Mediation and Moderation Effects*, 53 J. OF COUNSELING PSYCHOL. 302 (2006).

⁴⁰¹ E.g., Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001).; David M. Heubner, Carol J. Nemeroff & Mary C. Davis, *Do Hostility and Neuroticism Confound Associations Between Perceived Discrimination and Depressive Symptom?* 24 J. SOC. & CLINICAL PSYCHOL. 723 (2005); Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. OF HEALTH & SOC. BEHAV. 38 (1995).

⁴⁰² David M. Huebner, Gregory M. Rebchook & Susan M. Kegeles, *Experiences of Harassment, Discrimination, and Physical Violence Among Young Gay and Bisexual Men*, 94 AM. J. OF PUB. HEALTH 1200 (2004).

⁴⁰³ James Warner et al., *Rates and Predictors of Mental Illness in Gay Men, Lesbians and Bisexual Men and Women: Results from a Survey Based in England and Wales*, 185 BRITISH J. OF PSYCHIATRY 479 (2004).

⁴⁰⁴ E.g., Jesus Ramirez-Valles et al., *Confronting Stigma: Community Involvement and Psychological Well-Being Among HIV-positive Latino Gay Men*. 27 HISP. J. OF BEHAV. SCI. 101 (2005).

⁴⁰⁵ E.g., Keren Lehavot & Jane M. Simoni, *The Impact of Minority Stress on Mental Health and Substance Use among Sexual Minority Women*, 79 J. CONSULT. CLIN. PSYCHOL. 159 (2011); Sean Esteban McCabe, Wendy B. Bostwick, Tonda L. Hughes, Brady T. West & Carol J. Boyd, *The Relationship between Discrimination and Substance Use Disorders among Lesbian, Gay, and Bisexual Adults in the United States*, 100 AM. J. PUBLIC HEALTH 1946 (2010); Mark L. Hatzenbuehler, Katie A. McLaughlin, Katherine M. Keyes & Deborah S. Hasin, *The Impact of Institutional Discrimination on Psychiatric Disorders in Lesbian, Gay, and Bisexual Populations: A Prospective Study*, 100 AM. J. PUBLIC HEALTH 452 (2010); Genevieve N. Weber, *Using to Numb the Pain: Substance Use and Abuse among Lesbian, Gay, and Bisexual Individuals*, 30 J. MENTAL HEALTH COUNSELING 31 (2008).

⁴⁰⁶ AM. PYSCH. ASSOC., *supra* note 397.

⁴⁰⁷ *Id.* at 22. LGBT adults were also more likely than non-LGBT adults to report experiencing increased stress over the past year (49% v. 34%). More than one-third of adults who are LGBT believed they were not doing enough to manage their stress, compared to one-fifth of non-LGBT adults saying the same (35% v. 20%). *Id.* at 22.

questioned, physically threatened or abused by the police; nearly one-fourth (24%) reported being unfairly discouraged by a teacher or advisor to continue their education; and one-third (33%) reporting being unfairly not hired for a job.⁴⁰⁸ In particular, job stability was a source of stress for 57% of LGBT adults compared to 36% of non-LGBT adults.⁴⁰⁹ The study found that, regardless of the cause, experiencing discrimination was associated with higher reported stress and poorer reported health. However, these associations were even stronger for LGBT adults than non-LGBT adults. LGBT adults who had experienced discrimination had average stress levels of 6.4 compared to 5.5 among non-LGBT adults who had experienced discrimination based on other personal characteristics.⁴¹⁰

Studies have also linked a lack of legal protections and a poor social climate at the state level to health disparities for LGBT people. For example, a 2009 study by Mark Hatzenbuehler and co-authors found that an unsupportive state-level legal landscape for LGBT people was associated with “higher rates of psychiatric disorders across the diagnostic spectrum, including any mood, anxiety, and substance use disorder” in the LGB population than found in LGB populations in states with more supportive laws.⁴¹¹ A 2010 study by the same authors found that rates of anxiety, mood disorders, and alcohol use disorder increased significantly for LGB respondents after their state passed a constitutional marriage ban, and rates were unchanged in states that did not pass bans. The authors concluded that their “findings provide the strongest empirical evidence to date that living in states with discriminatory laws may serve as a risk factor for psychiatric morbidity in LGB populations.”⁴¹² Drawing on these findings and his other research, Hatzenbuehler concluded that “the recent laws that have been passed [HB 2 and an anti-LGBT law in Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”⁴¹³

Similarly, Matthews and Lee, who studied health disparities between LGB and non-LGB people in North Carolina in 2011 noted that the poor legal and social environment of the South, including North Carolina, may exacerbate the disparities:⁴¹⁴

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of

⁴⁰⁸ Id. at 6-7.

