

Liberty & Justice in Georgia

– Protecting Our Heritage & Growing Our Competitive Future –



Report commissioned by Georgia Unites Against Discrimination

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I. EXECUTIVE SUMMARY

Nondiscrimination protections – and the lack thereof – have played a growing role in Georgia’s political discourse over the last four years. This long-running debate seemingly culminated in March 2016 with the passage – and ultimate veto – of HB 757, a so-called “First Amendment Defense Act” that would have allowed businesses and some taxpayer-funded organizations to deny services to lesbian, gay, bisexual, and transgender (LGBT) people, if serving them conflicted with a deeply held religious belief.

The economic uproar that followed the passage of HB 757 is well-known – voices ranging from the NFL, to the titans of the entertainment industry, to corporate giants all weighed in heavily against a bill that allowed for the legalization of discrimination against LGBT people. What’s less known is that, even absent troubling bills such as HB 757, Georgia residents are arguably some of the most vulnerable in the nation – lacking explicit protections from discrimination that are commonplace in many other states in the nation. For Georgia’s LGBT residents, these vulnerabilities are even more pronounced.

Georgia Lacks Basic Civil Rights Protections

Georgia is an unenviable outlier among states in that we have some of the weakest civil rights protections for our citizens in the nation. Georgia has no law that prevents private employers from discriminating on the basis of an employee’s race;¹ no law that prevents local businesses from refusing service to patrons because of their religion;² and no law preventing landowners from

¹ *State Laws on Employment-Related Discrimination*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx>; *see also State Employment-Related Discrimination Statutes*, NAT’L CONFERENCE OF STATE LEGISLATURES (July 2015), <http://www.ncsl.org/documents/employ/discrimination-chart-2015.pdf>.

² *State Public Accommodation Laws*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx#1>.

refusing to rent or sell to our citizens based on their sexual orientation or gender identity.³ Georgia is one of only three states that does not prohibit private employer discrimination on the basis of factors including race or religion.⁴ And the state is one of only five that allows racial and religious discrimination in businesses open to the public.⁵ This leaves the average Georgian significantly more susceptible to discrimination than the average United States citizen – and often, lacking explicit legal recourse when discrimination occurs.

It's clear that as Georgia continues to move forward into the 21st century and bolsters its reputation as a top-tier destination for those looking to earn a strong living and raise a family, the state must improve its anti-discrimination laws to provide commonsense protections.

LGBT Georgians Face Acute Risks

Some of the most vulnerable Georgians include those who are LGBT. In Georgia, a patchwork of uneven protections often leaves unclear recourse for those in the LGBT community who experience discrimination. And that discrimination does happen: according to surveys 45% of LGBT employees in our state have reported experiencing discrimination and harassment at the office during the preceding year.⁶ As one of only five states lacking legal public accommodations protections for residents⁷, LGBT people can find themselves with nowhere to turn if they experience discrimination in a public place – like a shopping mall, park, restaurant, or movie theater.

Economic Urgency for Anti-Discrimination Reform

There is an economic backlash that occurs when any government policy attempts to normalize or legalize discrimination: in North Carolina, the HB 2 law has cost the state nearly a billion dollars in lost revenue to date. In Georgia, the backlash to HB 757 prompted outcries from some of our state's biggest industries – including the tourism sector.

It's no wonder tourism and convention bureaus are some of the most persuasive voices against discriminatory measures and in favor of comprehensive anti-discrimination protections. In Georgia, the Metro Atlanta Chamber and the Atlanta Convention and Visitors Bureau have estimated the fallout from the passage of a discriminatory bill would range from \$1 to \$2 billion.⁸ Statewide, the tourism industry brings in about \$50 billion annually and is responsible for 400,000 jobs, representing a tenth of the state economy.⁹

³ See generally O.C.G.A. § 8-3-200, *et seq.*

⁴ *State Employment-Related Discrimination Statutes*, NAT'L CONFERENCE OF STATE LEGISLATURES (July 2015), <http://www.ncsl.org/documents/employ/discrimination-chart-2015.pdf>.

⁵ *State Public Accommodation Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx#1>.

⁶ PHILLIP RUSH CENTER, GEORGIA STATEWIDE LGBT COMMUNITY SURVEY 11 (2013), <http://www.rushcenteratl.org/wp-content/uploads/2013/07/Rush-Center-Survey-Results-with-Cover.pdf>.

⁷ Paul Vincent Courtney, *Prohibiting Sexual Orientation Discrimination In Public Accommodations: A Common Law Approach*, 163 U. PA. L. REV. 1497, 1514 (2015).

⁸ Aaron Gould Sheinin & Kristina Torres, *Studies Show Billions At Risk For Ga. In "Religious Liberty" Fight*, ATLANTA J. CONST. (Nov. 19, 2015), <http://www.myajc.com/news/news/state-regional-govt-politics/opponents-studies-show-big-risks-for-ga-in-religio/npRM5/>.

⁹ Tom Cunningham, Potential Economic Consequences of RFRA-like Legislation, METRO ATLANTA CHAMBER (2016), available at <http://macpolicy.com/wp-content/uploads/2015/12/RFRA-Cost-Memo.pdf>.

The state's burgeoning film industry also opposes further attempts to codify discrimination. The industry objected to HB 757 in 2016, and tends to support commonsense anti-discrimination measures. Georgia's film industry – the third-largest in the nation behind only California and New York – brings in \$7 billion a year and is responsible for over 80,000 jobs.¹⁰

Stopping discriminatory measures like HB 757 isn't enough. The economic consequences are yet another – and an extremely powerful – reminder of why comprehensive anti-discrimination protections are needed in Georgia.

The Path Forward: Comprehensive Anti-Discrimination Protections

There is a clear gap between some of the basic civil rights protections citizens are afforded in Georgia versus other states. It's time for Georgia lawmakers to address our state's outdated protections, and expand them to include commonsense protections for all Georgians from discrimination in housing, employment, and public accommodations. Such a move would bring Georgia in-line with the vast majority of states across the nation.

Such updates to existing laws also must include explicit anti-discrimination protections for LGBT Georgians. A number of states across the country already have adopted such measures, and there's strong evidence that anti-discrimination protections – particularly as they pertain to LGBT people – are becoming an increasingly central consideration for businesses looking to invest or grow in certain states. Georgia will place itself at both a competitive and economic disadvantage until such updates can be made.

It's important to note that updating the state's anti-discrimination measures to include LGBT people should not – and does not – conflict with religious freedom. The freedom of religion is vital to our nation, and it's strongly protected within the First Amendment and within state law. Commonsense exemptions are regularly built into these types of measures so that religious leaders or places of worship are never forced to take actions that conflict with their faith. Freedom of religion and equality for all citizens under the law can and do co-exist – and it's time for Georgia to embark on that discussion.

II. GEORGIA NEEDS ANTI-DISCRIMINATION LEGAL REFORM

Every citizen should have the right to choose where they live, eat, and work free from discrimination. Yet, discrimination regrettably remains.

The problem is particularly acute in our state. Georgia is an exception in that it has virtually no state law protections for common forms of prejudice such as employment, housing, and public business discrimination. As examples, our state has no law that protects private employers from discriminating on the basis of an employee's race;¹¹ we have no law that prevents local businesses

¹⁰ Dave Williams, *Film Industry Impact In Georgia Passes \$7 Billion*, Atlanta Bus. Chron. (Aug. 2, 2016), <http://www.bizjournals.com/atlanta/news/2016/08/02/film-industry-impact-in-georgia-passes-7-billion.html>.

