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EXECUTIVE SUMMARY

Virginia is home to an estimated 257,400 LGBT adults and 50,400 LGBT youth. LGBT people in Virginia lack important legal protections that have been extended in other states. For example, statewide statutes in Virginia do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in Virginia also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, Virginia ranks 23rd in the nation on public support for LGBT rights and acceptance of LGBT people.

Figure 1. Social acceptance of LGB people, ranked by state



The legal landscape for LGBT people in Virginia likely contributes to an environment in which LGBT people experience stigma and discrimination. Stigma and discrimination can take many forms, including discrimination and harassment in employment and other settings; bullying, harassment, and family rejection of LGBT youth; overrepresentation in the criminal justice system; and violence. Research has linked stigma and discrimination against LGBT people to negative effects on individuals, businesses, and the economy.

In this study, we provide data and research documenting the prevalence of several forms of stigma and discrimination against LGBT adults and youth in the U.S. and in Virginia specifically, including discrimination and harassment in employment, housing, and public accommodations; bullying and harassment in schools; and family rejection of LGBT youth. We discuss the implications of such stigma and discrimination on LGBT individuals, in terms of health and economic security; on employers, in terms

of employee productivity, recruitment, and retention; and on the economy, in terms of health care costs and reduced productivity.

To the extent that Virginia is able to move toward creating a more supportive environment for LGBT people, it would likely reduce economic instability and health disparities experienced by LGBT individuals, which, in turn, would benefit the state, employers, and the economy.

KEY FINDINGS

Prevalence of Stigma and Discrimination against LGBT People

LGBT people in Virginia experience discrimination in employment, housing, and public accommodations.

- In 2019, the Equal Rights Center released a report investigating bias against LGB job applicants in Virginia using matched pairs rights testing.¹ The report found that in two of its 10 tests, a heterosexual job applicant was offered the job over an equally-qualified LGB tester. In the remaining 8 tests, both or neither tester were offered a job. In none of the tests was the LGB tester offered a job over the heterosexual tester. Additionally, one LGB-identified tester reported that he was openly ridiculed by two employees when disclosing his sexual orientation.
- The 2015 U.S. Transgender Survey (USTS) found that among transgender respondents from Virginia who held or applied for a job in the prior year, 24% reported being fired, being denied a promotion, or not being hired for a job because of their gender identity or expression.² In terms of housing discrimination, 20% of respondents from Virginia reported experiencing some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender, and 9% reported that they experienced homelessness in the past year because of being transgender. In addition, of those respondents who visited a place of public accommodation where staff or employees knew or thought they were transgender, 31% experienced at least one type of mistreatment in the past year because of being (or being perceived to be) transgender.
- A 2015 survey conducted at Virginia Tech found that LGBT faculty and staff felt less comfortable reporting acts of discrimination than their heterosexual counterparts (72.9% vs. 83.0%).³ Additionally, LGBT faculty and staff were more likely to witness discriminatory behavior (29.6% vs.

¹ EQUAL RIGHTS CENTER, BEHIND CLOSED DOORS: A TESTING INVESTIGATION INTO BIAS AGAINST LGBT JOB APPLICANTS IN VIRGINIA 27 (2019), <https://equalrightscenter.org/wp-content/uploads/behind-closed-doors-va.pdf>.

² The survey used a non-probability sampling method. NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, U.S. TRANSGENDER SURVEY: VIRGINIA STATE REPORT 1 (2017), <https://www.transequality.org/sites/default/files/docs/usts/USTSVASStateReport%281017%29.pdf>.

³ LGBTQ CLIMATE SURVEY REPORT 43 (2015), https://www.inclusive.vt.edu/content/dam/inclusive_vt_edu/resources/publications/reports/lgbtq-climate-survey.pdf.

19.5%) and experience discriminatory behavior (18.8% vs. 12.2%) than heterosexual faculty and staff.

- In 2014, Housing Opportunities Made Equal of Virginia sent emails to housing providers in the Richmond area in matched pairs to assess the existence of sexual orientation discrimination.⁴ In each pair, one email was sent to an apartment complex suggesting that it came from a same-sex couple while the other email to that same apartment complex suggested that it came from a different-sex couple. Out of 34 matched-pair tests, 44% resulted in treatment that favored the different-sex couple.
- In response to a 2016 poll, 58% of Virginia residents, both LGBT and non-LGBT, said that they thought that gay and lesbian people experience a lot of discrimination in the U.S., and 62% of Virginia residents said that they thought that transgender people experience a lot of discrimination in the U.S.⁵
- An analysis of aggregated public opinion data collected from 2011 through 2013 found that 81% of Virginia residents thought that LGBT people experience discrimination in the state.⁶
- Instances of discrimination in employment, housing, and public accommodations in Virginia have also been documented in court cases and media reports.

LGBT youth in Virginia experience bullying and harassment at school.

- The 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 74% of respondents from Virginia said they had experienced verbal harassment based on their sexual orientation at school, and 62% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.⁷ Many students also reported experiencing physical harassment based on their sexual orientation (29%) or gender expression (26%) at school in the year prior to the survey.
- The 2015 USTS found that 80% of survey respondents from Virginia who were perceived to be transgender while in grades K-12 reported experiencing verbal harassment, 27% reported experiencing physical assault, and 15% reported experiencing sexual violence while in school.⁸
- A 2017 Campus Climate survey of students at the University of Virginia found that LGB students were more likely to experience sexual harassment than non-LGB students. Over 60% of non-heterosexual students (61.4%) reported experiencing harassment since the beginning of the fall

⁴ HOUSING OPPORTUNITIES MADE EQUAL OF VIRGINIA, INC., A STUDY OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES IN VIRGINIA, <https://homeofva.org/wp-content/uploads/2019/01/HousingDiscriminationAgainstSameSexCouplesinVA.pdf>.

⁵ American Values Atlas, PRRI, <http://ava.prri.org/#/2018/States/trnsdis> (last visited Dec. 13, 2019) (under dropdown menu for “Year” select “2016,” select topic “discrimination,” under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes”).

⁶ 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 authors).

⁷ GLSEN, SCHOOL CLIMATE IN VIRGINIA 1 (2017), https://www.glsen.org/sites/default/files/2019-11/Virginia_Snapshot_2017_0.pdf.

⁸ NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, *supra* note 2.

2016 term.⁹ By contrast, only 38.9% of heterosexual students reported experiencing such harassment.

- Instances of bullying and harassment in education in Virginia have also been documented in court cases and media reports.

Impact of Stigma and Discrimination on LGBT Individuals

LGBT people in Virginia experience economic instability.

- Stigma and discrimination against LGBT workers can lead to economic instability, including lower wages and higher rates of poverty.
- Gallup polling data from 2015-2017 show that 27% of LGBT adults in Virginia reported that they did not have enough money for food, compared to 13% of non-LGBT adults in the state. And, 21% of LGBT adults in Virginia reported having a household income below \$24,000, compared to 16% of non-LGBT adults. In addition, 9% of LGBT adults in Virginia reported being unemployed, compared to 5% of non-LGBT adults.¹⁰
- The 2015 USTS found that 6% of transgender respondents in Virginia were unemployed, and 23% were living in poverty.¹¹

LGBT adults and youth in Virginia experience health disparities.

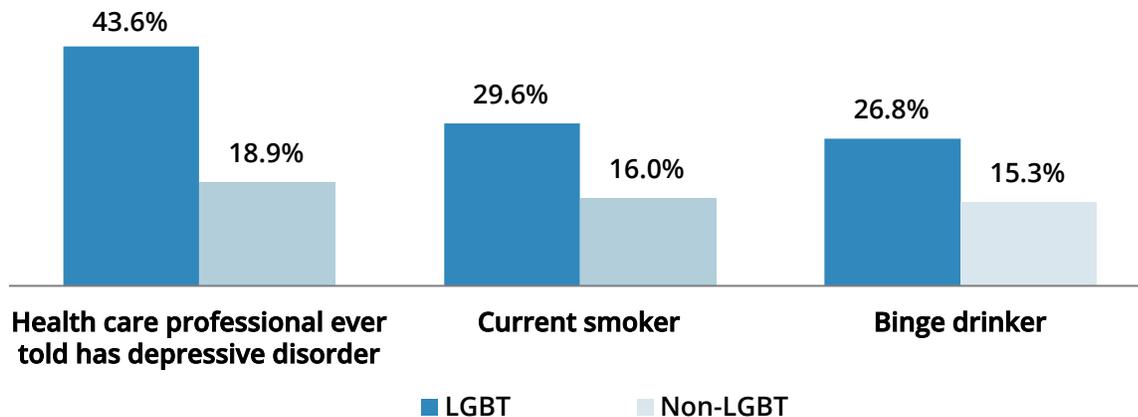
- Research indicates that stigma and discrimination contribute to adverse health outcomes for LGBT adults such as major depressive disorder, binge drinking, substance use, and suicidality. Similarly, bullying and family rejection, as well as social stigma more broadly, have been linked to increased likelihoods of dropping out of school, suicide, and substance use among LGBT youth.
- LGBT adult respondents to the 2017 Virginia Behavioral Risk Factor Surveillance System survey were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGBT respondents (43.6% vs. 18.9%). In addition, LGBT adults in Virginia were significantly more likely to report current smoking (29.6% vs. 16.0%) and binge drinking (26.8% vs. 15.3%) than non-LGBT adults.

⁹ REPORT ON THE 2017 UNIVERSITY OF VIRGINIA CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT (2017), https://ira.virginia.edu/sites/ias.virginia.edu/files/UVA_2017_ClimateReport_FINAL.pdf. See Table 5.4 entitled "Percent of students Experiencing Harassment, Intimate Partner Violence or Stalking Since the Beginning of the Fall 2016 Term by Type of Incident, Gender and Enrollment Status of Victim."

¹⁰ LGBT Data & Demographics: Virginia, Williams Inst., <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=51#density> (last visited Dec. 11, 2019).

¹¹ NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, *supra* note 2.

Figure 3. Health characteristics of adults in Virginia, by LGBT identity



Economic Impacts of Stigma and Discrimination

Discrimination against LGBT people in employment and other settings has economic consequences for employers and the state government.

- **Productivity.** Unsupportive work environments can mean that LGBT employees are less likely to be open about their sexual orientation or gender identity 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, as well as for private sector employers in the state. Given that an estimated 197,000 workers in Virginia identify as LGBT, the loss in productivity from a discriminatory environment could be significant.¹²
- **Retention.** LGBT employees in less supportive work environments feel less loyal to their employers and are more likely to plan to leave their jobs. Given the average replacement costs of an employee, public and private employers risk losing \$11,060, on average, for each employee that leaves the state or changes jobs because of an unsupportive environment in Virginia.
- **Recruitment.** Many LGBT and non-LGBT workers, in particular those who are younger and more highly educated, prefer to work for companies with more LGBT-supportive policies, and in states with more supportive laws. To the extent that workers from other states perceive Virginia to be unsupportive of LGBT people, it may be difficult for public and private employers in the state to recruit talented employees from other places.

¹² LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES, WILLIAMS INST. 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

Bullying, harassment, and family rejection of LGBT youth negatively impact the economy.

- Bullying, harassment, and family rejection of LGBT youth can cause them to miss or drop out of school, become homeless, or become unemployed or underemployed.
- In response to the 2015 USTS, of those respondents from Virginia who said they had been harassed in school, 15% said the harassment was so severe that they had to leave school.¹³
- School drop-outs and instances of homelessness that arise due to bullying, harassment, and family rejection are harmful not only to individual LGBT youth, but also have societal consequences in that they reduce the capacity of these youth to contribute to the economy as adults.
- In addition, school-based harassment and family rejection can increase costs to the state via Medicaid expenditures, incarceration, and lost wages. The Annie E. Casey Foundation has estimated that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort that ages out of foster care each year in the U.S.¹⁴ The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual aging-out cohort.

Health disparities for LGBT people negatively impact the economy.

- A more supportive legal landscape and social climate for LGBT people in Virginia is likely to reduce health disparities between LGBT and non-LGBT people, which would increase worker productivity and reduce health care costs.
- We estimate that reducing the disparity in major depressive disorder between LGBT and non-LGBT people in Virginia by 25% to 33.3% could benefit the state's economy by \$103.0 million to \$136.4 million. Reducing the disparity in current smoking by the same proportion could benefit the state's economy by \$65.2 million to \$86.7 million, and reducing the disparity in binge drinking could benefit the state's economy by \$38.0 million to \$50.9 million, in increased productivity and reduced health care costs each year. To the extent that a more supportive legal landscape would reduce other health disparities, the state's economy would benefit even more.

¹³ NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, *supra* note 2.

¹⁴ Annie E. Casey Foundation, Cost Avoidance: The Business Case for Investing in Youth Aging out of Foster Care 5 (2013), <https://www.aecf.org/resources/cost-avoidance-the-business-case-for-investing-in-youth-aging-out-of-foster/>.