⁴⁰⁹ Id. at 22.

⁴¹⁰ Id. at 22.

⁴¹¹ Mark L. Hatzenbuehler, Katherine M. Keyes & Deborah S. Hasin, *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 AM. J. PUBLIC HEALTH 2275, 2277 (2009). The study looked at two types of laws: employment non-discrimination laws and hate crimes laws. Id. at 2275. If a state did not include sexual orientation as a protected characteristic in either type of law, it was considered an unsupportive state. Id. at 2277.

⁴¹² Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 405 at 456.

⁴¹³ *The Health Consequences of Hate*, COLUMBIA UNIV., Apr. 26, 2016, <https://www.mailman.columbia.edu/public-health-now/news/health-consequences-hate>.

⁴¹⁴ Matthews & Lee, *supra* note 377 at 103.

which may create and exacerbate unhealthful social environments for LGB populations, even as evidence of the health impact of local and state policies on LGB health grows. This context may yield health profiles different from New England and the Pacific Northwest, areas that currently have a greater number of policies in place that support LGB and transgender rights.”

Research also suggests that the current discussion around HB2 may have negative impact on the health of LGBT people in North Carolina. Hatzenbuehler and the other authors of the 2010 marriage ban study noted that “the political campaigns against gays and lesbians by the proponents of these amendments, which were well-circulated in the media, further promulgated the stigma associated with homosexuality.”⁴¹⁵ Similarly, a 2016 study focused on campaign messaging around marriage bans found that “daily exposure to negative campaign messages was associated with increased negative affect and decreased positive affect and relationship satisfaction” among same-sex couples.⁴¹⁶ While many of these marriage campaigns lasted a number of months and involved extensive advertising and other media, the length and extent of the conversation around HB2 is yet to be seen. To date, it has already lasted over six weeks and coverage of the issue includes a number of negative statements about LGBT people.

Existing research suggests that transgender people experience patterns of minority stress and negative mental health outcomes similar to LGB people. For example, a 2013 study found that perceived anti-transgender stigma was related to higher prevalence of psychological distress among transgender respondents.⁴¹⁷ Other studies have also found evidence of links between minority stress factors and attempted suicide,⁴¹⁸ HIV risk behavior,⁴¹⁹ and depression⁴²⁰ among transgender populations.

Anecdotal reports from North Carolina suggest that HB2 and the anti-transgender messaging around it have already led to health consequences for transgender individuals. A transgender crisis helpline reported that its call volume “nearly doubled” in the weeks after HB2 passed, and was much higher than would be expected, even given the usual seasonal upswing during that

⁴¹⁵ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 405 at 457.

⁴¹⁶ David M. Frost & Adam W. Fingerhut, *Campaign Messages and Minority Stress*, __ GROUP PROCESSES AND INTERGROUP REL. __ (forthcoming 2016).

⁴¹⁷ Walter O. Bockting, Michael H. Miner, Rebecca E. Swinburne Romine, Autumn Hamilton & Eli Coleman, *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103 AM. J. PUBLIC HEALTH 943 (2013).

⁴¹⁸ Kristen Clements-Nolle, Rani Marx & Mitchell Katz, *Attempted Suicide among Transgender Persons: The Influence of Gender-Based Discrimination and Victimization*, 51 J. HOMOSEXUALITY 53 (2006); JAIME M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN & MARA KEISLING, NATIONAL CENTER FOR TRANSGENDER EQUALITY & THE NATIONAL GAY AND LESBIAN TASK FORCE, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

⁴¹⁹ Eiko Sugano, Tooru Nemoto & Don Operario, *The Impact of Exposure to Transphobia on HIV Risk Behavior in a Sample of Transgendered Women of Color in San Francisco*, 10 AIDS & BEHAVIOR 217 (2006).