¹¹ *State Laws on Employment-Related Discrimination*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx>; *see also State Employment-Related Discrimination Statutes*, NAT'L CONFERENCE OF STATE LEGISLATURES (July 2015), <http://www.ncsl.org/documents/employ/discrimination-chart-2015.pdf>.

from refusing service to patrons because of their religion;¹² and we lack any law preventing landowners from refusing to rent or sell to our citizens based on their sexual orientation or gender identity.¹³

Fortunately there are some federal protections, but these laws are piecemeal and are not comprehensive. Virtually every other state has recognized that federal law alone is insufficient. These states have responded by enacting anti-discrimination laws that ban discrimination affecting fundamental rights. Georgia is one of only three states that permit private employer discrimination on the basis of factors such as race or religion.¹⁴ And Georgia is one of five states that allow racial and religious discrimination in businesses otherwise open to the public.¹⁵

Of special note is discrimination against LGBT persons. There are approximately 269,000 LGBT adults in Georgia,¹⁶ comprising 3.5% of the population, and they are uniquely poorly protected from discrimination under Georgia law. According to one tally of laws affecting LGBT persons, Georgia is the single least protective state when it comes to offering legal security to its LGBT citizens.¹⁷ Georgia law, as it currently stands, does not prohibit government, business, and private citizens to discriminate with regard to these fundamental rights based on a person's gender identity or sexual orientation. Federal law offers little, if any, relief.¹⁸ In other words, in Georgia, LGBT people may be fired from their job, denied housing, and refused service in all variety of public places based on who they are. Legislation can and should protect all Georgians from discrimination that threatens their ability to live in our state.

A. Employment

In Georgia, discrimination against LGBT persons in finding and keeping a job is often not illegal.¹⁹ The state non-discrimination law, the Fair Employment Practices Act, extends only to state

¹² *State Public Accommodation Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx#1>.

¹³ See generally O.C.G.A. § 8-3-200, *et seq.*

¹⁴ *State Employment-Related Discrimination Statutes*, NAT'L CONFERENCE OF STATE LEGISLATURES (July 2015), <http://www.ncsl.org/documents/employ/discrimination-chart-2015.pdf>.

¹⁵ *State Public Accommodation Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx#1>.

¹⁶ Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; CHRISTY MALLORY & BRAD SEARS, *EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA*, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 1 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDReport-October-2014.pdf>.

¹⁷ *Equality Maps*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/legal_equality_by_state (“The major categories of laws covered by the policy tally include: Marriage and Relationship Recognition, Adoption and Parenting, Non-Discrimination, Safe Schools, Health and Safety, and Ability for Transgender People to Correct the Name and Gender Marker on Identity Documents.”).

¹⁸ See Part II.A. *infra* and note 19.

¹⁹ The federal Equal Employment Opportunity Commission recently concluded that “an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII.” *Baldwin v. Foxx*, EEOC Appeal No. 0120133080, 2015 WL 4397641, *5 (July 15, 2015). But this view has not been clearly endorsed by the courts. Within the Eleventh Circuit that governs Georgia, Alabama, and Florida, the question is an open one with some courts rejecting the EEOC's stance and others adopting it. *Compare* *Evans v. Georgia Regional Hosp.*, No. CV415–103, 2015 WL 5316695, at *3 (S.D. Ga. Sept. 10, 2015) (“[I]t is simply *not* unlawful under Title VII to discriminate against homosexuals or based on sexual orientation.”),

employees and does not cover sexual orientation or gender identity.²⁰ And while federal law covers religion, race, nationality, and sex-based discrimination, it does not explicitly cover LGBT persons,²¹ and it does not cover smaller businesses in any way.²² Because of this legal gap, discrimination against Georgia’s LGBT workers is not uncommon. In Georgia, 25% of LGBT workers reported having been discriminated against in employment and 45% have reported experiencing discrimination and other harassment at the office in the preceding year.²³ The experience of Georgia’s LGBT workforce appears similar to national trends where roughly one-in-five LGBT persons report being treated unfairly by an employer in hiring, pay, or promotion.²⁴ Wage inequity is also a serious concern, with a range of studies finding disparities ranging from 10% to 30% between heterosexual and homosexual workers.²⁵

Among the transgender population, these figures are more dire. According to surveys conducted nationally and in Georgia, more than three-quarters of transgender persons have experienced harassment at work, and over a third have lost a job due to their gender identity.²⁶

Expanding Georgia’s civil rights protections to cover the employment of LGBT persons would not affect Georgia’s status as a “right-to-work” state.²⁷ Georgia has several anti-discrimination laws covering age, disability, and religion, which are separate from and unaffected by its right-to-work laws. A number of states, including Iowa, Nevada, Utah, and Wisconsin, have right-to-work laws similar to Georgia’s as well as employment laws prohibiting discrimination based on sexual orientation and gender identity.

with Isaacs v. Felder Servs., LLC, 143 F.Supp.3d 1190 (M.D. Ala. 2015) (“This court agrees . . . with the view of the Equal Employment Opportunity Commission that claims of sexual orientation-based discrimination are cognizable under Title VII.”). *See also generally* *Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII*, EEOC,

https://www.eeoc.gov/eeoc/newsroom/wysk/lgbt_examples_decisions.cfm (collecting cases).

²⁰ O.C.G.A. § 45-19-22; CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 1 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDRReport-October-2014.pdf>.

²¹ Federal Laws Prohibiting Job Discrimination Questions And Answers, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/facts/qanda.html>.

²² *Coverage*, EEOC, <https://www.eeoc.gov/employers/coverage.cfm>.

²³ PHILLIP RUSH CENTER, GEORGIA STATEWIDE LGBT COMMUNITY SURVEY 11 (2013), <http://www.rushcenteratl.org/wp-content/uploads/2013/07/Rush-Center-Survey-Results-with-Cover.pdf>.

²⁴ *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CTR. (June 13, 2013), <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

²⁵ CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 4–5 (2016).

²⁶ FINDINGS OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY – GEORGIA RESULTS, NATIONAL CENTER FOR TRANSGENDER EQUALITY & NATIONAL GAY AND LESBIAN TASK FORCE 1 (2013), http://www.thetaskforce.org/downloads/reports/reports/ntds_state/ntds_state_ga.pdf; 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 51 (2011), *available at* http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

²⁷ Right-to-work laws refer to state laws designed to protect employees’ rights to work without affiliating or contributing financially to unions. Georgia’s right-to-work laws are codified at O.C.G.A. § 34-6-6 *et seq.*

B. Housing

Neither federal nor Georgia law offers protections for LGBT people looking to buy or rent housing. The Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and similar Georgia laws prohibit discrimination in the sale, rental, and financing of housing based on race, color, religion, national origin, sex, family status, and disability. But gender identity and sexual orientation are not protected classes.²⁸ Due to this legal oversight, LGBT Georgians face obstacles and uncertainty when it comes to putting a roof over their heads.

These impediments range from additional economic burdens to the persistent threat of being unable to secure or maintain housing based solely on their status as LGBT Georgians. Notwithstanding the United States Supreme Court's 2015 decision legalizing same-sex marriage,²⁹ LGBT Georgians likely still face tax, financing, and insurance consequences when buying, transferring, and insuring their homes.³⁰ These policies, which treat partners as if they were legal strangers, may add expense and uncertainty to LGBT wallets.

More fundamentally, LGBT people frequently struggle to find landlords willing to accept their money. A national study found that same-sex couples had a more difficult time leasing housing compared with similarly situated different-sex couples.³¹ Another study from Michigan found that same-sex couples experienced discrimination in 27% of their attempts to secure housing through rental, sales, or financing.³² Elderly gay and lesbian individuals also face housing discrimination, with one study finding at least one adverse differential treatment in *half* of all efforts to secure senior housing when compared to similarly situated heterosexual seniors.³³

Most indicators point to a greater risk of housing discrimination and more serious consequences for transgender people: 11 percent of transgender persons report having been evicted from their housing because of their gender identity, and a larger proportion report having been refused housing.³⁴ Homelessness is also a significant problem within the transgender population with one-fifth of respondents experiencing homelessness at some point arguably based on their gender identity. And upon losing their housing, transgender people face unique and grievous risks such as

²⁸ *Housing for LGBTQ People: What You Need to Know About Property Ownership and Discrimination*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/resources/housing-for-lgbt-people-what-you-need-to-know-about-property-ownership-and>.