Table 1. Reduction in costs associated with major depressive disorder, smoking, and binge drinking in Virginia if LGBT disparities were reduced

Health characteristic	Reduction in disparity between LGBT and non-LGBT people in Virginia	LGBT individuals impacted	Annual reduction in costs (millions)
Major Depressive Disorder	25%-33.3%	9,600-12,800	\$103.4-\$136.4
Smoking	25%-33.3%	12,300-16,400	\$65.2-\$86.7
Binge Drinking	25%-33.3%	7,400-9,900	\$38.0-\$50.9

DEMOGRAPHICS AND LEGAL LANDSCAPE

Virginia is home to an estimated 257,400 LGBT adults and approximately 50,400 LGBT youth who reflect the diversity of the state's overall population. There are few legal protections for LGBT people in Virginia.¹⁵ Additionally, the state is ranked 23rd in the nation on LGBT social climate, as measured by public support for LGBT rights and acceptance of LGBT people.¹⁶ Despite the lack of legal protections in the state, public opinion polls show that a majority of adults in Virginia support extending discrimination protections to LGBT people.¹⁷

DEMOGRAPHICS OF LGBT PEOPLE IN VIRGINIA

LGBT Adults in Virginia

Virginia is home to an estimated 257,400 LGBT adults (3.9% of adults self-identify as LGBT),¹⁸ including 34,500 transgender adults (0.55% of the adult population).¹⁹ They are diverse across many socio-demographic characteristics, including age, sex, race-ethnicity, and the presence of children in the household.

- Representative data from the combined 2015-2017 Gallup Daily Tracking Surveys indicate that LGBT adults in Virginia, like LGBT adults elsewhere across the United States, are younger than non-LGBT adults.²⁰ As shown in Table 2 below, more than half of LGBT adults in Virginia are under the age of 35.
- While similar proportions of non-LGBT adults in Virginia are male as are female, LGBT adults are more likely to be female.²¹
- LGBT adults in Virginia are racially and ethnically diverse. About 40% of LGBT adults in Virginia are people of color, including 18.3% who are Black or African American, 10.9% who are Latino/a or Hispanic, 8.0% who are more than one race, and 4.6% who are another racial or ethnic group.²² Comparatively, less than one third of non-LGBT adults in Virginia are people of color.

¹⁵ See Section I.B., *infra* for a discussion of the legal landscape for LGBT people in Virginia.

¹⁶ AMIRA HASENBUSH ET AL., WILLIAMS INST., THE LGBT DIVIDE: A DATA PORTRAIT OF LGBT PEOPLE IN THE MIDWESTERN, MOUNTAIN, & SOUTHERN STATES (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-divide-Dec-2014.pdf>.

¹⁷ Andrew R. Flores, Jody L. Herman & Christy Mallory, *Transgender Inclusion in State Non-Discrimination Policies: The Democratic Deficit and Political Powerlessness*, 2 RESEARCH & POLITICS 1 (2015).

¹⁸ LGBT Data & Demographics: Virginia, Williams Inst., <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=51#density> (last visited Dec. 11, 2019); LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES, WILLIAMS INST. 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

¹⁹ ANDREW R. FLORES ET AL., WILLIAMS INST., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

²⁰ LGBT Data & Demographics: Virginia, *supra* note 18.

²¹ *Id.*

²² Individual proportions of respondents who reported identifying as Asian, American Indian or Alaska Native, or Native Hawaiian or Other Pacific Islander were combined because of limited sample size.

Table 2. Weighted Characteristics of Virginia Adult Participants in the 2015-2017 Gallup Daily Tracking Surveys by LGBT and non-LGBT Status (N=28,007)

	LGBT (n = 887)	Non-LGBT (n = 27,120)
	%	%
Age		
18-24	30.3	11.6
25-34	25.0	17.1
35-49	19.7	24.9
50-64	16.8	25.7
65+	8.2	20.7
Sex		
Female	54.1	51.0
Male	45.9	49.0
Race-ethnicity		
White	58.2	69.1
African-American/Black	18.3	15.8
Latino/a or Hispanic	10.9	7.4
More than one race	4.6	3.7
All other racial/ethnic groups	3.6	4.0
Children under 18 in household (among those ages 25+)	25.7	36.9

Many LGBT adults in Virginia are raising children, in the context of same- and opposite-sex relationships, married and unmarried, and as single parents. An estimated 25.7% of LGBT adults ages 25 and older in Virginia (approximately 46,100 individuals)²³ are raising children.²⁴ Data from the 2011-2013 American Community Survey indicate that there were approximately 14,240 cohabiting same-sex couples living in Virginia, 16.0% of whom were raising children.²⁵

LGBT Youth in Virginia

The Youth Risk Behavior Surveillance System survey (YRBS) is a state-administered, school-based survey of health and health determinants that the Centers for Disease Control and Prevention (CDC) manages. The YRBS is one of the few sources of data about LGB youth in grades 9 through 12.²⁶ In 2016 and 2018, the CDC published reports on the health and wellbeing of youth from multiple states and large urban

²³ Unpublished analyses conducted by The Williams Institute of data from the combined 2015-2017 Gallup Daily Tracking Poll multiplied by the estimated number of LGBT adults in Virginia, *supra* note 4.

²⁴ LGBT Data & Demographics: Virginia, Williams Inst., *supra* note 18.

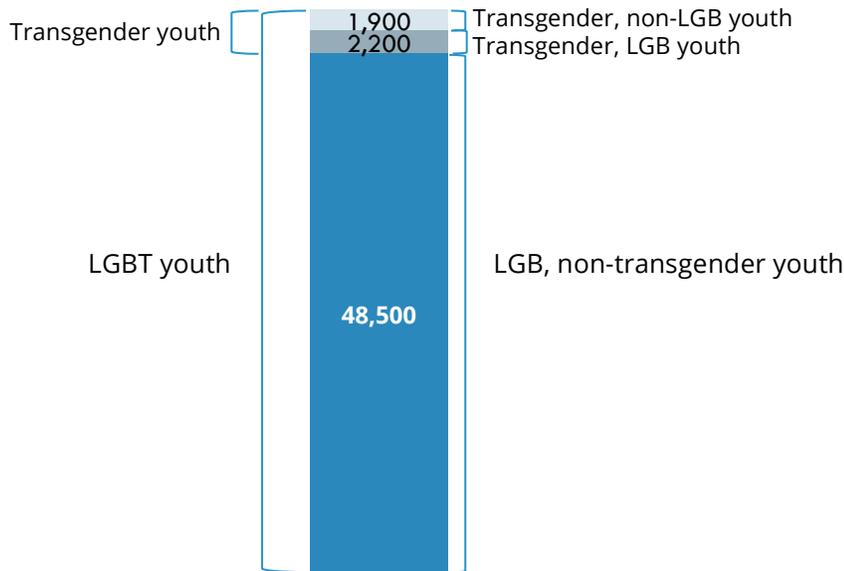
²⁵ *Id.*

²⁶ Questions to identify transgender participants were not included in the 2015 or 2017 YRBS surveys.

school districts that included measures of sexual orientation and behavior on the YRBS.²⁷ Based on these data, we estimate that 9.2% of youth in grades 9-12 identify as gay, lesbian, or bisexual in the United States.²⁸

We estimate that there are 50,400 LGBT youth ages 13-17 in the state of Virginia, including approximately 48,500 LGB youth²⁹ (2,200 of whom are also transgender³⁰) and approximately 1,900 transgender youth who are not LGB. An estimated total of 4,150 youth in Virginia identify as transgender.³¹

Figure I. Estimate of the LGBT Youth Population of Virginia, Ages 13-17



Sources: National YRBS, 2015 & 2017; BRFSS, 2015-2017; 2017 Population Estimates based on 2010 Census; American Community Survey, 2011-2013

²⁷ Laura Kann et al., *Youth Risk Behavior Surveillance – United States, 2017*, 67 MMWR 1, 169 (2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>; Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 – United States and Selected Sites, 2015*, 65 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 83.

²⁸ In the 2015 YRBS, 8.0% of youth in the national sample identified as LGB. In the 2017 YRBS, 10.4% of youth in the national sample identified as LGB. We averaged the percentage of youth identifying as LGB across these two samples to produce a larger sample size and, thus, a more reliable estimate.

²⁹ We assume the same distribution of sexual orientation across all youth, including those who declined to answer this question on the YRBS and those who are not enrolled in school.

³⁰ Unpublished analyses conducted by The Williams Institute of data from the combined 2015-2017 Behavioral Risk Factor Surveillance System survey (BRFSS) restricted to transgender-identified participants ages 18-24 indicate that 46.3% identify as straight or other sexual orientation (i.e. non-LGB). Data on the percentage of transgender youth identifying as LGB are not currently available, and we believe that the BRFSS measure from young adults ages 18-24 provides a close approximation for youth ages 13-17. We applied this percentage among 18-24 year old adults to the estimated number of transgender youth ages 13-17 estimated in JODY L. HERMAN ET AL., *AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES*, WILLIAMS INST., <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>.

³¹ *Id.* Numbers of LGB and non-LGB transgender youth sum to slightly less than reported total due to rounding.

LGB youth are more likely to be female than male. Among national participants in both the 2015 and 2017 YRBS, male and female students were equally as likely to identify as gay or lesbian.³² A larger percentage of female students identified as bisexual than male students in both years.³³

LEGAL LANDSCAPE FOR LGBT PEOPLE IN VIRGINIA

Virginia's legal landscape reflects a history of state laws and policies that limit protections for LGBT people or discriminate against them. Although same-sex couples have been able to legally marry in the state since October 2014,³⁴ as a result of the Fourth Circuit Court of Appeals' decision in *Bostic v. Schaeffer*,³⁵ the state and many localities continue to lack protections from sexual orientation and gender identity discrimination in the workplace, housing, public accommodations, and other areas.

Historical Legal Landscape

Although Virginia's sodomy law was repealed and marriage has been extended to same-sex couples in the state, historical anti-LGBT laws likely have lingering negative effects on the social climate for LGBT people.

Sodomy Laws. Enforcement of Virginia's sodomy law and other similar laws indicates a long history of discrimination against LGB people in the state. The Virginia colony first expressly criminalized sodomy in 1661, when it adopted the laws of England, though there is evidence that individuals were punished for engaging in sodomy in the colony as early as 1625.³⁶ The English law adopted by Virginia made sodomy punishable by death.³⁷ Over the next nearly four centuries, the scope and punishment of Virginia's sodomy law changed several times, though it remained on the books until 2014.³⁸ In 1975, a federal court upheld the state's sodomy law in a constitutional challenge.³⁹ Legislative efforts to repeal the sodomy law failed throughout the 1990s,⁴⁰ and Virginia retained and continued to enforce its sodomy law after the U.S. Supreme Court held that sodomy laws were unconstitutional in *Lawrence v. Texas*⁴¹ in 2003. The Virginia legislature repealed the sodomy law in 2014, 11 years after the *Lawrence* decision.⁴²

Marriage Equality. In 1975, the Virginia legislature passed a bill prohibiting marriage for same-sex couples.⁴³ In 1997, the legislature passed a separate statute prohibiting recognition of same-sex

³² Laura Kann et al., *supra* note 27.

³³ *Id.*

³⁴ *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

³⁵ 760 F.3d 352 (4th Cir. 2014).

³⁶ George Painter, *The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States*, Gay & Lesbian Archives of the Pacific Northwest, Aug. 10, 2004, <https://www.glapn.org/sodomylaws/sensibilities/virginia.htm>, citing *Laws of Virginia*.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Doe v. Commonwealth's Attorney for the City of Richmond*, 403 F.Supp. 1199 (E.D. Va. Oct. 24, 1975).

⁴⁰ George Painter, *Sodomy Laws: Virginia*, Gay & Lesbian Archives of the Pacific Northwest, Aug. 10, 2004, <https://www.glapn.org/sodomylaws/usa/virginia/virginia.htm>.

⁴¹ 539 U.S. 558 (2003).

⁴² S.B. 14, Gen. Assem., 2014 Sess. (Va. 2014).

⁴³ Va. Code Ann. § 20-45.2 (2018).

marriages validly performed elsewhere.⁴⁴ In 2004, the legislature passed a bill expanding the state's ban on legal recognition of same-sex couples to prohibit civil unions and similar non-marital statuses.⁴⁵ Although former governor Mark Warner expressed reservations about the bill and offered an amendment that would slightly narrow the ban on same-sex relationships, the bill as written passed with a veto-proof majority.⁴⁶ In 2005, the Virginia legislature voted in favor of a state constitutional amendment barring same-sex couples from marrying or entering into civil unions or other legal relationship statuses.⁴⁷ Voters approved the amendment in the November 2006 election and it took effect in January 2007.⁴⁸

In 2013, a same-sex couple filed a lawsuit in a federal district court in Virginia challenging the constitutionality of the state's marriage ban. In 2014, the court held in favor of the couple, finding that the ban violates the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution.⁴⁹ The Fourth Circuit Court of Appeals affirmed.⁵⁰ The U.S. Supreme Court declined to hear the case, allowing marriage equality to go into effect in Virginia in October 2014. In June 2015, the U.S. Supreme Court held that all state-level bans on marriage for same-sex couples were unconstitutional in *Obergefell v. Hodges*.⁵¹

Current Legal Landscape

Discrimination Protections. Virginia does not have any statewide non-discrimination statutes that expressly include sexual orientation or gender identity as protected characteristics in employment, housing, or public accommodations. Virginia's non-discrimination laws, the Virginia Human Rights Act and the Virginia Fair Housing Law, prohibit discrimination in employment, housing, public accommodations, and education based on race, religion, national origin, sex, pregnancy, childbirth, marital/familial status, disability, and age.⁵²

In 2014, former governor Terry MacAuliffe issued an executive order prohibiting discrimination based on sexual orientation and gender identity against state government employees.⁵³ The order directs state agencies to take affirmative measures to end discrimination in their departments and allows the Office of Equal Employment Services of the Department of Resource Management to enforce the order through disciplinary action.⁵⁴ The order does not provide for a private right of action in court.⁵⁵ The order protects

⁴⁴ H.B. 1589, Gen. Assem., 1997 Sess. (Va. 1997).