⁴²⁰ Tooru Nemoto, Birte Bödeker & Mariko Iwamoto, *Social Support, Exposure to Violence and Transphobia, and Correlates of Depression among Male-to-Female Transgender Women with a History of Sex Work*, 101 AM. J. PUBLIC HEALTH 1980 (2010).

time of the year.⁴²¹ And, Dr. Kristie L. Seelman, who has researched the link between bathroom access and transgender people’s health, commented on HB2: “Not having access to a bathroom heightens [transgender people’s] anxiety and stress, leading them to try to plan their daily lives around when and where they can find a bathroom, sometimes even getting to a point of dehydration or social isolation.”⁴²²

Additionally, research from other states indicates that laws or policies restricting bathroom access for transgender people can negatively impact their health, and can put them in danger of verbal and physical harassment. For example, a survey of transgender and gender non-conforming people in Washington, D.C. found that 54% of respondents had experienced a physical health problem from trying to avoid public bathrooms, including dehydration, urinary tract infections, kidney infections, and other kidney related problems.⁴²³ Further, 58% of the respondents reported that they “avoided going out in public due to a lack of safe restroom facilities,” 68% reported that they had been verbally harassed in a restroom, and 9% reported that they had been physically assaulted in a restroom.⁴²⁴

While research provides strong evidentiary support for the links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other factors that could also contribute to LGBT health disparities. For example, researchers have noted that healthier LGBT people may be more able to move to supportive climates than people in worse health.⁴²⁵ Nonetheless, the research indicates that minority stress factors, including the lack of legal protections, discrimination, a poor social climate, and negative messages about LGBT people in the media contribute to LGBT health disparities.

4. Illustration of Economic Impacts: Major Depressive Disorder

Poor health “can affect people’s ability to be productive at work, reduce labor force participation when people cannot work, and burden public health care funds when individuals rely on emergency care rather than regular or preventative care.”⁴²⁶ For these reasons, poor health, in general, imposes costs on employers and governments.⁴²⁷ When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those

⁴²¹ Samantha Allen, *After North Carolina’s Law, Trans Suicide Hotline Calls Double*, THE DAILY BEAST.COM, Apr. 19, 2016, <http://www.thedailybeast.com/articles/2016/04/20/after-north-carolina-s-law-trans-suicide-hotline-calls-double.html>.

⁴²² *Id.*

⁴²³ Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its Impact on Transgender People’s Lives*, 19 J. PUBLIC MANAGEMENT & SOCIAL POL. 65, 75 (2013).

⁴²⁴ *Id.* at 71, 76.

⁴²⁵ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 405 at 452.

⁴²⁶ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW, *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>.

⁴²⁷ *Id.*

which would exist in the absence of the disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the economy will benefit.⁴²⁸

To illustrate the cost savings that would result from eliminating health disparities facing LGBT people in North Carolina, we follow a model used by Canadian research organization Community – University Institute for Social Research (CUISR). CUISR estimated the costs associated with LGBT health disparities in Canada through a four-step method:

- Determining prevalence for health outcomes for LGB and non-LGB populations.
- Subtracting the prevalence for non-LGB population from that for LGB populations.
- Multiplying the difference in prevalence by the total LGB population to determine the number of LGB people who would not have those health outcomes if the rates were the same.
- Multiplying the excess number of LGB people with each health outcome by the annual cost per affected person associated with the outcome as drawn from existing research.