²⁹ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

³⁰ *Housing for LGBTQ People: What You Need to Know About Property Ownership and Discrimination*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/resources/housing-for-lgbt-people-what-you-need-to-know-about-property-ownership-and> (highlighting common issues in deed transfer taxes, estate taxes, insurance policy payouts, etc.).

³¹ *An Estimate of Housing Discrimination Against Same-Sex Couples*, OFFICE OF POLICY DEVELOPMENT AND RESEARCH (U. S. Department of Housing and Urban Development, 2013), *available at* http://www.huduser.org/portal/publications/pdf/Hsg_Disc_against_SameSexCpls_v3.pdf.

³² FAIR HOUSING CENTER OF METROPOLITAN DETROIT ET AL., *SEXUAL ORIENTATION AND HOUSING DISCRIMINATION IN MICHIGAN* (2007), *available at* http://www.fhcmichigan.org/images/Arcus_web1.pdf.

³³ OPENING DOORS: AN INVESTIGATION OF BARRIERS TO SENIOR HOUSING FOR SAME-SEX COUPLES, THE EQUAL RIGHTS CTR. (2014), http://www.equalrightscenter.org/site/DocServer/Senior_Housing_Report.pdf?docID=2361.

³⁴ Jaime M. Grant, Lisa A. Mottet, & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE 4 (2011), *available at* http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

being denied access to shelters, facing high incidence of sexual assault within shelters, and being mistreated by police and places of public accommodation.³⁵

C. Public Accommodations and Healthcare

Georgia is one of just five states without any legal public accommodations protections.³⁶ And while federal law protects Georgians from discrimination based on race, color, religion, or national origin in hotels, restaurants, and public arenas affecting interstate commerce, discrimination in other spheres is not prohibited. LGBT persons by virtue of their status are offered no protections at all. This means that, for example, Georgia hospitals or bakeries can discriminate on the basis of race or religion. Likewise, Georgia hotels, hospitals, restaurants, and businesses can refuse service to, or otherwise harass, LGBT persons with no legal consequences.

Nationally, discrimination against LGBT persons is prevalent. According to one study, 53% of transgender individuals have experienced discrimination in public accommodations, with 40% reporting harassment, 15% being denied services entirely, and 3% being assaulted for attempting to purchase goods or services.³⁷ In healthcare, discrimination against LGBT persons appears to be particularly acute and inexcusable. As but one example, in Michigan a pediatrician declined to treat a newborn baby because that infant was the child of a lesbian couple.³⁸ Eight percent of gay and lesbian people and 27% of transgender people reported this kind of outright refusal of medical care, in addition to reports of other common forms of harassment and abuse.³⁹

* * *

The lack of anti-discrimination legislation protecting LGBT persons in Georgia stands in stark contrast to public opinion. Recent surveys show overwhelming support for anti-discrimination legislation as it regards these fundamental daily activities. In one survey, 79% of respondents in Georgia said that it should be impermissible for Georgia employers to discriminate against their employees based on sexual orientation or gender identity.⁴⁰ In a national study, over 7-in-10 support broad anti-discrimination protections for LGBT persons in jobs, housing, and public

³⁵ Jaime M. Grant, Lisa A. Mottet, & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE 4 (2011), available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

³⁶ Paul Vincent Courtney, *Prohibiting Sexual Orientation Discrimination In Public Accommodations: A Common Law Approach*, 163 U. PA. L. REV. 1497, 1514 (2015).

³⁷ Jaime M. Grant, Lisa A. Mottet, & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, CENTER FOR TRANSGENDER EQUALITY AND NATIONAL GAY AND LESBIAN TASK FORCE 5 (2011), available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

³⁸ Tresa Baldas, *Peditrician Wouldn't Care for Baby with 2 Moms*, DETROIT FREE PRESS (Feb. 19, 2015), <http://www.freep.com/story/news/local/michigan/macomb/2015/02/18/discrimination-birth/23640315/>.

³⁹ WHEN HEALTH CARE ISN'T CARING: LAMBDA LEGAL'S SURVEY ON DISCRIMINATION AGAINST LGBT PEOPLE AND PEOPLE LIVING WITH HIV, LAMBDA LEGAL 10 (2010), available at https://www.lambdalegal.org/sites/default/files/publications/downloads/wbic-report_when-health-care-isnt-caring.pdf.

⁴⁰ CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 7 (2016), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDReport-October-2014.pdf>.

accommodations.⁴¹ Even among Americans who oppose same-sex marriage, more respondents support than oppose broad anti-discrimination laws.⁴²

Allowing formal avenues for LGBT people to complain of discrimination in employment, housing, and public accommodations would likely reduce incidents of discrimination. And yet, it does not appear that providing a means to investigate those complaints would place any significant cost burden on the state.⁴³ The over twenty states that have enacted laws protecting LGBT citizens have seen no significant uptick in litigation or other costs as a result of enforcing these laws.⁴⁴ Currently, the Georgia Commission on Equal Opportunity, the agency tasked with enforcing the Fair Employment Practices Act and fair housing complaints, addresses between 100 and 200 complaints each year.⁴⁵ Research indicates that LGBT people file complaints with state enforcement agencies at roughly the same rate as those who complain of racial or sex-based discrimination. Nationally, these rates range from 1 to 4 complaints per 100,000 protected individuals per year,⁴⁶ translating to approximately 10 complaints per year if the Georgia Commission on Equal Opportunity were to investigate claims of discrimination by LGBT persons in the state.⁴⁷

⁴¹ Betsy Cooper et al., *Beyond Same-sex Marriage: Attitudes on LGBT Nondiscrimination Laws and Religious Exemptions from the 2015 American Values Atlas*, PUBLIC RELIGION RESEARCH INST. (Feb. 18, 2016), *available at* <http://www.prr.org/research/beyond-same-sex-marriage-attitudes-on-lgbt-nondiscrimination-and-religious-exemptions-from-the-2015-american-values-atlas/>.

⁴² Betsy Cooper et al., *Beyond Same-sex Marriage: Attitudes on LGBT Nondiscrimination Laws and Religious Exemptions from the 2015 American Values Atlas*, PUBLIC RELIGION RESEARCH INST. (Feb. 18, 2016), *available at* <http://www.prr.org/research/beyond-same-sex-marriage-attitudes-on-lgbt-nondiscrimination-and-religious-exemptions-from-the-2015-american-values-atlas/>.

⁴³ CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 8–9 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDReport-October-2014.pdf>.

⁴⁴ CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 8–9 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDReport-October-2014.pdf>.

⁴⁵ CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 1 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDReport-October-2014.pdf>.

⁴⁶ CHRISTY MALLORY & BRAD SEARS, EVIDENCE OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY: AN ANALYSIS OF COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES, 2008–2014, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 8 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Accommodations-Discrimination-Complaints-2008-2014.pdf>.

⁴⁷ One study put the number of projected additional complaints at only two per year. CHRISTY MALLORY & BRAD SEARS, EMPLOYMENT DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY IN GEORGIA, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 2 (2016), *available at* <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GeorgiaNDReport-October-2014.pdf>. (“Adding sexual orientation and gender identity to the state’s current law prohibiting discrimination in state government employment would result in approximately two additional complaints being filed with the Georgia Commission on Equal Opportunity each year.”)

III. ANTI-DISCRIMINATION LAWS FURTHER RELIGIOUS LIBERTY

Freedom of religion is one of our most fundamental and cherished rights. It's the reason our nation was founded and one of the values that makes us who we are. This freedom is enshrined in our federal Constitution, our state Constitution, and throughout the laws of the land. Freedom to exercise our religious beliefs is one of the core liberties that allow each and every American to live their lives to the fullest and advance the common good. In simple terms, it's not up for debate.