⁴⁵ H.B. 751, Gen. Assem., 2004 Sess. (Va. 2004).

⁴⁶ Warner Fiske & Nancy Madsen, *Warner and Gillespie Have Adjusted Views on Gay Marriage*, POLITIFACT.COM, Oct. 12, 2014, <https://www.politifact.com/virginia/article/2014/oct/12/warner-and-gillespie-have-adjusted-views-gay-marri/>.

⁴⁷ H.J. 586, Gen. Assem., 2005 Sess. (Va. 2005).

⁴⁸ Va. Question 1, Ballotpedia.com, [https://ballotpedia.org/Virginia_Question_1_Marriage_Amendment_\(2006\)](https://ballotpedia.org/Virginia_Question_1_Marriage_Amendment_(2006)) (last visited Dec. 7, 2019).

⁴⁹ *Bostic v. Rainey*, 970 F. Supp. 2d 456 (E.D. Va. Feb. 13, 2014).

⁵⁰ *Bostic v. Schaeffer*, 760 F.3d 352 (4th Cir. 2014).

⁵¹ 135 S. Ct. 1732 (2015).

⁵² VA. CODE ANN. §§ 2.2-3900 to 2.2-3903; 36-96.1 to 36-96.23 (2018).

⁵³ Va., Exec. Order No. 1 (2014).

⁵⁴ *Id.*

⁵⁵ *Id.*

the state's 170,000 government employees from discrimination based on sexual orientation and gender identity.⁵⁶

Cities and counties in Virginia have limited power to enact local ordinances that protect residents from discrimination based on sexual orientation and gender identity. In determining the balance of state and local government power, Virginia follows "Dillon's Rule," under which the powers of municipal governments can only be derived from three sources—powers expressly granted by the state legislature, powers fairly or necessarily implied from expressly granted powers, and powers which are essential and indispensable to municipal governments.⁵⁷ A Virginia statute expressly allows local governments to enact non-discrimination ordinances, but the ordinances cannot be "inconsistent with nor more stringent than" the state's non-discrimination laws.⁵⁸

Given that state statutes do not expressly prohibit discrimination based on sexual orientation or gender identity, whether Virginia localities have the power to enact local ordinances that prohibit discrimination based on these characteristics likely depends on how the term "sex" is interpreted in the state statutes. To date, Virginia courts have not provided an interpretation of the term "sex" to include sexual orientation or gender identity, but a 2016 opinion issued by Attorney General Mark Herring suggests that courts in the state would likely construe the term broadly to prohibit discrimination against LGBT people.⁵⁹

In the context of uncertainty around local government power to enact ordinances that prohibit discrimination against LGBT people, few cities and counties in the state have chosen to adopt these protections. Two cities, Charlottesville⁶⁰ and Richmond,⁶¹ have enacted local ordinances that prohibit discrimination based on both sexual orientation and gender identity in employment, housing, and public accommodations. In addition, Arlington County⁶² and the city of Alexandria⁶³ have enacted ordinances that prohibit discrimination based on sexual orientation in these areas.

Local policies that prohibit discrimination based on sexual orientation and gender identity in Virginia have been challenged in court twice. Both cases were ultimately dismissed without a resolution on the merits. Arlington's ordinance was challenged in court after the county attempted to enforce the protections against a video production company.⁶⁴ The production company argued that the ordinance was void under Dillon's Rule because it exceeded the scope of powers granted to the county by the

⁵⁶ For the state government workforce, search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Nov. 16, 2019) (select advanced search, enter "Class of Worker By Sex" under topic or table name and "Virginia" under state, county or place, select "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over" 2017 1-year estimates).

⁵⁷ *Arlington Cty. v. White*, 528 S.E.2d 706, 708 (Va. 2000) (citing *City of Va. Beach v. Hay*, 518 S.E.2d 314, 316 (Va. 1999)).

⁵⁸ VA. CODE ANN. § 15.2-965 (2018).

⁵⁹ 2016 Va. AG Lexis 7 (2016).

⁶⁰ CHARLOTTESVILLE, VA., CODE §§ 2-430 to 2-443 (2018).

⁶¹ RICHMOND, VA., CODE §§ 17-1 to 17-30 (2018).

⁶² ARLINGTON CTY., VA., CODE §§ 31-1 to 31-16 (2018).

⁶³ ALEXANDRIA, VA., CODE §§ 12-4-1 to 12-4-30 (2018).

⁶⁴ *Bono Film & Video, Inc. v. Arlington Human Rights Comm'n*, No. 06-812, 2006 WL 3334994 (Va. Cir. Nov. 16, 2006).

state.⁶⁵ The county declined to pursue administrative enforcement after the law was filed, and as a result, the court dismissed the case for lack of standing.⁶⁶ In a second case, parents challenged the Fairfax County School Board's decision to add sexual orientation and gender identity to its student non-discrimination policy.⁶⁷ As in the Arlington case, the parents argued that the board exceeded its powers as granted by the legislature.⁶⁸ The court dismissed the case for lack of standing without addressing whether the board had the power to adopt the policy.⁶⁹ In light of these challenges, local governments in Virginia are likely hesitant to adopt and enforce ordinances that protect LGBT people from discrimination absent clarity from the legislature or a court.

Parenting Rights. Until recently, Virginia law presented unique barriers to family formation for same-sex couples. Prior to the U.S. Supreme Court's decision in *Obergefell v. Hodges*⁷⁰, single LGBT individuals in Virginia could legally adopt a child as a single parent, but same-sex couples in Virginia were unable to jointly adopt a child as a result of language in Virginia's adoption laws limiting joint adoptions to married couples.⁷¹ Following the *Obergefell* ruling, the Virginia Department of Social Services issued a bulletin stating that married same-sex couples must be treated the same way as different-sex couples for purposes of joint adoption and adoptive placement.⁷² In 2019, the Virginia legislature passed a bill ensuring that same-sex couples can legally enter into surrogacy contracts.⁷³ Nonetheless, LGBT individuals and same-sex couples may continue to face barriers to becoming parents as a result of a 2012 Virginia law that allows private adoption agencies to refuse to place children based on religious objections.⁷⁴

Safe Schools and Youth. Virginia's anti-bullying law requires that school districts adopt and enforce policies against the bullying of students.⁷⁵ Unlike many state anti-bullying laws, Virginia's statute does not include an enumerated list of personal characteristics based on which students are likely to be bullied, such as race, sex, sexual orientation, or gender identity.⁷⁶

Gender Marker and Name Changes. Virginia law allows individuals to change their name and the gender marker on their birth certificate and driver's license.⁷⁷ An individual may change their name by petitioning the court.⁷⁸ To change a birth certificate, the individual must submit to the Virginia Registrar a court order

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Lafferty v. Sch. Bd. of Fairfax Cty.*, 798 S.E.2d 164, 166 (Va. 2017).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 135 S.Ct. 2584 (2015).

⁷¹ VA. CODE ANN. § 63.2-1201 (2018).

⁷² Bulletin, Va. Dep't of Soc. Svcs., Impact of Same-Sex Couples Ruling on Adoption and Foster Care (Oct. 10, 2014).

⁷³ S.B. 1544, Gen. Assem., 2019 Sess. (Va. 2019).

⁷⁴ VA. CODE ANN. § 63.2-1709.3 (2018).

⁷⁵ VA. CODE ANN. § 22.1-279.6 (2018).

⁷⁶ *Id.* VA. CODE ANN. §§ 22.1-279.6, 22.1-291.4 (2018).

⁷⁷ ID Documents Center: Virginia, National Ctr. for Transgender Equality, <https://transequality.org/documents/state/virginia> (last visited Dec. 9, 2019).

⁷⁸ *Id.*

showing a legal name change and a court order indicating that the individual's "sex...has been changed by medical procedure."⁷⁹ In order to change a driver's license, the individual may present to Department of Motor Vehicles a court order showing a legal name change and a gender designation change request signed by a medical or mental health care provider certifying the individual's gender identity.⁸⁰

Other protections. Virginia lacks several other legal protections for LGBT people that have been enacted in other states, including, for example, a hate crimes law that includes sexual orientation and gender identity, a ban on the use of conversion therapy on youth by professional health care providers, and a law that requires health care providers to offer coverage for gender-affirming medical care.⁸¹

PUBLIC OPINION

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Virginia's Equality Profile, Movement Advancement Project, http://www.lgbtmap.org/equality_maps/profile_state/VA (last visited Dec. 9, 2019).

STIGMA AND DISCRIMINATION

LGBT adults in Virginia experience discrimination in employment, housing, and public accommodations. The existence and prevalence of such discrimination has been documented in a variety of sources, including surveys, court cases, and anecdotal reports to the media. Additionally, bullying and harassment of LGBT youth in Virginia has been documented in surveys and anecdotal reports to the media. Research also suggests that a number of LGBT youth in Virginia, like LGBT youth elsewhere in the country, face rejection by their families.

DISCRIMINATION AND HARASSMENT IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Discrimination against LGBT people in the U.S. has been well documented. For example, a 2016 survey conducted by the Center for American Progress found that 25% of LGBT people had experienced some type of discrimination within the past year.⁸² Similarly, a 2013 national survey conducted by Pew Research Center found that 21% of LGBT respondents in the U.S. reported that they had been treated unfairly by an employer in hiring, pay, or promotions, and 23% had received poor service at a restaurant, hotel, or other place of business because of their sexual orientation or gender identity.⁸³ Another national survey conducted in 2017 by NPR, Robert Wood Johnson Foundation, and Harvard T.H. Chan School of Public Health found that 20% of LGBTQ respondents reported being discriminated against when applying for jobs and 22% of LGBTQ respondents reported being discriminated against when trying to rent an apartment or buy a house because of their sexual orientation or gender identity.⁸⁴ LGBTQ people of color were more likely to report experiencing employment discrimination in response to the survey than white LGBTQ respondents.⁸⁵ Further, 16% of LGBTQ respondents said they had been discriminated against by a doctor or health clinic based on their sexual orientation or gender identity, and 18% said they had avoided going to a doctor or seeking health care because they were afraid of discrimination.⁸⁶

When transgender people are surveyed separately, they report similar or higher levels of discrimination. For example, the 2015 U.S. Transgender Survey (USTS) found that 27% of respondents in the U.S. who

⁸² SEJAL SINGH & LAURA E. DURSO, CENTER FOR AM. PROGRESS, WIDESPREAD DISCRIMINATION CONTINUES TO SHAPE LGBT PEOPLE'S LIVES IN BOTH SUBTLE AND SIGNIFICANT WAYS (2017), <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/>.

⁸³ A SURVEY OF LGBT AMERICANS: ATTITUDES, EXPERIENCES AND VALUES IN CHANGING TIMES, PEW (2013), <https://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 reported experiencing workplace harassment in the last five years, and 12% reported losing a job because of their sexual orientation. BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., DOCUMENTED EVIDENCE OF EMPLOYMENT DISCRIMINATION & ITS EFFECTS ON LGBT PEOPLE 2 (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

⁸⁴ NPR, ROBERT WOOD JOHNSON FOUNDATION & HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, DISCRIMINATION IN AMERICA: EXPERIENCES AND VIEWS OF LGBTQ AMERICANS 1 (2017), https://www.rwjf.org/content/dam/farm/reports/surveys_and_polls/2017/rwjf441734.

⁸⁵ *Id.* at 11.

⁸⁶ *Id.* at 1.

held or applied for a job within the prior year reported being fired, denied a promotion, or not being hired because of their gender identity or expression, and 15% reported being verbally harassed, physically attacked, and/or sexually assaulted at work in the year prior to the survey because of their gender identity.⁸⁷ Further, 23% of transgender respondents nationwide reported experiencing some form of housing discrimination in the past year and 31% reported experiencing at least one type of mistreatment in a place of public accommodation in the past year.⁸⁸

Surveys of LGBT individuals in Virginia also find discrimination and harassment:

- In 2019, the Equal Rights Center released a report investigating bias against LGB job applicants in Virginia using matched pairs rights testing.⁸⁹ The Equal Rights Center found that in two of its 10 tests, a heterosexual job applicant was offered the job over an equally-qualified LGB tester.⁹⁰ In the remaining 8 tests, both or neither tester were offered a job.⁹¹ In none of the tests was the LGB tester offered a job over the heterosexual tester.⁹² Additionally, one LGB-identified tester reported that he was openly ridiculed by two employees when disclosing his sexual orientation.⁹³
- The 2015 USTS documented evidence of discrimination against transgender people in a range of areas, including employment, housing, and public accommodations. The survey found that of transgender respondents from Virginia who held or applied for a job in the prior year, 24% reported being fired, being denied a promotion, or not being hired for a job because of their gender identity or expression. Among employed respondents, 12% being verbally harassed and 1% reported being sexually assaulted at work in the prior year because of their gender identity. Additionally, 14% of respondents who had ever been employed reported losing a job at some point in their lives because of their gender identity or expression.⁹⁴

In terms of housing discrimination, 20% of respondents from Virginia reported experiencing some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender, and 9% reported that they experienced homelessness in the past year because of being transgender. Of those who had experienced homelessness, 15% said they avoided staying in a shelter because they feared being mistreated as a transgender person.⁹⁵

⁸⁷ SANDY JAMES ET AL., 2015 U.S. TRANSGENDER SURVEY 12 (2016), <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

⁸⁸ *Id.* at 13, 16.