In this report, we used CUISR’s method to estimate the costs associated with higher prevalence of two health outcomes – major depressive disorder and binge drinking – in LGB adults in North Carolina. To the extent possible, we used data on these health outcomes and related costs specific to North Carolina. Where we could not find reliable cost or prevalence data for these health outcomes at the state-level, we used national data as a proxy. Given the limited data we have about health outcomes for transgender people nationally or in North Carolina, we assume for purposes of our analysis that transgender people have the same rates of the health conditions described below as LGB people. The available research on health outcomes for transgender people indicates that this is a conservative assumption.⁴²⁹

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of North Carolina for LGBT people would only reduce the disparities by a fraction over the short- or even middle-term. This is consistent with the 2009 Hatzenbuehler et al. study described above, in which health disparities for LGB people related to mood and alcohol use disorder were reduced in states with more supportive laws, but not eliminated.⁴³⁰ The Hatzenbuehler et al. 2010 study also indicated that anti-LGBT legal initiatives, which we view as arguably similar to the discussion around HB2 – and will become increasingly so the longer the discussion continues – can have significant impacts on LGB health disparities even in just a few years.⁴³¹ Comparing data from the National Epidemiologic Survey on Alcohol and

⁴²⁸ Id.

⁴²⁹ E.g., George R. Brown & Kenneth T. Jones, *Mental Health and Medical Health Disparities in 5135 Transgender Veterans Receiving Healthcare in the Veterans Health Administration: A Case-Control Study*, 3 LGBT HEALTH 122 (2016).

⁴³⁰ Hatzenbuehler, Keyes & Hasin, *supra* note 411 at 2277.

⁴³¹ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 405 at 452. The study, analyzing data collected in 2001-2002 and 2005-2006, used longitudinal, population-based data to ensure that changes in prevalence rates pre- and post-marriage ban could be studied, allowing for “clearer inferences” that marriage bans had adverse effects on LGB

Related Conditions collected in 2001-2 compared with 2004-5, many of the observed increases in prevalence of health conditions in the states that passed constitutional amendments banning marriage for same-sex couples were dramatic, including a 36.6% increase in any mood disorder (includes major depression), a 24.9% increase in major depression (although not statistically significant), and a 41.9% increase in alcohol use disorder for LGB people.⁴³² By comparison, among heterosexual respondents in those states, no statistically significant increases were found for changes in any mood disorder (2.8% increase) or major depression disorder (4.5% increase) after the marriage bans passed. While there was a statistically significant increase in alcohol disorder (18%), the increase was less than half of that for LGB respondents.⁴³³

For each disparity we use a conservative range for the impact of an improved legal landscape and social climate for LGBT people, towards which the repeal of HB2 would be just one step. Specifically, we assume a range of a 25% to 33.3% reduction in the *disparity* between LGB and non-LGB people in the state on each outcome could be achieved in the short- to middle-term if the state were to move toward LGBT inclusion as opposed to toward further LGBT exclusion.

Further, we note that there may be significant overlap in the costs we estimate below because, for example, some people may have major depression disorder and be smokers, and the costs associated with each of these conditions may overlap. For this reason, our estimates are not intended to be cumulative, but rather to illustrate that significant cost savings could result if the disparity found on any particular health outcome were reduced or eliminated.

a. Excess Costs Associated with LGBT Major Depressive Disorder (MDD)

In order to best estimate the annual costs associated with MDD, we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with the largest nationally representative sample of LGB adults to date. An analysis of 2004-5 NESARC data found that, nationally, 18.0% of LGB respondents had major depressive disorder in the 12 months prior to the survey, compared to 8.1% of non-LGB respondents.⁴³⁴ While the North Carolina BRFFS does not have a question to measure MDD in a 12-month period, other BRFFS data and research on the causes of health disparities analyzed above suggest that using national data would undercount the size of this disparity for LGBT North Carolinians (e.g. it ranks in the bottom half of states in terms of legal protections and social acceptance for LGBT people).

health. Id. at 453-55. Id. at 455. Though prevalence rates for these conditions among heterosexuals increased, the increases were smaller in magnitude than they were for LGB respondents. Id.

⁴³² Id. at 456 Table 3.

⁴³³ Id. at 456 Table 3.

⁴³⁴ Hatzenbuehler, Keyes & Hasin, *supra* note 411 at 2279. For an explanation of how major depressive disorder is determined on the NESARC see U.S. ALCOHOL EPIDEMIOLOGIC DATA REFERENCE MANUAL, ALCOHOL USE AND ALCOHOL USE DISORDERS IN THE UNITED STATES, A 3-YEAR FOLLOW-UP: MAIN FINDINGS FROM THE 2004-2005 WAVE 2 NATIONAL EPIDEMIOLOGIC SURVEY ON ALCOHOL AND RELATED CONDITIONS (NESARC) 19 (2010), http://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf.