In recent years, anti-discrimination policies protecting LGBT persons and religious liberty have from time to time been pitted against each other. Some of this conflict is inherent to life in a diverse multi-religious society: each person's freedom to practice their religion how they see fit will be limited in some ways by other people's rights to live a life that they see fit. For this reason, the citizen who sincerely believes that adultery is a sin punishable by death will have no defense to a charge of homicide should he act on that belief.⁴⁸ Likewise, although some saw the integration of our public schools last century as an offense to "the Lord's will,"⁴⁹ black students' rights to an equal education proved more essential than those religious convictions. These balancing acts can be difficult but at bottom are applications of the simple legal truism: "Your right to swing your arms ends just where the other man's nose begins."⁵⁰ Or, as the Georgia Constitution puts it: "freedom of religion shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state."⁵¹

Yet much of this recent tension between LGBT liberty and religious freedom is also artificially concocted. Religious freedom in America has never been protected as expansively as it is now. But while LGBT persons have gained some important rights in recent years, the fact remains that they are one of the least well-protected minority groups. Put another way, no pastor has ever been forced to perform a same-sex marriage ceremony in their place of worship against their will,⁵² but LGBT persons are fired from jobs and denied access to the housing market for exercising fundamental and constitutionally protected rights.

In the final analysis, LGBT rights and religious rights need not be in opposition: strong protections for the rights of everyone further equality and liberty for all Americans.

A. Religious Freedoms Have Never Been so Legally Protected

The current landscape of law affecting religious exercise has never been as protective of religious liberty as it is now.⁵³

⁴⁸ *Mary Latham Marries an Older Man – And Regrets It*, NEW ENGLAND HIST. SOC., <http://www.newenglandhistoricalsociety.com/mary-latham-marries-and-older-man-and-regrets-it/> (describing "the only known execution in America for adultery.").

⁴⁹ Max Blumenthal, *Agent of Intolerance*, NATION (May 28, 2007), <https://www.thenation.com/article/agent-intolerance/>.

⁵⁰ Zechariah Chafee, *Freedom of Speech in War Time*, 32 HARV. L. REV. 932, 957 (1919).

⁵¹ GA. CONST. Art. I, § I, ¶ IV.

⁵² Travis Weber, *Can Pastors and Churches Be Forced to Perform Same-Sex Marriages?*, FAMILY RESEARCH COUNSEL, <http://www.frc.org/clergyprotected> (answering question posed by title with a clear "no"); *see also* David Mikkelsen, *Coercion d'Alene*, SNOPE.COM (July 7, 2015), <http://www.snopes.com/politics/religion/hitchingpost.asp> (debunking rumor that a local business known as the "Hitching Post" would be compelled to perform same-sex marriages).

⁵³ *See generally* MARCI A. HAMILTON, *GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW* (2005); *THE RISE OF CORPORATE RELIGIOUS LIBERTY* (Micah Schwartzman et al. eds, 2016).

For example, in 2012 the Supreme Court (by a 9-0 count) held that the First Amendment prohibits suits by clergy against their churches for claims alleging employment discrimination, meaning that it is impermissible for government to contradict a church's determination as to who can act as its leadership.⁵⁴ Places of worship enjoy autonomy over all decisions concerning doctrine, policy, selection of religious leaders, and regulation of congregation membership—regardless of government efforts to intervene.⁵⁵ Any law that targets a religious group is subject to “strict scrutiny”—the Constitution's most searching standard of review—under which laws almost invariably fall.⁵⁶ In other words, government “may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices.”⁵⁷ Similarly, religious persons have broad free speech rights, especially in the context of homosexuality. They are free to condemn the practice in public and in private, as individuals or as leaders of their congregation. The Supreme Court has made clear that private religious parade organizers cannot be forced to include pro-LGBT messages in their public events because to do so would violate their First Amendment rights.⁵⁸ Furthermore, places of worship are free to associate—or not associate—with people as they see fit, meaning that they have wide latitude to exclude.⁵⁹

Additionally, the federal Religious Freedom Restoration Act (“RFRA”) provides that federal government cannot substantially burden religious exercise, even via a generally applicable law, unless the government can show it is furthering a compelling government interest through the least restrictive means.⁶⁰ The Georgia Constitution also protects religious liberty through the Georgia Bill of Rights in a way that is at least as protective as federal law.⁶¹ Similarly, there are additional laws, such as the Religious Land Use and Institutionalized Persons Act (“RLUIPA”)⁶² and the Equal Access Act,⁶³ which offer overlapping protections for religious exercise in certain spheres like zoning, prisons, and schools.

This is not to say that the existence of these types of laws makes all forms of discrimination go away. Just as the passage of civil rights era laws has not cured all private racial discrimination in this country, so too are legal protections for religious exercise unable to influence all private hearts and minds at all times. And importantly, Georgia law does not protect against religious discrimination in small business employment or public accommodations. But because of these other legal protections, intolerant persons are deterred from acting on their prejudices and people denied religious liberty have legal recourse. For these reasons, it is not clear what, if any, religiously oppressive behavior would be remedied by any additional legal protections such as a state version of the RFRA.

⁵⁴ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012).

⁵⁵ *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952); *Watson v. Jones*, 80 U.S. 679 (1871).

⁵⁶ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993).

⁵⁷ *Id.* at 547.

⁵⁸ *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 573-81 (1995).

⁵⁹ *Boy Scouts of America v. Dale*, 530 U.S. 640, 648, 656 (2000).

⁶⁰ 42 U.S.C. § 2000bb-1.

⁶¹ *Grady v. Unified Govt. of Athens–Clarke County*, 289 Ga. 726, 728–731, 715 S.E.2d 148 (2011) (explaining that the rights protections of the Georgia Constitution are “greater” than in the federal Constitution's First Amendment).

⁶² 42 U.S.C. §§ 2000cc, *et seq.*

⁶³ 20 U.S.C. § 4071(a).

Proponents of a Georgia RFRA identified various instances of religious intolerance in the state that they argued proved the necessity of further legislation aimed at protecting religious freedoms. For example, the law firm of Maner Crumly Chambliss LLP published a memorandum identifying 22 instances of religious intolerance in Georgia.⁶⁴ Yet in each of the incidents cited, existing law would have given the religiously oppressed persons the same protections as a state RFRA. In none of the cases cited would the result have changed had a RFRA been in place.

As but one illustration, the leading example of religious intolerance in Georgia, taken verbatim from the memorandum prepared by Maner Crumly Chambliss LLP, is reproduced below:

1. Restrictions on Free Speech at Georgia Institute of Technology. Georgia Tech had various speech code policies, which applied to students and student organizations and limited their ability to express views on topics that the Institute deemed “intolerant.” Georgia Tech also limited the locations on its huge campus where students could engage in free speech to certain tiny “speech zones” and refused to give student activity funds to student organizations that engaged in “religious activities.”⁶⁵

The reality is that this conduct on the part of the Georgia Institute of Technology was not legal. The students and student groups who were affected filed suit in 2006 as a result.⁶⁶ And because their religious practice and advocacy was within their First Amendment rights, they prevailed.⁶⁷ Indeed, the legal standard, strict scrutiny, was identical under the First Amendment as it would have been under a state RFRA. In *each* of the cases identified in the Maner Crumly Chambliss memorandum, the result would be the same regardless of a state RFRA.

B. Some Religious Exemptions Have Led to Unintended Consequences

Even as a state RFRA would be unlikely to remedy any existent religious discrimination, a state RFRA, or similar legislation such as 2016’s vetoed First Amendment Defense Act (“FADA”),⁶⁸ would present significant unintended consequences. Not only would such legislation be perceived as facilitating LGBT intolerance, leading to economic consequences; if any legislation were written broadly enough so as to exempt government actors or private businesses from complying with any duties or laws which offend their religious beliefs, significant uncertainty and insecurity would be injected into a wide range of government and business transactions. This uncertainty would pose a significant cost on government and private citizens—especially in the form of litigation expenses.