⁸⁹ EQUAL RIGHTS CENTER, BEHIND CLOSED DOORS: A TESTING INVESTIGATION INTO BIAS AGAINST LGBT JOB APPLICANTS IN VIRGINIA 27 (2019), <https://equalrightscenter.org/wp-content/uploads/behind-closed-doors-va.pdf>.

⁹⁰ *Id.* The study consisted of ten matched-pair tests conducted over the course of four months. In two tests (20%), only the heterosexual tester received a job offer. In no tests did the LGBT tester receive a job offer over the heterosexual tester.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ The survey used a non-probability sampling method. NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, U.S. TRANSGENDER SURVEY: VIRGINIA STATE REPORT 1 (2017),

<https://www.transequality.org/sites/default/files/docs/usts/USTSVASStateReport%281017%29.pdf>.

⁹⁵ *Id.* at 2.

In addition, of respondents who visited a place of public accommodation where staff or employees knew or thought they were transgender, 31% experienced at least one type of mistreatment in the past year because of being transgender. Forms of mistreatment experienced by respondents included being denied equal treatment or service (15%), verbal harassment (21%), and physical assault (1%).⁹⁶

- A 2015 survey conducted at Virginia Tech found that LGBT faculty and staff felt less comfortable reporting acts of discrimination than their heterosexual counterparts (72.9% vs. 83%).⁹⁷ Additionally, LGBT faculty and staff were more likely to witness discriminatory behavior (29.6% vs. 19.5%) and experience discriminatory behavior (18.8% vs. 12.2%) than heterosexual faculty and staff.⁹⁸
- In 2014, Housing Opportunities Made Equal of Virginia sent emails to housing providers in the Richmond area in matched pairs to assess the existence of sexual orientation discrimination.⁹⁹ In each pair, one email was sent to an apartment complex suggesting that it came from a same-sex couple while the other email to that same apartment complex suggested that it came from a different-sex couple.¹⁰⁰ Out of 34 matched-pair tests, 44% resulted in treatment that favored the different-sex couple.¹⁰¹
- In response to a 2016 poll, 58% of Virginia residents, both LGBT and non-LGBT, said that they thought that gay and lesbian people experience a lot of discrimination in the U.S., and 62% of Virginia residents said that they thought that transgender people experience a lot of discrimination in the U.S.¹⁰²
- Analysis of aggregated public opinion data collected from 2011 through 2013 found that 81% of Virginia residents thought that LGBT people experience discrimination in the state.¹⁰³

Instances of discrimination against LGBT people in Virginia have also been documented in a number of court cases and in the media. Examples include:

- In 2018, a lesbian public school teacher filed a lawsuit in federal court alleging that her employer discriminated against and harassed her based on sex in violation of Title VII.¹⁰⁴ According to the

⁹⁶ *Id.*

⁹⁷ LGBTQ CLIMATE SURVEY REPORT 43 (2015),

https://www.inclusive.vt.edu/content/dam/inclusive_vt_edu/resources/publications/reports/lgbtq-climate-survey.pdf.

⁹⁸ *Id.*

⁹⁹ HOUSING OPPORTUNITIES MADE EQUAL OF VIRGINIA, INC., A STUDY OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES IN VIRGINIA,

<https://homeofva.org/wp-content/uploads/2019/01/HousingDiscriminationAgainstSameSexCouplesinVA.pdf>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² American Values Atlas, PRRI, <http://ava.pri.org/#/2018/States/trnsdis> (last visited Dec. 13, 2019) (under dropdown menu for “Year” select “2016,” select topic “discrimination,” under dropdown menu for “Select Question” select “Discrimination against gay and lesbian people” or “Discrimination against transgender people;” under dropdown menu for “Select Response” select “Yes”).

¹⁰³ 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 authors).

¹⁰⁴ Kerri O’Brien, *Former teacher files lawsuit against Chesterfield Schools, says she was told to be more feminine*, ABC 8 NEWS (Feb. 5, 2019), <https://www.wric.com/news/taking-action/former-teacher-files-lawsuit-against-chesterfield-schools-says-she-was-told-to-be-more-feminine/>.

teacher, her superiors criticized her for not dressing femininely enough in the workplace.¹⁰⁵ She also reported that during one incident, another teacher blocked her use of the women’s restroom and told her that it was not appropriate for her to use the ladies’ restroom at the same time as female students.¹⁰⁶ The case ultimately settled for \$10,000 and an agreement that the school would provide LGBTQI competency training for all school employees moving forward.¹⁰⁷

- In 2018, the U.S. Equal Employment Opportunity Commission filed a complaint against a restaurant in Gainesville on behalf of three male servers alleging they had been harassed based on their sex in violation of Title VII.¹⁰⁸ According to the complaint, the men were told they were not masculine enough and were subjected to homophobic slurs.¹⁰⁹ The restaurant settled the case for \$40,000.¹¹⁰
- In 2018, a same-sex couple reached out to a Charlottesville-based wedding videographer and the couple was denied services; the videographers stated that they wanted to “stay true to [their] beliefs.”¹¹¹
- In 2016, a transgender woman reported having a second-round job interview cut short after informing the potential employer that she was transgender to explain why different names appeared on her various job application documents.¹¹²
- In 2015, a gay employee of a university filed a lawsuit against the school alleging discrimination and harassment in violation of Title VII.¹¹³ According to the employee, he was told by his supervisor that she was directed to give him a reprimand letter because the university’s president disapproved of his sexual orientation.¹¹⁴ The court dismissed the case, in part because it decided that “Title VII does not encompass sexual orientation discrimination claims”¹¹⁵
- In 2013, a gay man who worked at a 7-Eleven store in Virginia Beach reported that he was fired because of his sexual orientation.¹¹⁶ According to the man, he was fired shortly after a male customer approached him and sexually assaulted him in the store.
- In 2012, a volleyball coach filed a complaint with Virginia Commonwealth University (VCU) alleging that the school fired him because he was gay.¹¹⁷ The coach had a successful coaching career at

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Complaint, *EEOC v. Mejia Corp.*, No. 1:18CV01226, 2018 WL 9437159, at *3-4 (E.D. Va. Sept. 26, 2018).

¹⁰⁹ *Id.*

¹¹⁰ Consent Decree, *EEOC v. Mejia Corp.*, No. 1:18-cv-01226-MSN, 2019 WL 4451818, at *2-4 (E.D. Va. Aug. 8, 2019).

¹¹¹ Tyler Hawn, *Charlottesville-based wedding photographers refuse to serve same-sex couple*, CBS 19 NEWS (July 23, 2018), <https://www.cbs19news.com/content/news/Charlottesville-based-wedding-photographer-refuses-to-serve-same-sex-couple-488837941.html>.

¹¹² *Va. Transgender People Share Workplace Discrimination Stories*, NBC 29 NEWS (June 6, 2016).

¹¹³ *Hinton v. Va. Union Univ.*, 185 F. Supp. 3d 807, 812 (E.D. Va. 2016).

¹¹⁴ *Id.* at 813.

¹¹⁵ *Id.* at 817-18.

¹¹⁶ Sunnive Brydum, *Virginia Man Says 7-Eleven Fired Him for Being Gay*, ADVOCATE.COM, Apr. 13, 2013, <http://www.advocate.com/business/2013/04/13/watch-virginia-man-says-7-eleven-fired-him-being-gay>.

VCU for eight years, but was terminated shortly after a new athletics director was hired. The coach reported that the new athletics director did not reach out to him or his team, and did not make an effort to have any meetings with him about his program. VCU's internal investigation concluded that the termination was not discriminatory, but did not publicly state why he was fired.¹¹⁸

- During the same week in 2012 that the volleyball coach was fired from VCU, another openly gay employee in the athletics department was demoted.¹¹⁹ The woman had been an employee of VCU for over thirty years. VCU's vice president of equity and diversity said that the female staffer and the coach were the only two employees in the athletics department to experience changes in their jobs after the new director arrived. The employee chose not to file a formal complaint with the university.
- In 2012, a gay man filed a lawsuit against a job-staffing agency alleging that he had been discriminated against and harassed based on sex stereotypes in violation of Title VII.¹²⁰ The employee stated in his complaint that he had been given inferior work assignments because he did not meet management's "expectations of what an employee should be as a male or a female." He also said that his co-workers and managers verbally harassed him, regularly calling him a "homosexual," a "faggot," a "woman," a "bitch," a "homo," and "gay" in the workplace, and that these insults escalated into threats of violence.¹²¹ The court denied the employer's motion to dismiss the employee's discrimination and harassment claims.¹²² No further details about the case are available.

BULLYING, HARASSMENT, AND FAMILY REJECTION OF LGBT YOUTH

Bullying and Harassment

Survey data, court cases, and anecdotal reports indicate that LGBT youth and youth adults across the US, including in Virginia, face harassment, bullying, and exclusion between kindergarten and the twelfth grade (K-12) and in higher education. For example, analyses of data collected nationwide through the 2017 YRBS found that LGB¹²³ and transgender¹²⁴ high school students were more likely to report being

¹¹⁷ Jeffrey H. Martin, *Fired Gay VCU Coach Has New Job in Mind: His Old One*, USATODAY.COM, Dec. 20, 2012, <http://www.usatoday.com/story/sports/college/volleyball/2012/12/19/james-finley-fired-vcu-volleyball-investigation/1780795/>; Lou Chibbaro Jr., *Gay Coach Fired at VCU*, WASHINGTONBLADE.COM, <http://www.washingtonblade.com/2012/12/06/gay-coach-fired-at-vcu/>.

¹¹⁸ Zachary Reid Richmond, *VCU Says Firing of Gay Women's Volleyball Coach Not Discriminatory*, Dec. 20, 2012, http://www.timesdispatch.com/sports/college/vcu/vcu-says-firing-of-gay-women-s-volleyball-coach-not/article_c2adebc8-4af2-11e2-a1d8-0019bb30f31a.html.

¹¹⁹ Mechelle Hankerson, *Administration Will Investigate Former Volleyball Coach's Firing*, COMMONWEALTHTIMES.COM, <http://www.commonwealthtimes.org/2012/12/03/administration-will-investigate-former-volleyball-coachs-firing/>.

¹²⁰ *Henderson v. Labor Finders of Va., Inc.*, Civ. A. No. 3:12cv600, 2013 WL 1352158, at *2 (E.D. Va. Apr. 2, 2013).

¹²¹ *Id.*

¹²² *Order of Dismissal, Henderson v. Labor Finders of Va., Inc.*, Civ. A. No. 3:12cv600, 2013 WL 1352158 (E.D. Va. Apr. 2, 2013) (No. 3:12-cv-00600), 2013 WL 7393944.

¹²³ Kann et al., *supra* note 27.

¹²⁴ U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION, 2017 YOUTH RISK BEHAVIOR SURVEY RESULTS: SELECT U.S. STATES HIGH SCHOOL SURVEYS (2019), https://www.cdc.gov/healthyyouth/disparities/pdf/states_transgender_report.pdf.

bullied at school, being in a physical fight, and being threatened with a weapon on school property, among other negative outcomes. Virginia did not collect data on sexual orientation or gender identity through its state-level YRBS, so it is not possible to analyze disparities for LGBT youth in the state. However, state-level analysis of YRBS data collected in other states indicate that LGB youth experience higher rates of being bullied and threatened with violence than heterosexual youth consistently throughout the US.¹²⁵ State-level data on the experiences of transgender youth are not available.

Other surveys of youth and young adults in Virginia have documented the prevalence of bullying and harassment in the state. For instance, the 2017 GLSEN National School Climate survey of LGBTQ middle- and high-school students found that 74% of respondents from Virginia said they had experienced verbal harassment based on their sexual orientation at school, and 62% said they had experienced verbal harassment based on their gender expression at school in the year prior to the survey.¹²⁶ Many students also reported experiencing physical harassment based on their sexual orientation (29%) or gender identity (26%) at school in the year prior to the survey.¹²⁷ In addition, 14% of respondents reported that they had experienced physical assault at school because of their sexual orientation and 12% of respondents said they had experienced physical assault because of their gender identity at school in the year prior to the survey.¹²⁸

Further, 64% of transgender student respondents from Virginia reported that they were unable to use the bathroom or locker room at school that aligns with their gender identity, and 52% were prevented from using their preferred name or pronouns in school.¹²⁹ Thirty-seven percent reported that their school administration was supportive of LGBTQ students.¹³⁰ Of students who were bullied or harassed at school, only 56% of students reported the incident to school staff.¹³¹ Twenty-four percent of those who reported bullying or harassment to staff said that it resulted in effective intervention.¹³²

Additionally, in response to the 2015 USTS, 80% of Virginia respondents who were out or perceived as transgender at some point between K-12 experienced some form of mistreatment, such as being verbally harassed, prohibited from dressing according to their gender identity, disciplined more harshly, or physically or sexually assaulted because people thought that they were transgender.¹³³ Furthermore, 15% of Virginia respondents said that the harassment they experienced was so severe that they had to leave a K-12 school.¹³⁴

¹²⁵ Kann et al., *supra* note 27 (see supplemental tables).