Applying the percentage of excess prevalence of MDD among LGBs in North Carolina (18.0% – 8.1% = 9.9%) to the state’s LGBT population (approximately 250,000 adults)⁴³⁵ indicates that there are approximately 24,750 more LGBT people who have major depression in North Carolina than there would be in the absence of a disparity.

We drew from a 2015 study, *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, to estimate the annual cost per person suffering from MDD in North Carolina.⁴³⁶ The study found that the annual total cost of MDD, nationwide, in 2010 was \$210.5 billion. The costs included loss of productivity in the workplace, absenteeism from work, costs for medical and pharmaceutical services, and suicide-related costs. In order to determine the cost per person with MDD, we divided the total cost by the number of adults with the condition in 2010.⁴³⁷ Next, we adjusted the cost per person with MDD in 2010 for inflation.⁴³⁸ In inflation-adjusted dollars, the cost per person with MDD in 2016 is \$14,885.49.⁴³⁹

If the disparity for LGBT people for MDD in North Carolina were eliminated, costs associated with the disorder would drop by \$368.4 million per year. For the reasons described above, we estimate that in the short- to middle-term, North Carolina may be able to reduce the disparity in MDD between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections and the social acceptance of LGBT people – of which the repeal of HB2 would be one step. Applying this range would mean an eventual annual reduction in costs associated with MDD in North Carolina of approximately \$92.1 to \$122.8 million.

⁴³⁵ AMIRA HASENBUSH, ANDREW R. FLORES, ANGELIKI KASTANIS, BRAD SEARS & GARY J. GATES, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW, *THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN & SOUTHERN STATES* 23 (2015).

⁴³⁶ Paul E. Greenberg et al., *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*, 76 J. CLIN. PSYCHIATRY 155 (2015). Greenberg et al. used data from the National Survey on Drug Use and Health to identify people who met the diagnostic criteria for major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with major depressive disorder (and compared to a control group). Similarly, the prevalence of MDD we use for our estimates was determined by identifying individuals who met the diagnostic criteria for MDD in data collected by the NESARC. All cost data used in our estimates are drawn directly from the calculations made by Greenberg et al.

⁴³⁷ The study found that, in 2010, 15,446,771 adults in the U.S. suffered from major depressive disorder. Id. Dividing the total cost (\$210,548,000,000) by the number of sufferers (15,446,771) indicates that the cost per sufferer was \$13,630.55 in 2010.

⁴³⁸ To adjust for inflation, we used the U.S. Bureau of Labor Statistics’ inflation calculator available at CPI Inflation Calculator, U.S. Bureau of Labor Stats., <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. 28, 2016).

⁴³⁹ We assume that the costs associated with depression would be the same in 2016 as they were in 2010 (adjusted for inflation).

Table IV.g. Reduction in costs associated with MDD in North Carolina if LGB disparity were reduced or eliminated

Reduction in disparity between LGB and Non-LGB North Carolinians	LGB individuals impacted	Annual reduction in costs (millions)
25%	6,188	\$92.1
33.3%	8,250	\$122.8
100%	24,750	\$368.4

b. Excess Costs Associated with LGBT Binge Drinking

Our analysis of data from North Carolina’s 2014 BRFSS found that 26.6% of LGB respondents reported binge drinking, compared to 13.3% of non-LGB respondents. Applying the percentage of excess prevalence of binge drinking among LGBs in North Carolina (13.3%) to the state’s LGBT population (250,000 adults)⁴⁴⁰ indicates that there are approximately 33,250 more LGBT people who binge drink in North Carolina than there would be in the absence of a disparity.

We drew from a 2015 study, *2010 National and State Costs of Excessive Alcohol Consumption*, to estimate the annual cost per binge drinker in North Carolina.⁴⁴¹ The study found that the annual total cost of binge drinking in North Carolina in 2010 was \$5,568,400,000.⁴⁴² Associated costs included loss in productivity in the workplace, health care costs, and other losses such as costs to the criminal justice system related to binge drinking.⁴⁴³ We adjusted the cost per binge drinker for inflation⁴⁴⁴ for an estimated cost per binge drinker in North Carolina in 2016 of \$7,596.55.⁴⁴⁵

If the disparity in binge drinking for LGB people in North Carolina were eliminated, costs associated with binge drinking would be reduced by \$252.6 million per year. Reducing the disparity by a range of 25% to 33.3%, for the reasons described above, would eventually result in an annual reduction of \$63.2 to \$84.2 million.