The federal experience is illustrative: under the federal RFRA, a religion known as the “União do Vegetal” or the Union of the Plants, was allowed to import and use substances regulated under Schedule I of the Controlled Substances Act and international treaty.⁶⁹ In another case, a

⁶⁴ *Recent Examples in Georgia of Religious Discrimination*, MANER CRUMLY CHAMBLISS LLP, available at <http://concernedwomen.org/wp-content/uploads/2015/01/Georgia-Religious-Liberty-Cases-2015.pdf>.

⁶⁵ *Recent Examples in Georgia of Religious Discrimination*, MANER CRUMLY CHAMBLISS LLP, available at <http://concernedwomen.org/wp-content/uploads/2015/01/Georgia-Religious-Liberty-Cases-2015.pdf>.

⁶⁶ *Sklar v. Clough*, No. 06-cv-0627, Complaint (N.D. Ga. Mar. 16, 2006), available at <http://adfwebadmin.com/resources/files/svc%20complaint.pdf>.

⁶⁷ *Sklar v. Clough*, No. 06-cv-0627, 2008 WL 5381961 (N.D. Ga. Dec. 23, 2008) (awarding attorneys’ fees to plaintiffs as prevailing parties).

⁶⁸ See generally Part IV., *infra*.

⁶⁹ *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

Muslim prisoner was granted exemptions from generally applicable security rules so that he could grow a beard.⁷⁰ These two recent Supreme Court cases are not held up as examples of inappropriate decisions—indeed people from diverse political persuasions have applauded these rulings, but these cases are harbingers of litigation to come. Other recent litigants have sought—and been granted—more fundamental exemptions from the law:

- a person accused of using child labor to harvest pecans successfully invoked RFRA to refuse to honor a federal subpoena to testify;⁷¹
- churches have sought exemptions from tort law for liability in cases where leaders sexually abused children;⁷²
- sex abuse defendants have claimed RFRA as a shield to their prosecution;⁷³
- in Indiana, the founder of the new First Church of Cannabis bragged that “I created the fastest-growing religion in America last week” in response to that state’s RFRA;⁷⁴
- in Vermont, a father who failed to pay child support because he argued that working would offend his religious beliefs successfully invoked a state RFRA to void a criminal contempt order that was not the “least restrictive means” of law enforcement;⁷⁵
- a deportation action was challenged on the ground that the deportee couple could not have a “qualifying relative” in the United States because they could not have a child and would not have *in vitro* fertilization due to their beliefs;⁷⁶
- a Texas man who pleaded no contest to sexual assault of a child invoked the Texas RFRA to argue that the law required extra scrutiny for search warrants issued to places of worship;⁷⁷
- and a federal district court held that the Milwaukee Archdiocese, seeking to avoid paying tens of millions of dollars to victims of sexual abuse, could successfully claim an exemption from bankruptcy law regarding fraudulent transfers under RFRA.⁷⁸

These examples show that the reach of RFRA laws is sweeping and their application unpredictable. Even when RFRA legislation has been invoked unsuccessfully, government is faced with real

⁷⁰ Holt v. Hobbs, 135 S. Ct. 853 (2015).

⁷¹ Perez v. Paragon Contractors, Corp., No. 2:13CV00281–DS, 2014 WL 4628572 (D. Utah Sept. 11, 2014); see also Kara Loewentheil, *Code of Silence: RFRA Protects Religious Refusal To Testify*, PUBLIC RIGHTS PRIVATE CONSCIENCE PROJECT (Sept. 17, 2014), <http://blogs.law.columbia.edu/publicrightsprivateconscience/2014/09/17/code-of-silence-rfra-protects-religious-refusal-to-testify/>.

⁷² See generally Marci A. Hamilton, *The “Licentiousness” in Religious Organizations and Why it is Not Protected under Religious Liberty Constitutional Provisions*, 18 WM. & MARY BILL OF RTS. J. 953 (2010); see also Brief *Amicus Curiae* of the Church of Jesus Christ of Latter-Day Saints, *Ramani v. Segelstein*, No. 49341 (Nev. Oct. 5, 2009); Joinder of the Roman Catholic Bishop of Las Vegas and of the Roman Catholic Bishop of Reno, *Ramani v. Segelstein*, No. 49341 (Nev. Oct. 12, 2009).

⁷³ See, e.g., *State v. Bent*, 328 P.3d 677 (N.M. Ct. App. 2013).

⁷⁴ Steven Nelson, *Indiana’s Church of Cannabis Growing Like a Weed*, U.S. NEWS & WORLD REPORT (Apr. 2, 2015), <http://www.usnews.com/news/articles/2015/04/02/indianas-church-of-cannabis-growing-like-a-weed>.

⁷⁵ *Hunt v. Hunt*, 642 A.2d 843, 853–54 (Vt. 1994).

⁷⁶ *Fernandez v. Mukasey*, 520 F.3d 965 (9th Cir. 2008).

⁷⁷ *Jeffs v. State*, No. 03–10–00272–CR, 2012 WL 601846 (Tex. Crim. App. Feb. 24, 2012).

⁷⁸ *In re Archdiocese of Milwaukee*, 496 B.R. 905 (E.D. Wisc. July 29, 2013), *overruled on other grounds* *Listecky v. Official Comm. of Unsecured Creditors*, 780 F.3d 731 (7th Cir. 2015).

uncertainty as to the administration of its neutrally applicable laws and is forced to expend significant resources in litigation. The number of unexpected victories thus far will no doubt inspire more audacious future challenges to our generally applicable laws.

C. Commonsense Exemptions Can Protect Clergy and Places of Worship

While a state RFRA would likely produce a range of significant unintended consequences, a more carefully tailored religious exemption would protect people of faith in Georgia in important new ways without undermining the rule of law. Virtually every state non-discrimination law has some form of exemption such that places of worship and the people who lead those organizations have freedom to practice their faith how they see fit. Exemptions under state law are generally broader than those provided by the federal civil rights acts.⁷⁹ These exemptions permit churches and their members to engage in conduct that would otherwise be classified as illegal discrimination without fear of legal reprisal. Some of these protections are constitutionally guaranteed,⁸⁰ however, in most instances, the state law religious exemptions are explicit and broader than the Constitution requires.⁸¹

In fact, of the twenty-two states to have barred discrimination on the basis of sexual orientation or gender identity, all twenty-two laws contain discrimination exemptions for places of worship.⁸² Georgia law currently provides no such protections or exemptions.

Reasonable minds can disagree as to the proper shape and size of any religious exemption from generally applicable anti-discrimination laws, but all would agree that religious organizations need some protections. The baseline of legal security for religious persons is set by the First Amendment to the United States Constitution. The Supreme Court has held that the Free Exercise Clause contains a “ministerial exception” to generally applicable civil rights laws, such that choices as to whom “will minister to the faithful” are “strictly ecclesiastical” and “the church’s alone.”⁸³

* * *

Although some legal and economic effects of enacting a state RFRA or FADA in Georgia are uncertain, at least one consequence of passing this kind of law is definite: people will use such a law to justify discrimination. Indeed, Georgia Senator Greg Kirk admitted when questioned last year that the Ku Klux Klan would qualify as a faith based group eligible for protection under HB 757, claiming that “I don’t know what would stop them” from invoking the failed measure to discriminate.⁸⁴

⁷⁹ Compare 42 U.S.C.A. § 2000e-1 (providing exemption from federal employment discrimination law for “a religious corporation” only “with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation . . . of its activities.”), with Cal. Gov’t Code § 12926(d) (exempting entirely religious corporations as not being an “employer” covered by the law).