¹²⁶ GLSEN, SCHOOL CLIMATE IN VIRGINIA 1 (2017), https://www.glsen.org/sites/default/files/2019-11/Virginia_Snapshot_2017_0.pdf. The survey included 568 respondents from Virginia.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 2.

¹³¹ *Id.* at 1.

¹³² *Id.*

¹³³ The survey used a non-probability sampling method. NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, *supra* note 94.

¹³⁴ *Id.*

A 2017 Campus Climate survey of students at the University of Virginia found that LGB students were more likely to experience sexual harassment than non-LGB students. Over 60% of non-heterosexual students (61.4%) reported experiencing harassment since the beginning of the fall 2016 term.¹³⁵ By contrast, only 38.9% of heterosexual students reported experiencing such harassment.¹³⁶ Additionally, students who identified as non-heterosexual reported higher rates of nonconsensual completed or attempted penetration or sexual touching due to physical force or incapacitation (14.5%) than students who identified as heterosexual (5.5%).¹³⁷

Recent instances of discrimination, bullying, and harassment against LGBT middle school and high school students in Virginia have also been documented in lawsuits, administrative complaints, and the media:

- In 2018, a Virginia high school student began transitioning and requested the use of male pronouns.¹³⁸ The student's French teacher refused to use male pronouns when referring to the student.¹³⁹ In October 2019, the French teacher sued the school district claiming that the school breached his employment contract in firing him.¹⁴⁰ Throughout the teacher's complaint, he continued to misgender his former student.¹⁴¹
- In 2015, a case was filed on behalf of a transgender student, Gavin Grimm, against the Gloucester County School Board for adopting a bathroom policy that segregated transgender students from their peers.¹⁴² The policy effectively expelled transgender students from communal restrooms and required them to use alternative facilities.¹⁴³ After several years of litigation, including in the Supreme Court, the U.S. District Court for the Eastern District of Virginia granted Grimm's motion for summary judgment in 2019, ruling that the school violated Grimm's rights under both Title IX and the equal protection clause of the Fourteenth Amendment.¹⁴⁴
- In 2015, a high school counselor allegedly referred to a transgender student as "young lady" despite the student identifying as male.¹⁴⁵ The counselor later received a Letter of Concern regarding his treatment of the transgender student.¹⁴⁶ The counselor then filed a lawsuit alleging discrimination, hostile work environment, and retaliation under Title VII.¹⁴⁷ The District Court

¹³⁵ REPORT ON THE 2017 UNIVERSITY OF VIRGINIA CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT (2017), https://ira.virginia.edu/sites/ias.virginia.edu/files/UVA_2017_ClimateReport_FINAL.pdf. See Table 5.4 entitled "Percent of students Experiencing Harassment, Intimate Partner Violence or Stalking Since the Beginning of the Fall 2016 Term by Type of Incident, Gender and Enrollment Status of Victim."

¹³⁶ *Id.* See Table 5.4 entitled "Percent of students Experiencing Harassment, Intimate Partner Violence or Stalking Since the Beginning of the Fall 2016 Term by Type of Incident, Gender and Enrollment Status of Victim."

¹³⁷ *Id.*

¹³⁸ Complaint at 1-2, *Vlaming v. West Point Sch. Bd.*, available at <http://www.adfmedia.org/files/VlamingComplaint.pdf>.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 37.

¹⁴¹ *Id.* at 6.

¹⁴² *Grimm v. Gloucester Cty. Sch. Bd.*, Civil No. 4:15cv54, 2019 WL 3774118, at *2-3 (E.D. Va. Aug. 9, 2019).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at *15.

¹⁴⁵ *Yeboah-Kankam v. Prince William Cty. Sch. Bd.*, 1:17-cv-549 (LMB/JFA), 2017 WL 6758449, at *4 (E.D. Va. Dec. 29, 2017).

¹⁴⁶ *Id.* at *5.

¹⁴⁷ *Id.* at *6.

ultimately granted the school district's motion to dismiss the counselor's lawsuit, and the Fourth Circuit affirmed.¹⁴⁸

- In 2013, a six-year-old African-American student was allegedly subjected to recurring racial epithets and was repeatedly called "gay" for refusing to fight back against name-calling students.¹⁴⁹ The child feigned illness to avoid going to school, and ultimately transferred to a new school as a result of such bullying.¹⁵⁰

Family Rejection

For many youth, the challenges that they face at school are compounded by having unaccepting families. This can further impair their ability to learn and graduate. Research shows that many LGBT youth have strained relationships with their families, or face abuse by their parents, because of their sexual orientation and gender identity.¹⁵¹ For example, in one study about the challenges that youth face, LGBT youth 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%).¹⁵² In contrast, non-LGBT youth ranked classes/exams/grades (25%), college/career (14%), and financial pressures related to college or a job (11%) as the most important problems in their lives.¹⁵³

EFFECTS OF STIGMA AND DISCRIMINATION

Stigma and discrimination can result in negative outcomes for LGBT individuals, including economic instability and poor health. Research has found that gay men and transgender people experience wage gaps compared to heterosexual men and cisgender people, and has found an association between lower earnings and a lack of state-level protections from discrimination for LGBT people. Research also indicates that LGBT people, in general, are disproportionately poor, and that social climate and policy are linked determinants of poverty among LGBT communities.

¹⁴⁸ *Yeboah-Kankam v. Prince William Cty. Sch. Bd.*, 720 Fed. Appx. 180, 180-81 (4th Cir. 2018).

¹⁴⁹ *M.D. v. Sch. Bd. of Richmond*, 560 Fed. Appx. 199, 201 (4th Cir. 2014).

¹⁵⁰ *Id.*

¹⁵¹ 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 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., *ENSURING ACCESS TO MENTORING PROGRAMS FOR LGBTQ YOUTH* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Access-to-Youth-Mentoring-Programs.pdf>.

¹⁵² HUMAN RIGHTS CAMPAIGN, *GROWING UP LGBT IN AMERICA: HRC YOUTH SURVEY REPORT KEY FINDINGS 2* (2012), http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Growing-Up-LGBT-in-America_Report.pdf.

¹⁵³ *Id.*

In addition, research has linked experiences of stigma and discrimination, as well as living in a state with unsupportive laws and social climate, to health disparities for LGBT people, including higher rates of mood and anxiety disorders, depression, attempted suicide, self-harm, and substance use. Data from Virginia’s Behavioral Risk Factor Surveillance System survey (BRFSS) indicate that LGBT adults in the state are more likely to experience several of these health outcomes than their non-LGBT counterparts.

ECONOMIC INSTABILITY

Wage Gaps for LGBT People

Wage gap analysis has been used by economists to measure employment discrimination against women, people of color, and LGBT people. Several studies have found evidence of wage gaps affecting gay men and transgender people, and for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts.

In a meta-analysis of 31 studies on sexual orientation wage gaps, Professor Marieka Klawitter concluded that almost all studies found an earnings penalty for gay men, with an average of -11% compared to heterosexual men.¹⁵⁴ For lesbians, only a few studies found an earnings penalty and most found a significant earnings premium in comparison to heterosexual women, even after controlling for many relevant factors. On average, the earnings premium for lesbians was +9%.¹⁵⁵ Klawitter concluded that her analysis “shows evidence consistent with possible discrimination—an earnings penalty—for gay men, but not for lesbians.”¹⁵⁶ However, despite this premium, most lesbians still earn less than most gay and heterosexual men because of the gender wage gap.¹⁵⁷

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 toward gay men than toward lesbians, and that straight men are more likely to be in wage-determining senior positions than women.¹⁵⁸ Klawitter also pointed to several studies suggesting that when gay men and lesbians are more visible in the workplace, they have lower earnings.¹⁵⁹ She also noted that other research reviews have found that lesbians who do not fit the norms for femininity have a harder time securing employment.¹⁶⁰ Finally, Klawitter noted 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,

¹⁵⁴ 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).

¹⁵⁵ *Id.* (finding an average wage gap of +9% for lesbians with a range of -25% to +43%).

¹⁵⁶ *Id.* at 21.

¹⁵⁷ M.V. LEE BADGETT & ALYSSA SCHNEEBaum, WILLIAMS INST., *THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS* (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

¹⁵⁸ Klawitter, *supra* note 154 at 21-22.

¹⁵⁹ *Id.* at 22.

¹⁶⁰ E.g., LOTTA SAMELIUS & ERIK WÄGBERG, 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.

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.¹⁶¹

A simple comparison¹⁶² of median incomes in Ohio also suggests that men in same-sex couples may face a wage gap. An analysis of Census 2000 data found that the median income of men in same-sex couples in the state was 10% lower than the median income of men in different-sex marriages.¹⁶³

In addition, a forthcoming study, based on representative data from 27 states, finds “clear evidence that self-identified transgender individuals have significantly lower employment rates and household incomes and significantly higher poverty rates than non-transgender individuals.”¹⁶⁴ The study concludes that transgender adults who are wage earners experience a “household income penalty” equivalent to 12% of annual household income.¹⁶⁵

A growing body of research supports that, for many LGBT people who face discrimination along multiple axes of inequality, the resulting impact is greater than the sum of the parts. For example, a 2015 study found that the overall wage gap for men of color in same-sex couples 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.”¹⁶⁶

Research also indicates that non-discrimination policies help to close sexual orientation wage gaps. A 2009 study found that in states with sexual orientation non-discrimination laws, men and women in same-sex couples had a wage premium (3% and 2% respectively) compared to men and women in different-sex couples, and they earned approximately 0.3% more for each year the policy was in effect.¹⁶⁷ Similarly, two 2011 studies reported a significant impact of state non-discrimination laws on annual earnings¹⁶⁸ and found that state non-discrimination laws were associated with a greater number of weeks worked for gay men, especially in private-sector jobs.¹⁶⁹ Furthermore, a 2015 study found that the

¹⁶¹ Klawitter, *supra* note 154 at 22.

¹⁶² Comparison does not control for factors other than sexual orientation that may impact wages, such as education and age.

¹⁶³ The median income of women in same-sex couples in Virginia is higher than that of women in different-sex marriages, but lower than the median income of men with either same-sex or different-sex partners. ADAM P. ROMERO, CLIFFORD ROSKY, M.V. LEE BADGETT & GARY J. GATES, WILLIAMS INST., CENSUS SNAPSHOT: VIRGINIA 2 (2008), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/VirginiaCensus2000Snapshot.pdf>.

¹⁶⁴ Christopher S. Carpenter, Samuel T. Eppink & Gilbert Gonzales, *Transgender Status, Gender Identity, and Socioeconomic Outcomes in the United States* (forthcoming in *INDUST. AND LABOR REL. REV.*) (draft on file with authors).

¹⁶⁵ *Id.*

¹⁶⁶ Jamie H. Douglas & Michael D. Steinberger, *The Sexual Orientation Wage Gap for Racial Minorities*, 54 *INDUST. REL.* 59, 96 (2015).

¹⁶⁷ 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>.

¹⁶⁸ Amanda K. Baumle & Dudley L. Poston Jr., *The Economic Cost of Homosexuality: Multilevel Analysis*, 89 *SOC. FORCES* 1005 (2011).

¹⁶⁹ Marieka M. Klawitter, *Multilevel Analysis of the Effects 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).

enactment of state level non-discrimination laws increased wages by 4.2% and rate of employment by 2% for gay men.¹⁷⁰

Poverty in the LGBT Community

While national averages indicate that LGBT people may be more likely to have higher household incomes than non-LGBT people, those averages can mask that LGBT people are also disproportionately poor¹⁷¹ and that poverty is concentrated in certain groups within the LGBT community such as bisexual women, people of color, and transgender people. For example, a 2019 study on poverty in the LGBT community found that 21.6% of LGBT adults in the U.S. experience poverty, compared to 15.7% of cisgender straight adults.¹⁷² Bisexual women and transgender people had especially high rates of poverty, with 29.4% of people in both groups reporting that they were living in poverty.¹⁷³ In addition, a 2013 study found that 7.6% of lesbian couples were living in poverty, compared to 5.7% of married different-sex couples, and that over one in five children of same-sex couples were living in poverty, compared to 12.1% of children of married different-sex couples.¹⁷⁴

Similarly, research on the issue of food insecurity in the LGBT community has found that, in the year prior to the survey, more than one in four LGBT adults (27%) experienced a time when they did not have enough money to feed themselves or their families, and nearly half of LGB adults age 18-44 who are raising children (46%) participated in SNAP, the federal food stamps program.¹⁷⁵

The 2015 USTS found that, nationally, 29% of respondents were living at or near the federal poverty line, which was twice the rate of poverty in the U.S. general population (29% vs. 12%).¹⁷⁶ Transgender people of color were more likely to be living in poverty, with 43% of Latino/a, 43% of American Indian, 40% of multiracial, 38% of Black, 34% of Middle Eastern, and 32% of Asian respondents reporting that they were living in poverty, compared to 24% of White respondents.¹⁷⁷

In a 2013 study on poverty, Badgett et al. suggested that social climate and policy are linked determinants of LGB poverty: "LGB people who live in non-coastal regions of the U.S. or rural

¹⁷⁰ 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, statutes of limitations, and attorney's fees increase the positive impact on gay men's wages. *Id.*

¹⁷¹ M.V. LEE BADGETT, LAURA E. DURSO & ALYSSA SCHNEEBAUM, WILLIAMS INST., NEW PATTERNS OF POVERTY IN THE LESBIAN, GAY, AND BISEXUAL COMMUNITY (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>.