⁴⁴⁰ HASENBUSH ET AL., *supra* note 435 at 23.

⁴⁴¹ Jeffrey J. Sacks, Katherine R. Gonzales, Ellen E. Bouchery, Laura E. Tomedi, & Robert D. Brewer, *2010 National and State Costs of Excessive Alcohol Consumption*, 29 AM. J. PUBLIC HEALTH 73 (2015).

⁴⁴² *Id.* at 77.

⁴⁴³ *Id.* at 75.

⁴⁴⁴ To adjust for inflation, we used the U.S. Bureau of Labor Statistics’ inflation calculator available at U.S. Bureau of Labor Stats., CPI Inflation Calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. 28, 2016).

⁴⁴⁵ In order to determine the annual cost per binge drinker, we divided the total cost by the number of binge drinkers in North Carolina in 2010. According to the 2010 North Carolina BRFSS, 11% of the respondents were binge drinkers. *2010 BRFSS Survey Results: North Carolina, Binge Drinking*, N.C. STATE CENTER FOR HEALTH STATS. http://www.schs.state.nc.us/schs/brfss/2010/nc/risk/_RFBING4.html (last visited Apr. 29, 2016). Applying this percentage to North Carolina’s adult population in 2010 (7,277,315)⁴⁴⁵ indicates that 800,505 people in North Carolina were binge drinkers in 2010. Dividing the total cost (\$5,568,400,000) by the number of binge drinkers (800,505) indicates that the cost per binge drinker in North Carolina was \$6,956.11 in 2010. We assume that the costs associated with binge drinking would be the same in 2016 as they were in 2010 (adjusted for inflation).

We note that Matthews and Lee found a much smaller disparity in binge drinking between LGB and non-LGB people based on the 2011 North Carolina BRFSS data, and other studies have found disparities for LB women but not GB men. We offer this model as an illustration of the potential costs associated with binge drinking, but given the small sample size, further research needs to be done.

Table IV.i. Reduction in costs associated with binge drinking in North Carolina if LGB disparity were reduced or eliminated

Reduction in disparity between LGB and Non-LGB North Carolinians	LGB individuals impacted	Annual reduction in costs (millions)
25%	8,313	\$63.2
33.3%	11,083	\$84.2
100%	33,250	\$252.6

In sum, research indicates that the lack of legal protections and a less favorable social climate for LGBT people in North Carolina is contributing to health disparities. Based on this research, it is likely that HB2, and the public debate about it, are exacerbating these health disparities. If North Carolina were to move toward greater legal protections and more social acceptance for LGBT people, of which repealing HB2 would be but one step, the state would have healthier and more productive LGBT people. Further, consideration of just two health disparities for LGBT people in the state – MDD and binge drinking – indicates that the state would benefit from millions of dollars in greater productivity and reduced costs to its health care and social service systems each year.

CONCLUSION

Because HB2 conflicts with the non-discrimination laws of the federal government and many state and local governments in the U.S., as well as the policies of most large companies and the beliefs of a majority of Americans, the law is already putting at risk almost \$5 billion in federal funding and business investment in the state. In addition, by adding to an already challenging environment for LGBT people, the law is undermining the advantages of diversity in the workplace, eroding worker productivity, and making talented LGBT and non-LGBT employees more difficult to recruit and retain. By moving toward exclusion and away from inclusion, HB2 contributes to the discriminatory environment that LGBT people face at school, in the workplace, in housing, and in public life— creating health and economic disparities for LGBT people in the state and taking a significant toll on LGBT youth in particular. The repeal of HB2 would not only reverse the threat to over \$5 billion in economic activity for the state, but would also begin to bring North Carolina some of the economic advantages that come when a state embraces diversity and its LGBT citizens.