⁸⁰ See, e.g., *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012).

⁸¹ See, e.g., 42 U.S.C.A. § 2000e-1; Cal. Gov’t Code § 12926(d).

⁸² JEROME HUNT, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES, CENTER FOR AMERICAN PROGRESS ACTION FUND 3–4 (June 2012), available at https://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf.

⁸³ *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694, 710 (2012).

⁸⁴ *Georgia State Senate Debate on First Amendment Defense Act*, YOUTUBE.COM (Feb. 19, 2016), <https://www.youtube.com/watch?v=7QpIt68Xoog>.

Religious faith based groups in Georgia should lead the charge for greater equality for all, recognizing the inalienable truth that: “We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”⁸⁵ Thus, “Injustice anywhere is a threat to justice everywhere.”⁸⁶ Or, as the Bible provides: “Love your neighbor as yourself.’ Love does no harm to its neighbor. Therefore love is the fulfillment of the law.”⁸⁷ Georgia can follow the lead of other states, recognizing that LGBT equality and religious liberty are not opposing forces. Indeed, as other states’ experiences have illustrated, comprehensive civil rights legal reform can and does further both of these fundamentally important interests.

IV. THE ECONOMICS OF ANTI-DISCRIMINATION ARE BAD BUSINESS FOR GEORGIA

States that have enacted legislation perceived as facilitating discrimination against LGBT people have faced swift, direct, and steep economic consequences.

When former Indiana Governor and Vice President Elect Mike Pence signed legislation billed as promoting religious freedom which was seen by opponents as legalizing discrimination, Indiana was hit with a wave of criticism from the political, business, and sports spheres.⁸⁸ The Indiana legislature responded within days by enacting a revised bill that clarified that religious freedom could not be used as a justification for anti-LGBT discrimination.⁸⁹ Even though the original bill was in effect for less than two weeks, serious damage to the state’s economic outlook had already been wrought. Indianapolis alone lost over \$60 million in economic opportunities in the aftermath of the religious liberty bills.⁹⁰ Other economists have estimated that Indiana lost thousands of jobs and lost or jeopardized a quarter of a billion dollars as a result.⁹¹

In North Carolina, the backlash to its HB2 was even more pronounced. Within months of passing, the state lost thousands of jobs and almost \$700 million in revenue.⁹² Five states, the

⁸⁵ Martin Luther King, Jr., *Letter from a Birmingham Jail* (1963).

⁸⁶ Martin Luther King, Jr., *Letter from a Birmingham Jail* (1963).

⁸⁷ Romans, 13:9–10.

⁸⁸ Monica Davey & Mitch Smith, *Indiana Governor, Feeling Backlash from Law’s Opponents, Promises ‘Fix’*, N.Y. TIMES, Apr. 1, 2015, A14, available at <http://www.nytimes.com/2015/04/01/us/politics/indiana-governor-mike-pence-feeling-backlash-from-religious-laws-opponents-promises-a-fix.html>.

⁸⁹ Monica Davey, Campbell Robertson, & Richard Pérez-Peña, *Indiana and Arkansas Revise Rights Bills, Seeking to Remove Divisive Parts*, N.Y. TIMES, Apr. 3, 2015, A12, available at <http://www.nytimes.com/2015/04/03/us/indiana-arkansas-religious-freedom-bill.html>.

⁹⁰ Andrew Bender, *Indiana’s Religious Freedom Act Cost Indianapolis \$60 Million In Lost Revenue*, FORBES (Jan. 31, 2016), <http://www.forbes.com/sites/andrewbender/2016/01/31/indianas-religious-freedom-act-cost-indianapolis-60-million-in-lost-revenue/#64af187f4e73> (quoting an Indianapolis convention and visitors’ bureau head who claimed many conventions declined to select Indianapolis as their host city in the aftermath of the state’s RFRA passage).

⁹¹ Sarah McBride & Laura E. Durson, *Indiana’s Religious Freedom Restoration Act Is Bad for Business*, CTR. FOR AM. PROGRESS (Mar 25, 2015), <https://www.americanprogress.org/issues/lgbt/news/2015/03/31/110232/indianas-religious-freedom-restoration-act-is-bad-for-business/>.

⁹² Bruce Henderson, *HB2 Was A Mistake, Most N.C. Voters Say In Observer Poll*, CHARLOTTE Observer (Oct. 28, 2016), <http://www.charlotteobserver.com/news/local/article111159142.html>.

District of Columbia, and at least 21 municipalities have barred taxpayer-funded travel to the state.⁹³ The Charlotte area alone suffered \$285 million in losses in the months after HB2.⁹⁴ Raleigh lost \$40 million in convention business.⁹⁵ The National Basketball Association pulled its All-Star Game from Charlotte, the National Collegiate Athletic Association removed at least seven championships from the state, and the Atlantic Coast Conference—based in Greensboro—moved all of its championship events.⁹⁶

The Department of Justice filed suit against the state alleging that HB2 violates federal civil rights laws.⁹⁷ If the Justice Department suit is successful, the state's federal funding would be put in jeopardy, potentially adding up to \$5 billion *a year* in total economic losses due to the enactment of HB2, according to a recent report.⁹⁸ And beyond hard economics, there is evidence that the effects of HB2 in North Carolina are more existentially far-reaching and pernicious, with 70% of North Carolinians reporting that they feel as though the state's reputation has diminished as a result of the bill.⁹⁹

If Georgia were to pass its own analogous state RFRA legislation, all indications point to an even larger negative economic impact. According to reports from the Metro Atlanta Chamber and the Atlanta Convention and Visitors Bureau, the estimated fallout from a religious liberty bill seen as enabling anti-LGBT discrimination would range from \$1 to \$2 *billion*.¹⁰⁰ Not only is Georgia a larger state with a bigger economy than other states to have passed such laws, but Georgia's particular economic position leaves it especially susceptible to negative backlash. There are at least five characteristics of the Georgia economy that make it likely that any negative economic impact would be not just larger, but *proportionately* larger in the following areas: film, conventions, attracting young workers, corporate vulnerability to boycott, and sports.

⁹³ CHRISTY MALLORY & BRAD SEARS, DISCRIMINATION, DIVERSITY, AND DEVELOPMENT: THE LEGAL AND ECONOMIC IMPLICATION OF NORTH CAROLINA'S HB2, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW 26 (2016), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Discrimination-Diversity-and-Development_The-Legal-and-Economic-Implications-of-North-Carolinas-HB2.pdf.

⁹⁴ Jim Morrill, Steve Harrison, & Ely Portillo, Chamber: Let Cities Pass Own LGBT Protections, CHARLOTTE OBSERVER (May 24, 2016), <http://www.charlotteobserver.com/news/politics-government/article79503287.html>.

⁹⁵ Julia Sims, HB2 could cost Raleigh up to \$40M in convention business, WRAL.com (July 6, 2016), <http://www.wral.com/hb2-could-cost-raleigh-up-to-40m-in-convention-business/15834233/#sG1M3PBwuTbj6Muu.99>.

⁹⁶ Colin Campbell, *Failed HB2 Compromise Bill Could Have Prevented Sports Losses*, GOP Legislator Says, NEWS & OBSERVER (Sept. 26, 2016), <http://www.newsobserver.com/news/politics-government/state-politics/article104314141.html#storylink=cpy>.

⁹⁷ Joe Sterling, Elliott C. McLaughlin, & Joshua Berlinger, *North Carolina, U.S., Square Off Over Transgender Rights*, CNN (May 10, 2016), <http://www.cnn.com/2016/05/09/politics/north-carolina-hb2-justice-department-deadline/>.

⁹⁸ CHRISTY MALLORY & BRAD SEARS, WILLIAMS INST. AT UNIV. OF CAL. SCH. OF LAW, DISCRIMINATION, DIVERSITY, AND DEVELOPMENT: THE LEGAL AND ECONOMIC IMPLICATION OF NORTH CAROLINA'S HB2 (2016).