¹⁷² M.V. LEE BADGETT, SOON KYU CHOI & BIANCA D.M. WILSON, WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS 1 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

¹⁷³ *Id.*

¹⁷⁴ M.V. LEE BADGETT & ALYSSA SCHNEEBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS 1-3 (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

¹⁷⁵ TAYLOR N.T. BROWN, ADAM P. ROMERO & GARY J. GATES, WILLIAMS INST., FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>.

¹⁷⁶ JAMES ET AL., *supra* note 87.

¹⁷⁷ *Id.*

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.”¹⁷⁸

Building from that thesis, a 2014 report by the Williams Institute linked greater socio-economic disparities for LGBT people to region, a lack of legal protections, and a poor social climate.¹⁷⁹ 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 Midwest, with a poorer social climate and fewer legal protections.¹⁸⁰ For example, while same-sex couples with children face an income disadvantage when compared to their different-sex married counterparts in all states, that income gap widens from \$4,300 in states with protective laws to \$11,000 in states that lack such laws.¹⁸¹

Data from the 2015-2017 Gallup Daily Tracking poll show similar disadvantages for LGBT people in Virginia, including:¹⁸²

- 27% of LGBT adults in Virginia reported that they do not have enough money for food, compared to 13% of non-LGBT adults.
- 21% of LGBT adults in Virginia reported having a household income below \$24,000, compared to 16% of non-LGBT adults.
- 9% of LGBT adults in Virginia reported that they were unemployed, compared to 5% of non-LGBT adults.
- 17% of LGBT adults in Virginia reported that they do not have health insurance, compared to 11% of non-LGBT adults.

In addition, the 2015 National Transgender Discrimination Survey found that 6% of transgender respondents in Virginia were unemployed and 23% were living in poverty.¹⁸³ Nine percent of respondents in Virginia reported experiencing homelessness in the past year because they were transgender.¹⁸⁴

¹⁷⁸ BADGETT, DURSO & SCHNEEBAUM, *supra* note 171 at 25.

¹⁷⁹ HASENBUSH ET AL., *supra* note 16.

¹⁸⁰ Press Release, Williams Inst., 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 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.”

¹⁸¹ HASENBUSH ET AL., *supra* note 16.

¹⁸² LGBT Data & Demographics: Virginia, *supra* note 18.

¹⁸³ NATIONAL CENTER FOR TRANSGENDER EQUALITY & EQUALITY VIRGINIA, *supra* note 2 at 1.

¹⁸⁴ *Id.* at 2.

HEALTH DISPARITIES FOR LGBT PEOPLE

Health Disparities for LGBT Adults

Experiences of discrimination and harassment, as well as living in a state with unsupportive laws and social climate, 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. Research shows that mood¹⁸⁵ and anxiety disorders,¹⁸⁶ attempted suicide,¹⁸⁷ and self-harm¹⁸⁸ are more common among sexual minorities (LGBs) than non-LGB people. Studies also indicate that rates of depression, anxiety disorders, and attempted suicide are also elevated among transgender people.¹⁸⁹ In addition, LGB people are more likely to report tobacco use, drug use, and alcohol disorders than their non-LGB counterparts.¹⁹⁰ As described more fully below, empirical research has linked such disparities to anti-LGBT policies and unsupportive social climates. Health survey data collected in Ohio indicate that LGBT adults in the state experience the same types of disparities that have been documented in other states and on national surveys.

Health Disparities for LGBT Adults in Virginia

One source for assessing health disparities between LGBT and non-LGBT people in Virginia is the BRFSS.¹⁹¹ Since 2014, the Virginia Department of Health has included the CDC's optional module for measurement of sexual orientation and gender identity on its BRFSS. In the analysis presented here, we

¹⁸⁵ Michael King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 8 BMC Psychiatry 70 (2008); Kimberly F. Balsam, Theodore P. Beauchaine, Ruth M. Mickey & Esther D. Rothblum, *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 J. ABNORMAL PSYCH. 471 (2005).

¹⁸⁶ King et al., *supra* note 185; 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).

¹⁸⁷ King et al., *supra* note 185; 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).

¹⁸⁸ Balsam et al., *supra* note 185. 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).

¹⁸⁹ See INSTITUTE OF MEDICINE, *supra* note 188 at 193-97.

¹⁹⁰ Cochran & Mays, *supra* note 187; 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).

¹⁹¹ About BRFSS, U.S. Centers for Disease Control & Prevention, <https://www.cdc.gov/brfss/about/index.htm> (last visited June 11, 2019); Behavioral Risk Factor Surveillance System, Virginia Department of Health, <http://www.vdh.virginia.gov/brfss/> (last visited June 11, 2019). Administered jointly by the CDC and the Virginia Department of Health, the Virginia BRFSS is an anonymous survey of adults 18 years and older about a variety of health behaviors and preventive health practices. The 2017 BRFSS sexual orientation measure asked respondents the following: "Do you consider yourself to be: 1 - Straight; 2 - Lesbian or gay; 3 - Bisexual." Respondents who indicated other or another sexual orientation were coded as "other." The transgender status question asked respondents: "Do you consider yourself to be transgender?" If respondents answered "yes" the interview then asked "Do you consider yourself to be 1. Male-to-female, 2. Female-to-male, or 3. Gender non-conforming?" If respondents asked about the definition of the term *transgender*, the interviewer stated, "Some people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman would be transgender. Some transgender people change their physical appearance so that it matches their internal gender identity. Some transgender people take hormones and some have surgery. A transgender person may be of any sexual orientation - straight, gay, lesbian, or bisexual." If respondents asked about the term *gender non-conforming*, the interviewer stated, "Some people think of themselves as gender non-conforming when they do not identify only as a man or only as a woman." 2017 Behavioral Risk Factor Survey, Oct. 3 2016, available at https://www.cdc.gov/brfss/questionnaires/pdf-ques/2017_BRFSS_Pub_Ques_508_tagged.pdf.

utilized data from the 2017 Virginia BRFSS, noting where our results are similar or dissimilar to patterns observed in the general population.

We assessed the health of LGBT and non-LGBT adults on three health outcomes that are widely viewed as stress-coping responses¹⁹² and which have been specifically linked to LGBT stigma and discrimination in prior research: depression, smoking, and binge drinking; as well as two other health indicators (the number of days respondents experienced poor mental health during the month prior to the survey, and respondents' experiences of feeling limited in their usual activities because of poor health). In our analyses, we include individuals who identified as LGBT and those who did not identify as LGBT (non-LGBT), including those who identified as straight and not transgender.¹⁹³

The proportions of LGBT ($n = 293$) and non-LGBT ($n = 7,738$) people in Virginia who reported each health outcome are shown below. The proportions are weighted to reflect the population of Virginia, as recommended by the CDC when analyzing these data.¹⁹⁴

Mental Health. LGBT adults in Virginia were significantly more likely to have ever been diagnosed with a depressive disorder (including depression, major depression, dysthymia, or minor depression) by a health care professional when compared to non-LGBT adults (43.6% vs. 18.9%).¹⁹⁵ LGBT respondents reported, on average, more days of not being in good mental health in the month prior to the survey than non-LGBT respondents (7.2 days vs. 3.6 days).¹⁹⁶ LGBT respondents reported that their physical or mental health kept them from doing their usual activities the same number of days per month, on average, as non-LGBT respondents (4.5 days vs. 4.6 days).¹⁹⁷

¹⁹² See, e.g., Richard T. Liu & Lauren B. Alloy, *Stress Generation in Depression: A Systemic Review of the Empirical Literature and Recommendations for Future Study*, 30 CLIN. PSYCH. REV. 582 (2010); Jon. D. Kassel, Laura R. Stroud, Carol A. Paronis, *Smoking, Stress, and Negative Affect: Correlation, Causation, and Context Across States of Smoking*, 129 PSYCHOL. BULLETIN 129 (2003); Kathleen T. Brady & Susan C. Sonne, *The Role of Stress in Alcohol Use, Alcoholism Treatment, and Relapse*, 23 ALCOHOL RESEARCH & HEALTH 263 (1999).

¹⁹³ Respondents who identified as lesbian, gay, or bisexual and responded to the transgender-status question we coded as LGBT. Similarly, respondents who identified as transgender and responded to the sexual orientation question we coded as LGBT. Respondents who identified as straight or other in response to the sexual orientation question AND identified as not transgender we coded as non-LGBT. We coded all other respondents as missing.

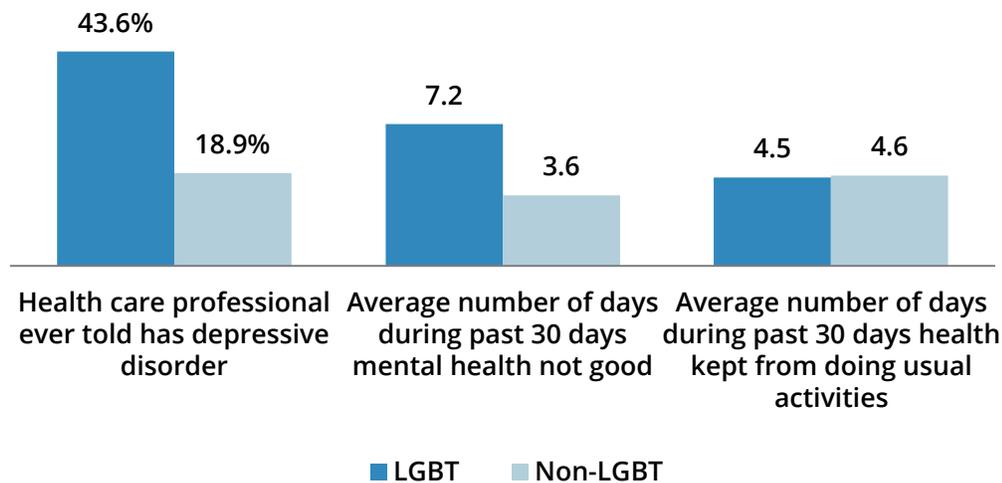
¹⁹⁴ Behavioral Risk Factor Surveillance System: Complex Sampling Weights and Preparing 2017 BRFSS Module Data for Analysis, July 2018, U.S. Centers for Disease Control and Prevention, https://www.cdc.gov/brfss/annual_data/2017/pdf/Complex-Smple-Weights-Prep-Module-Data-Analysis-2017-508.pdf (last visited June 11, 2019). LGBT survey respondents in Virginia were younger than the non-LGBT survey respondents and were more likely to be female than male. In order to make fair comparisons between sexual orientation groups, we used statistical controls to make the two groups comparable on age and sex.

¹⁹⁵ Adjusted odds ratio (95% CI) = 3.29 (2.35, 4.60).

¹⁹⁶ Adjusted $b = 3.02$, $p < 0.01$.

¹⁹⁷ Adjusted $b = 0.66$, $p > 0.05$.

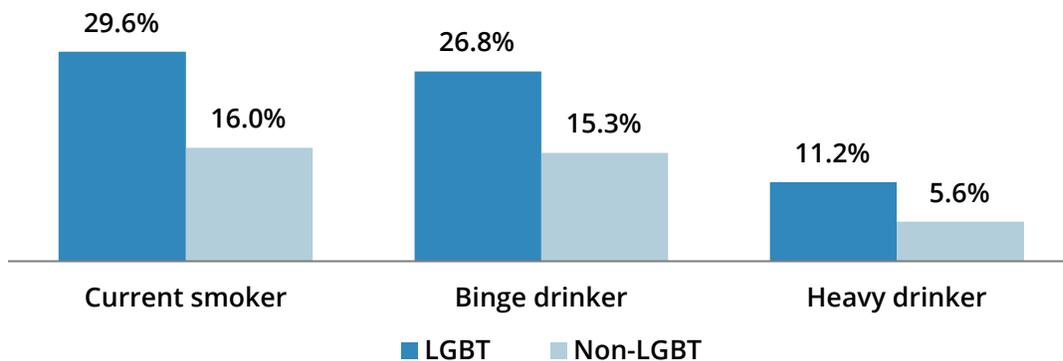
Figure 10. Health characteristics of adults in Virginia, by LGBT identity



Source: 2017 Virginia BRFSS

Substance Use. LGBT adults in Virginia were significantly more likely to be current smokers than non-LGBT adults (29.6% vs. 16.0%).¹⁹⁸ Additionally, greater proportions of LGBT adults than non-LGBT adults were identified as binge drinkers (26.8% vs. 15.3%)¹⁹⁹ and heavy drinkers (11.2% vs. 5.6%).²⁰⁰

Figure 11. Substance abuse among adults in Virginia, by LGBT identity



Source: 2017 Virginia BRFSS

¹⁹⁸ Adjusted odds ratio (95% CI) = 2.04 (1.41, 2.96). Current smokers included respondents who reported having smoked at least 100 cigarettes in their lifetimes and reported now smoking every day or some days.