⁹⁹ MONMOUTH UNIV. POLLING INST., PREZ AND SENATE RACES TIGHT; HB2 DRAG ON GOV. MCCRORY RE-ELECT BID (Aug. 25, 2016), http://www.monmouth.edu/polling-institute/reports/MonmouthPoll_NC_082416/.

¹⁰⁰ Aaron Gould Sheinin & Kristina Torres, *Studies Show Billions At Risk For Ga. In "Religious Liberty" Fight*, ATLANTA J. CONST. (Nov. 19, 2015), <http://www.myajc.com/news/news/state-regional-govt-politics/opponents-studies-show-big-risks-for-ga-in-religio/npRM5/>.

A. Film

Film is now a \$7 billion a year industry in Georgia¹⁰¹ which accounts for over 80,000 jobs¹⁰²—figures that put the state behind only California and New York. Tax incentives have rapidly drawn film projects to the state since 2005,¹⁰³ but any legislation seen as anti-LGBT would easily damage the industry’s nascent presence in Georgia.¹⁰⁴ Before Governor Nathan Deal vetoed the 2016 legislative session’s HB 757, Hollywood megaliths such as the Motion Picture Association of America, Disney, and Marvel indicated in certain terms that they would boycott the state if the legislation became law.¹⁰⁵

Given the well-known political inclinations and activism of the industry there is no indication that the strong reactions spurred by the potential passage of HB 757 were either anomalous or mere empty threats. Indeed, the market for filming locations outside of California and New York is an especially a competitive one, which has been driven to date largely by tax incentives.¹⁰⁶ But it appears unlikely that the industry would be unresponsive to social conditions and pressures. In 2005, the first year that Georgia offered tax incentives for in state film productions, direct studio expenditures in the state totaled only \$120 million. Were Georgia to pass legislation deemed anti-LGBT, the state would certainly experience drops in film-related revenues, but more broadly, the state would risk crippling its young and vibrant film industry before it had even reached full maturity.

B. Conventions and tourism

Conventions are big business in Georgia. Tourism is responsible for roughly \$50 billion in annual spending and 400,000 jobs, representing a tenth of the state economy.¹⁰⁷ The Metro Atlanta Chamber estimates losses of “at least \$600 million” were Georgia to pass a RFRA-like bill, based on the business community’s response to similar legislation in Indiana. But the Chamber notes that “if

¹⁰¹ Dave Williams, *Film Industry Impact In Georgia Passes \$7 Billion*, Atlanta Bus. Chron. (Aug. 2, 2016), <http://www.bizjournals.com/atlanta/news/2016/08/02/film-industry-impact-in-georgia-passes-7-billion.html>.

¹⁰² Tiffany Stevens, *Atlanta’s Explosive Film and TV Growth, By the Numbers*, ATLANTA J. CONST. (AUG. 21, 2015) (attributing 77,900 jobs to the film industry in 2015 before the industry grew again last year).

¹⁰³ Economic Contributions of the Georgia Film and Television Industry, Motion Picture Association of America (2011), http://www.mpa.org/wp-content/uploads/2014/03/Georgia-Executive-Summary_Feb28.pdf.

¹⁰⁴ Jim Galloway, *How Georgia’s Film Industry Has Muddled GOP Battle Lines Over “Religious Liberty”*, ATLANTA J. CONST. (Mar. 30, 2016), <http://politics.blog.ajc.com/2016/03/30/how-georgias-film-industry-has-muddled-gop-battle-lines-over-religious-liberty/>.

¹⁰⁵ Andrew Pulver, *Disney And Marvel To Boycott Georgia If State Passes “Religious Liberty” Bill*, GUARDIAN (Mar. 23, 2016), <https://www.theguardian.com/film/2016/mar/23/disney-marvel-georgia-religious-liberty-bill-boycott>.

¹⁰⁶ Peter Caranicas & Rachel Abrams, *Runaway Production: The United States of Tax Incentives*, VARIETY (Aug. 13, 2013), <http://variety.com/2013/biz/news/runaway-production-the-united-states-of-tax-incentives-1200589317/> (noting that at least 42 states offer tax incentives).

¹⁰⁷ Tom Cunningham, *Potential Economic Consequences of RFRA-like Legislation*, METRO ATLANTA CHAMBER (2016), available at <http://macpolicy.com/wp-content/uploads/2015/12/RFRA-Cost-Memo.pdf>.

the reaction is larger or longer” than in Indiana where the law was in effect for mere days, the negative economic impact would be “much more” significant.¹⁰⁸

This is because convention planners are sensitive to potential controversy and think to themselves: *why take the risk?* A trade publication for professional convention planners found that while a majority of planning professionals were indifferent to political issues affecting site selection, 70% said that they would avoid selecting a location where a political issue *might* be an important factor.¹⁰⁹ Notably, only 17% indicated that they would not cancel a meeting in a destination that passed a law that attendees would find offensive.¹¹⁰ This qualitative and quantitative data fits well with the past economic experience of Georgia. For example, in 2011, in response to passage of the Illegal Immigration Reform and Enforcement Act, a bill seen by some as discriminatory, the state lost over \$90 million in convention activity according to the Atlanta Convention and Visitors Bureau.¹¹¹ While that economic response was certainly significant, the convention losses from a backlash generated by a bill with anti-LGBT provisions could easily make \$90 million seem like a drop in the bucket.

C. Workforce attraction and retention

Georgia’s economy depends on its ability to draw young people from the region and the nation more broadly. Over the past three decades, Georgia has done this to great effect, leading to proportionately faster growth in Georgia than in the rest of the country.¹¹² But were the legislature to pass a bill seen as facilitating discrimination against the LGBT community, the state’s ability to attract the workforce that is its lifeblood could be significantly impacted.

For example, in the ten years between 1990 and 2000, the twenty-nine counties surrounding Atlanta experienced 38% population growth compared to a national average of 13%. The bulk of this growth came from the in-migration of young and educated people. This population, specifically those under age 30, overwhelmingly (78%) support same-sex marriage.¹¹³ If Georgia is seen as hostile to the LGBT community—rather than as a leader for equality—the state’s ability to attract these talented young people will be damaged. In Indiana, where the legislature passed a “fix bill” within days clarifying that their version of RFRA would not permit private discrimination against

¹⁰⁸ Tom Cunningham, Potential Economic Consequences of RFRA-like Legislation, METRO ATLANTA CHAMBER (2016), available at <http://macpolicy.com/wp-content/uploads/2015/12/RFRA-Cost-Memo.pdf>.

¹⁰⁹ Loren G. Edelstein, *Should Politics Matter?*, MEETINGS AND CONVENTIONS (Apr. 1, 2015), <http://www.meetings-conventions.com/News/Research/Should-Politics-Matter/>.

For a fuller range of the responses of convention planners in narrative form, see Loren G. Edelstein, *Meeting in a Politically Charged Atmosphere*, MEETINGS AND CONVENTIONS (Apr. 1, 2015), <http://www.meetings-conventions.com/News/Research/Meeting-in-a-Politically-Charged-Atmosphere/>.

¹¹⁰ Loren G. Edelstein, *Should Politics Matter?*, MEETINGS AND CONVENTIONS (Apr. 1, 2015), <http://www.meetings-conventions.com/News/Research/Should-Politics-Matter/>.

¹¹¹ Loren G. Edelstein, *Should Politics Matter?*, MEETINGS AND CONVENTIONS (Apr. 1, 2015), <http://www.meetings-conventions.com/News/Research/Should-Politics-Matter/>.

¹¹² Tom Cunningham, Potential Economic Consequences of RFRA-like Legislation, METRO ATLANTA CHAMBER (2016), available at <http://macpolicy.com/wp-content/uploads/2015/12/RFRA-Cost-Memo.pdf>.