¹⁹⁹ Adjusted odds ratio (95% CI) = 1.61 (1.08, 2.39). Binge drinking is defined in the BRFSS as five or more alcoholic drinks on one occasion for males and four or more alcoholic drinks on one occasion for females.

²⁰⁰ Adjusted odds ratio (95% CI) = 1.99 (1.19, 3.33). Heavy drinking is defined as more than 14 drinks per week among males and more than 7 drinks per week among females.

Our findings are consistent with analyses of BRFSS data collected in other states and with analyses of data from the National Health Interview Survey, a national probability survey administered by the federal government.²⁰¹ For example, an analysis of BRFSS data collected in 10 states²⁰² in 2010 found that LGB individuals were more likely to be current smokers than their non-LGB counterparts.²⁰³ Similarly, an analysis of data from the 2013 National Health Interview Survey found that LGB adults age 18-64 in the U.S. were more likely to be current smokers (27.2% lesbian or gay vs. 29.5% bisexual vs. 19.6% non-LGB).²⁰⁴ A 2018 analysis of 2016 BRFSS data compared health-related behavior across sexual orientation and transgender identity and found that gay men, lesbian women, and bisexual women were significantly more likely to be current smokers than their heterosexual counterparts.²⁰⁵ Two studies analyzing BRFSS data from Massachusetts²⁰⁶ and Washington state²⁰⁷ 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.

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*²⁰⁸ and by the Institute of Medicine of the National Academies.²⁰⁹ Research also suggests 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

²⁰¹ U.S. Centers for Disease Control & Prevention, About the National Health Interview Survey, https://www.cdc.gov/nchs/nhis/about_nhis.htm (last visited Nov. 13, 2019).

²⁰² 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 from two states (Colorado and Oregon) were unavailable to the authors at the time of analysis, so the 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).
²⁰³ *Id.* at 340.

²⁰⁴ Brian W. Ward et al., *Sexual Orientation and Health Among U.S. Adults: National Health Interview Survey, 2013*, 77 NATIONAL HEALTH STATS. REPORT 1, 4 (2015), <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

²⁰⁵ Timothy J. Cunningham, Fang Xu, & Machell Town, *Prevalence of Five Health-Related Behaviors for Chronic Disease Prevention Among Sexual and Gender Minority Adults – 25 U.S. States and Guam, 2016*, 67 MMWR 888 (2018).

²⁰⁶ 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).

²⁰⁷ 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).

²⁰⁸ *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 Jan. 3, 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 SERVICES, OFFICE OF DISEASE PREVENTION AND HEALTH PROMOTION, *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 16 (2d ed. 2000).

²⁰⁹ INSTITUTE OF MEDICINE, *supra* note 188 at 14 ("LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma").

health outcomes, resulting in health disparities for LGBT people compared to non-LGBT people.²¹⁰ Research that has focused on mental and physical health outcomes of LGBT people supports the minority stress model.²¹¹ This research has demonstrated that both interpersonal experiences of stigma and discrimination, such 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.²¹²

A number of studies have found evidence of links between minority stressors and negative mental health outcomes in LGB people, including a higher prevalence of psychiatric disorders,²¹³ including depression²¹⁴ and psychological distress,²¹⁵ as well as loneliness, suicidal intention,²¹⁶ deliberate self-harm,²¹⁷ and low self-esteem.²¹⁸ Studies have also linked minority stress in LGB people to an increased prevalence of high-risk health-related behaviors, such as tobacco use, drug use, and alcohol disorders.²¹⁹

For example, a 2016 study by the American Psychological Association, based on a nationally representative sample, linked experiences of discrimination to increased stress and poorer health for LGBT people.²²⁰ The study found that LGBT adults reported higher average levels of perceived stress (6.0 vs. 5.0 on a 10-point scale) and were more likely to report extreme levels of stress (39% vs. 23%) in the prior 30 days than adults who were non-LGBT.²²¹ Job stability was a current source of stress for 57% of LGBT adults, compared to 36% of non-LGBT adults.²²² The study also found that many LGBT respondents

²¹⁰ 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 188.

²¹¹ *Id.*; AM. PSYCH. ASSOC., *STRESS IN AMERICA: THE IMPACT OF DISCRIMINATION* 8, 22 (2016).

²¹² 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).

²¹³ *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).

²¹⁴ *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).

²¹⁵ *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).

²¹⁶ 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).

²¹⁷ 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).

²¹⁸ *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).

²¹⁹ *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).

²²⁰ AM. PSYCH. ASSOC., *supra* note 211.

²²¹ *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%).

²²² *Id.*

had experienced discrimination.²²³ Nearly one-fourth (23%) of LGBT adults reported that they had ever been unfairly stopped, searched, 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%) reported being unfairly not hired for a job.²²⁴

Studies have also linked a lack of legal protections and a poor state social climate to health disparities for LGBT people. For example, a 2009 study by Mark Hatzenbuehler et al. found that an unsupportive state-level legal landscape for LGB 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.²²⁵ 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 ban on marriage for same-sex couples, 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.”²²⁶ Drawing on these findings and prior research, Hatzenbuehler concluded that “the recent laws that have been passed [anti-LGBT laws in North Carolina and Mississippi], as well the prejudicial attitudes that underlie them, are likely to have negative consequences for the mental and physical health of LGBT populations.”²²⁷

Similarly, researchers who used 2011 North Carolina BRFSS data to study health disparities between LGB and non-LGB people in the state noted that the poor legal and social environment for LGB people in the South may exacerbate these disparities:

Of additional concern is that many Southeastern states have failed to incorporate sexual minorities into existing laws (e.g., employment nondiscrimination) or have

²²³ The percentage of respondents who were reported as having experienced discrimination said that they had either experienced “at least one of the five day-to-day stressors ‘less than once a year’ or more often; or ever experienced one of nine major forms of discrimination.” The five day-to-day stressors included: 1) You are treated with less courtesy or respect than other people; 2) You receive poorer service than other people at restaurants or stores; 3) People act as if they think you are not smart; 4) People act as if they are afraid of you; 5. You are threatened or harassed. The nine major forms of discrimination included: 1) Have you ever been unfairly fired from a job? 2) Have you ever been unfairly denied a promotion? 3) For unfair reasons, have you ever been not hired for a job? 4) Have you ever been unfairly stopped, searched, questioned, physically threatened or abused by the police? 5) Have you ever been unfairly discouraged by a teacher or advisor from continuing your education? 6) Have you ever been unfairly prevented from moving into a neighborhood because the landlord or a realtor refused to sell or rent you a house or apartment? 7) Have you ever moved into a neighborhood where neighbors made life difficult for you or your family? 8) Have you ever been treated unfairly when receiving health care? 9) Have you ever been treated unfairly while using transportation (e.g., buses, taxis, trains, at an airport, etc.)? Press Release, Am. Psych. Assoc., 2015 Stress in America: Methodology, <http://www.apa.org/news/press/releases/stress/2015/methodology.aspx> (last visited Dec. 5, 2016) (see Measurement with Experience with Discrimination).

²²⁴ AM. PSYCH. ASSOC., *supra* note 211 at 6-7.

²²⁵ 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.

²²⁶ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 219 at 456. See also Ben Lennox Kail, Katie L. Acosta & Eric R. Wright, *State-Level Marriage Equality and the Health of Same-Sex Couples*, 105 AM. J. PUBLIC HEALTH 1101 (2015).

²²⁷ Mark L. Hatzenbuehler, *The Health Consequences of Hate*, COLUMBIA UNIV. (Apr. 26, 2016), <https://www.mailman.columbia.edu/public-health-now/news/health-consequences-hate>.

adopted new anti-LGB policies (e.g., prohibiting legal recognition of same-sex relationships), both of which may create and exacerbate unhealthy 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.²²⁸

Additionally, research 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 2008 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.²²⁹ 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.²³⁰

While research provides strong support for direct links between anti-LGBT policies or unsupportive environments and negative health outcomes, there may be other related factors that could contribute to the magnitude of observed disparities. For example, researchers have noted that healthier and better-resourced LGBT people may be able to move to more supportive climates than LGBT peers in worse health, which would heighten observed disparities in less accepting places.²³¹ Nonetheless, the research indicates that minority stress factors, including a lack of legal protections, discrimination, and a poor social climate, contribute to LGBT health disparities in Virginia.

Health Disparities for LGBT Youth

Patterns of poor health and health risk observed among LGBT adults have been widely documented among LGBT adolescents as well. For example, the CDC analysis of 2017 YRBS data reported high rates of poor mental health and health risk behavior, commonly considered stress coping behavior,²³² that disproportionately impact LGB youth.²³³ Analyses of YRBS data from prior years also indicated sexual orientation disparities in mental health and health risk behaviors.²³⁴ Finally, a 2011 meta-analysis of 18 studies found that, compared to non-LGB youth, heterosexual youth were more likely to report depression and more than twice as likely to think about suicide, over three times as likely to report that

²²⁸ Derrick D. Matthews & Joseph G. L. Lee, *A Profile of North Carolina Lesbian, Gay, and Bisexual Health Disparities*, 106 AM. J. PUB. HEALTH 98 (2014).

²²⁹ 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’Y. 65, 75 (2013).

²³⁰ *Id.* at 71, 76.

²³¹ Hatzenbuehler, McLaughlin, Keyes & Hasin, *supra* note 219 at 452.

²³² See, e.g., Liu & Alloy, *supra* note 192; Kassel et al., *supra* note 192; Brady & Sonne, *supra* note 192.

²³³ Kann et al., *supra* note 27.

²³⁴ *Id.*; Kann et al., *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 MMWR 1 (2011).

they had attempted suicide, and more than four times as likely to have attempted suicide such that they needed medical attention.²³⁵

Other studies have linked health disparities and risk behaviors among LGB youth to discrimination and unsupportive environments. For example, a 2017 study found that marriage equality at the state level was associated with a statistically significant decline (14%) in the proportion of LGB youth reporting that they attempted suicide in the past year.²³⁶ Similarly, 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 school environments were at a 20% greater risk of attempting suicide than were LGB youth in supportive school environments.²³⁷ High levels of school-based victimization have been associated with higher levels of illicit drug use and risky sexual behavior.²³⁸ Research has also linked unsupportive family environments to depression and suicidality,²³⁹ high levels of stress,²⁴⁰ tobacco use,²⁴¹ and illicit drug use²⁴² in LGB youth and young adults.

Studies of transgender youth have also found evidence of associations between discrimination, abuse, and poorer health. For example, 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.²⁴³

²³⁵ 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 Sexual Minority and Heterosexual Youth: A Meta-Analytic Review*, 49 J. ADOL. HEALTH 115 (2011).

²³⁶ Julia Raifman et al., *Difference-in-Differences Analysis of the Association between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 JAMA PEDIATRICS 350 (2017) [doi: 10.1001/jamapediatrics.2016.4529].

²³⁷ Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 PEDIATRICS 896 (2011).

²³⁸ 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 27 at 11.

²³⁹ 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).

²⁴⁰ 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).

²⁴¹ 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).

²⁴² *Id.*

²⁴³ 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).

ECONOMIC IMPACT OF STIGMA AND DISCRIMINATION

In 2014, the United States Agency for International Development (USAID) and the Williams Institute produced a study addressing the economic impacts of stigma and discrimination against LGBT people. In this section, we draw from that study and look at three forms of stigma and discrimination to assess the impact of an unsupportive legal landscape on Virginia's economy: 1) discrimination and harassment in the workplace and other settings; 2) health disparities experienced by LGBT people; and 3) bullying and harassment of youth.²⁴⁴ In our analysis, we draw on data specific to Virginia, and illustrate the magnitude of some of the costs resulting from different types of stigma and discrimination. Due to limited available data on LGBT people in the state, we are able to estimate only a few of the costs related to LGBT stigma and discrimination in Virginia.

FRAMEWORK FOR ANALYSIS

In a 2014 USAID and Williams Institute study, titled *The Relationship Between LGBT Inclusion and Economic Development: An Analysis of Emerging Economies*, the authors explored both micro- and macro-level analyses to assess possible links between discrimination against LGBT people, as well as exclusionary treatment of LGBT people, and economic harms.²⁴⁵ In the micro-level analysis, the authors considered five types of discrimination against LGBT people and explained 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. Discrimination and bullying of LGBT students in schools; and
5. Health disparities.²⁴⁶

After considering these, the authors concluded 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.”²⁴⁷

²⁴⁴ The USAID and Williams Institute study also assessed the economic impacts of two other forms of stigma and discrimination against LGBT people: 1) police abuse and over-incarceration and 2) higher rates of violence. We do not consider these forms in this report due to a lack of state-level data on effects of such stigma and discrimination against LGBT people in Virginia.