¹¹³ Scott Clement & Robert Barnes, *Poll: Gay-Marriage Support At Record High*, WASH. POST (Apr. 23, 2015), https://www.washingtonpost.com/politics/courts_law/poll-gay-marriage-support-at-record-high/2015/04/22/f6548332-e92a-11e4-aae1-d642717d8afa_story.html (pre-*Obergefell*).

LGBT persons, firms continue to report that out-of-state prospects consistently ask problematic questions about the social climate of the state.¹¹⁴

D. Corporate vulnerability to boycotts

The Metro Atlanta Chamber warns that there is reason to believe that Georgia businesses would be especially susceptible to any boycott efforts because “Georgia’s largest firms tend to be consumer oriented with readily identifiable competitors” meaning that “[t]here are easy alternatives for consumers that want to avoid products of major Atlanta based firms.”¹¹⁵ Empirical studies of the effects of boycotts report that targeted firms suffer abnormal wealth losses in both the short and medium term. Stock prices of businesses targeted for boycotts declined by an average of 2.7% within 10 days of initiation of boycott actions and by 3.4% at 100 days out.¹¹⁶ Based on the ease with which some large Georgia-based firms can be boycotted, these figures represent a conservative estimate. And these figures do not account for consumers’ persistence in consumption: generally once consumer behavior changes, it stays that way, meaning that the effects of a consumer boycott may endure into the long-term for Georgia’s businesses targeted for boycott.

E. Sports

A modern and expensive new home for the Atlanta Falcons and the Major League Soccer franchise Atlanta United nears completion in the center of the city. A significant justification for the \$1.6 billion price tag for the new Mercedes-Benz stadium, including hundreds of millions in local public contributions,¹¹⁷ is the draw of hosting the Super Bowl. As the Georgia legislature considered HB 757 in the 2016 session, the NFL made clear that if the state were to enact the law, it would no longer be seriously considered to host the event.¹¹⁸ After Governor Deal vetoed HB 757, the NFL promptly awarded the 2019 Super Bowl to Atlanta, bringing in hundreds of millions in revenue to the city. But the league is likely to revisit its decision in response to subsequent legislative action, much like it did in taking away the 1993 Super Bowl from Arizona in response to the state’s failure to recognize MLK Day as a state holiday.¹¹⁹

While the Super Bowl is the single biggest ticket sports event vulnerable to relocation in response to anti-LGBT legislation, there are others that in their totality would dwarf any revenues lost from a relocated Super Bowl. Collegiate sports are particularly vulnerable. For example, Atlanta is set to host the next 11 SEC Football Championship games. Between 1999 and 2014, hosting these

¹¹⁴ Tom Cunningham, Potential Economic Consequences of RFRA-like Legislation, METRO ATLANTA CHAMBER (2016), available at <http://macpolicy.com/wp-content/uploads/2015/12/RFRA-Cost-Memo.pdf>.

¹¹⁵ Tom Cunningham, Potential Economic Consequences of RFRA-like Legislation, METRO ATLANTA CHAMBER (2016), available at <http://macpolicy.com/wp-content/uploads/2015/12/RFRA-Cost-Memo.pdf>.

¹¹⁶ Richard E. White & Dilip D. Kare, *The Impact Of Consumer Boycotts On The Stock Prices Of Target Firms*, 6 J. APPLIED BUS. RES. 63 (1990).

¹¹⁷ Ernie Suggs & Tim Tucker, *Atlanta Council Clears Stadium Plan*, ATLANTA J. CONST. (Mar. 19, 2013), <http://www.myajc.com/news/news/local/key-stadium-vote-could-come-today/nWwXq/>.

¹¹⁸ Jeff Schultz, “Religious Liberty” Bill Jeopardizes Atlanta Super Bowl Bid, ATLANTA J. CONST. (Mar. 18, 2016), <http://www.ajc.com/sports/football/religious-liberty-bill-jeopardizes-atlanta-super-bowl-bid/sLVWtnaRVMNhZRot2eJs1M/>.

¹¹⁹ Cindy Boren, *Why The NFL Moved The Super Bowl From Arizona In 1990*, WASH. POST (Feb. 26, 2014), <https://www.washingtonpost.com/news/early-lead/wp/2014/02/26/why-the-nfl-moved-the-super-bowl-from-arizona-in-1990/>.

events brought the city an average of \$62.5 million per year. The SEC was vocal in its opposition to HB 757 and would likely follow the ACC's lead in removing its championships from a state seen as hostile to its mission.¹²⁰ Similarly, there is the NCAA Men's Basketball Final Four—which Atlanta hosted in 2002, 2007, and 2013, and is scheduled to host again in 2020. Houston pocketed \$300 million in revenues from the 2016 Final Four, but Atlanta would miss out on such revenues if the NCAA relocated in response to anti-LGBT legislation, as it has done in North Carolina.¹²¹

V. CONCLUSION AND RECOMMENDATIONS

The authors and signatories of this report make the following recommendations for Georgia policymakers and advocates:

Georgia Should Enact Comprehensive Anti-Discrimination Protecting All People's Rights to Employment, Housing, and Public Accommodations:

- Georgia legislators should join the vast majority of other states and enact comprehensive state protections for all Georgians in the exercise of fundamental endeavors such as employment, housing, and public accommodations.
- Georgia state law should protect against discrimination in these areas based upon race, religion, color, national origin, physical or mental disability, medical condition, marital status, sex, sexual orientation, gender identity and expression, age, and military or veteran status.

Georgia Should Enact Anti-Discrimination Legislation to Protect the LGBT Community:

- Georgia legislators should study what has worked in other states and enact similar or identical comprehensive anti-discrimination laws.
- Twenty states and the District of Columbia have employment non-discrimination laws that cover sexual orientation and gender identity. Two more states have laws that cover sexual orientation but not gender identity.¹²²
- Twenty states and the District of Columbia have housing non-discrimination laws that cover sexual orientation and gender identity. Two more states have laws that cover sexual orientation but not gender identity.¹²³
- Nineteen states and the District of Columbia have public accommodations non-discrimination laws that cover sexual orientation and gender identity. Two more states have laws that cover sexual orientation but not gender identity.¹²⁴

¹²⁰ Steven Godfrey, *Georgia Law Could Cost Atlanta A Super Bowl, But Losing The SEC Would Cost Even More*, SB NATION (Mar. 24, 2016), <http://www.sbnation.com/college-football/2016/3/24/11300038/georgia-hb-757-sports-super-bowl-sec-championship>.

¹²¹ Cara Smith, *Here's The "Trick" To Become A Final Four Host City, Houston Prez Says*, HOUSTON BUS. J. (Feb. 12, 2016), http://www.bizjournals.com/houston/morning_call/2016/02/heres-the-one-trick-to-becoming-a-final-four-host.html.

¹²² *Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

¹²³ *Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

¹²⁴ *Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

- Thirteen states have credit and lending non-discrimination laws that cover sexual orientation and gender identity. One more state has laws that cover sexual orientation but not gender identity.¹²⁵

Any Religious Exemption Law in Georgia Must Protect Places of Worship While Not Legalizing Discrimination More Broadly:

- Georgia legislators should ensure that any anti-discrimination law amply protects the religious integrity of places of worship. Legislators should ensure that any comprehensive anti-discrimination reform contains protections for places of worship and clergy. In so doing, Georgia would join all other states to have passed laws shielding LGBT persons from discrimination in employment, housing, and public accommodations.
- Georgia legislators should prevent passage of any legislation that has the purpose or effect of enabling or perpetuating discrimination against any individual, including LGBT persons.
- Georgia legislators should make any laws creating religion-based exemptions from generally applicable laws explicit that they cannot be used to discriminate, cause harm to third parties, or preempt non-discrimination policies outside of places of worship.

¹²⁵ *Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/non_discrimination_laws.