²⁴⁵ M.V. LEE BADGETT, SHEILA NEZHAD, KEES WAALDIJK & YANA VAN DER MEULEN RODGERS, USAID & WILLIAMS INST., *THE RELATIONSHIP BETWEEN LGBT INCLUSION AND ECONOMIC DEVELOPMENT: AN ANALYSIS OF EMERGING ECONOMIES 2* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-inclusion-and-development-november-2014.pdf>. The micro-level analysis focused on the experiences of LGBT individuals and defined inclusion as the ability to live one's life as one chooses. *Id.* at 1. The macro-level analysis analyzed the effect of LGBT rights on economic development (measured by per capita gross domestic product and the Human Development Index) after controlling for other factors that influence development. *Id.* at 2.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 6.

Turning to the macro-level, the authors found an association between greater protections of legal rights for sexual and gender minorities and economic development in emerging economies, measured by per capita GDP.²⁴⁸ Notably, they found that non-discrimination laws in particular “have an especially strong correlation with GDP per capita. The importance of 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.”²⁴⁹

While the USAID and Williams Institute study focused on national economies, similar types of discrimination and stigma confront LGBT people in Virginia and are likely to have similar economic effects.

Before we turn to the analysis, we note five important points:

First, we map out several economic impacts due to stigma and discrimination against LGBT people in Virginia *in general*. We do not consider how these effects specifically relate to any particular law or policy in the state.

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

Third, while the forms of discrimination and stigma that we address in this study provide a useful way to understand some of the significant challenges that LGBT people face throughout their lives, different types of discrimination and stigma interact with each other and all may contribute to one or more negative outcomes for LGBT people. For example, LGBT people are more likely to be poor because of school bullying and workplace discrimination, to have poor health, and to have higher rates of incarceration and violent crime victimization. Because these factors overlap and interact, the economic impacts that we have estimated should not be summed together.

Fourth, focusing on LGBT stigma and discrimination alone will not address all negative outcomes experienced by LGBT people. LGBT people also have identities associated with their race, ethnicity, age, disability, and gender. While a singular focus on LGBT stigma will not entirely eliminate the disparities we discuss, an approach that embraces eliminating disparities for diverse LGBT people, no matter what their cause, will improve the lives of many non-LGBT people as well. For example, eliminating gender and

²⁴⁸ *Id.* at 10.

²⁴⁹ *Id.* at 3.

racial-ethnic wage gaps in the U.S. would both eliminate the poverty gap between same-sex and different sex-couples, as well as lift many non-LGBT people out of poverty.²⁵⁰

Finally, as the authors of the USAID and Williams Institute study emphasize, to move this analysis beyond this framework and the illustrations of economic impact below, we need more complete and better data on LGBT populations.²⁵¹ In particular, the routine inclusion of sexual orientation and gender identity measures on large population-based surveys would provide a rich source of information about LGBT people and disparities they face related to their sexual orientation and gender identity. The value of such data collection is illustrated by our use of BRFSS data specific to LGBT people, which was unavailable just a few years ago. We also need more research about the lived experiences of LGBT people and the effectiveness of legal protections to further assess the impact of LGBT supportive laws and climates on LGBT people.²⁵²

ECONOMIC IMPACT IN THE WORKPLACE AND OTHER SETTINGS

A growing body of research finds that supportive workplace policies and practices, such as non-discrimination policies, have a positive impact on employer outcomes—which has been termed “the business case for diversity.” 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.

To the extent that Virginia’s legal landscape and social climate is unsupportive of LGBT workers, businesses within the state and the state, as an employer, are likely to experience negative economic outcomes. Research shows that LGBT workers in unsupportive environments are less likely to be open about their sexual orientation or gender identity at work, more likely to be distracted on the job, and less likely to be committed to staying with their current employer, compared to LGBT employees at supportive workplaces. Moreover, LGBT and non-LGBT workers outside a state that they perceive to be unsupportive may be less likely to accept job offers from employers in that state.

In addition, discrimination in employment, housing, and other areas of life can result in LGBT people experiencing economic instability, including poverty and homelessness. When LGBT people experience economic instability, they are more likely to rely on government benefits and services, which increases the costs of these programs to the state.

²⁵⁰ M.V. LEE BADGETT & ALYSSA SCHNEEBBAUM, WILLIAMS INST., THE IMPACT OF WAGE EQUALITY ON SEXUAL ORIENTATION POVERTY GAPS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Impact-of-Wage-Equality-on-Sexual-Orientation-Poverty-Gaps-June-2015.pdf>.

²⁵¹ See, e.g., MARIELLA ARRENDONDO ET AL., DOCUMENTING DISPARITIES FOR LGBT STUDENTS: EXPANDING THE COLLECTION AND REPORTING OF DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY (2016), <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>.

²⁵² BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 245 at 49.

The Business Case for Diversity

Over the past two decades, many employers have adopted non-discrimination policies to protect LGBT employees and created more inclusive workplace environments, even when not legally required to do so.²⁵³ 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 frequently evaluating LGBT-supportive policies and practices.

Corporations have increasingly enacted LGBT-supportive policies, in part because the companies perceive that the policies will have a positive impact on the bottom line. As of 2015, 93% of Fortune 500 companies had policies prohibiting sexual orientation discrimination, and 75% of policies included gender identity.²⁵⁴ Further, 64% offered domestic partner benefits, and 40% had transgender-inclusive benefits policies.²⁵⁵

Of the 21 Fortune 500 companies headquartered in Virginia,²⁵⁶ at least 19 include sexual orientation and gender identity in their non-discrimination policies: Freddie Mac, General Dynamics, Capital One, Northrop Grumman, DXC Technology, Dollar Tree, Altria Group, CarMax, Performance Food Group, Dominion Energy, Norfolk Southern, AES, Leidos Holdings, Owen & Minor, Hilton, Genworth Financial, Huntington Ingalls, Beacon Roofing Supply, and Booz Allen Hamilton.²⁵⁷

As stated in a 2015 amici brief filed by 379 large corporations in the historic marriage equality case *Obergefell v. Hodges*,²⁵⁸ the business case for diversity is clear:

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.

²⁵³ 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).

²⁵⁴ 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; BECK BAILEY, LIZ COOPER & MADELINE PERROU, HUMAN RIGHTS CAMPAIGN, *CORPORATE EQUALITY INDEX 2019: RATING AMERICA'S WORKPLACES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUALITY 7* (2016), https://assets2.hrc.org/files/assets/resources/CEI-2019-FullReport.pdf?_ga=2.147242679.1034985380.1576106439-581265351.1576106439.

²⁵⁵ FIDAS & COOPER, *supra* note 254.

²⁵⁶ Emily Leayman, *Fortune 500: Which Virginia Companies Make the List in 2019*, PATCH.COM (May 21, 2019), <https://patch.com/virginia/mclean/fortune-500-which-virginia-companies-make-list-2019>.

²⁵⁷ Unless otherwise noted, the information about individual companies' policies is from the Human Rights Campaign report, *Corporate Equality Index 2019: Rating America's Workplaces on Lesbian, Gay, Bisexual and Transgender Equality*. FIDAS & COOPER, *supra* note 254. DOLLAR TREE, *CODE OF ETHICS 4* (2017), https://www.dollartree.com/file/general/dollar_tree_code_of_ethics.pdf; Performance Food Group, *Equal Employment Opportunity Policy*, http://pfgc.com/~/_/media/PFGC/Files/EEO/EEO_Policy.pdf (last visited Dec. 7, 2019); AES, *The AES Corporation Human Rights Policy*, https://s2.q4cdn.com/825052743/files/doc_downloads/2016/AES_Human-Rights-Policy_vdef.pdf (last visited Dec. 7, 2019).

²⁵⁸ 135 S. Ct. 2584 (2015).

Members of the lesbian, gay, bisexual, and transgender (“LGBT”) community are one source of that diversity.²⁵⁹

In fact, 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.²⁶⁰ 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.²⁶¹ Some of the specific business-related outcomes that have motivated 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 enhancing employee productivity.²⁶²

Academic research conducted over the past two decades 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 (Figure 14).²⁶³

²⁵⁹ Brief for 379 Employers and Organizations Representing Employers as Amici Curiae Supporting Petitioners, *Obergefell v. Hodges*, 135 S. Ct. 2584 (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.

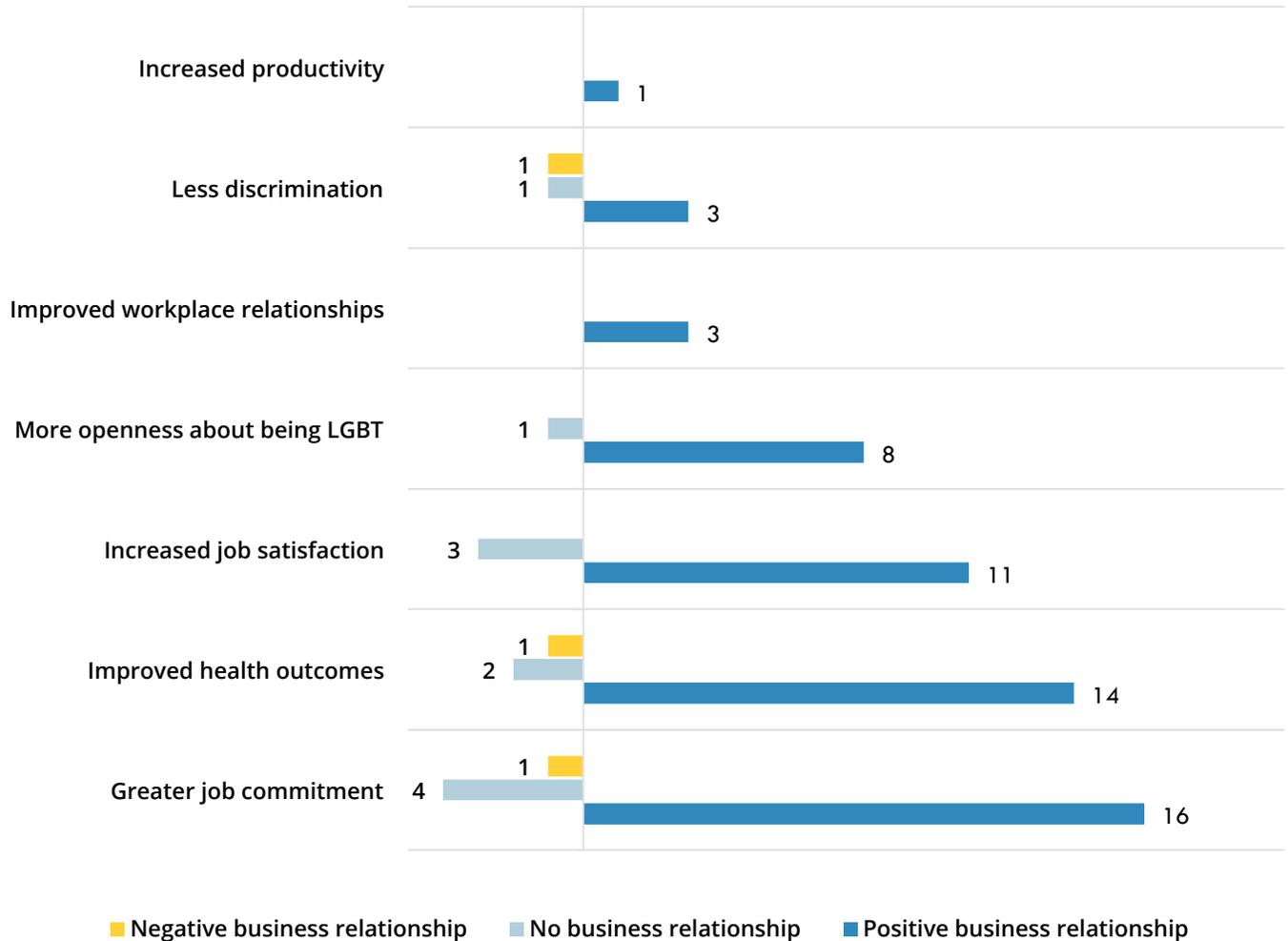
²⁶⁰ BRAD SEARS & CHRISTY MALLORY, WILLIAMS INST., ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

²⁶¹ JODY L. HERMAN, WILLIAMS INST., 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>.

²⁶² *Id.*; SEARS & MALLORY, *supra* note 260.

²⁶³ M.V. LEE BADGETT, LAURA DURSO, ANGELIKI KASTANIS, & CHRISTY MALLORY, WILLIAMS INST., 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>.

Figure 14. Number of studies conducted prior to 2013 showing relationship between LGBT-supportive policies or workplace climates and individual-level outcomes



A 2014 literature review of academic studies similarly concluded that LGBT-supportive policies have positive effects on LGBT employees in terms of mental health, workplace relationships, and job satisfaction.²⁶⁴ Many of the underlying studies included in the 2013 and 2014 literature reviews focused on three specific areas of the case for business diversity: employee recruitment, productivity/engagement, and retention.

²⁶⁴ Ozeren Emir, *Sexual Orientation Discrimination in the Workplace: A Systematic Review of Literature*, 109 *PROCEDIA – SOC. & BEHAV. SCI.* 1203, 1208-10 (2014).

Studies focused on these outcomes have shown the following:

Recruitment

- LGBT-supportive policies and workplace environments are important to LGBT employees when they are deciding where to work.²⁶⁵
- LGBT employees prefer to work in states with more supportive laws and social environments.²⁶⁶
- Employers are more likely to cite problems with recruitment of LGBT employees when LGBT-supportive policies are not in place.²⁶⁷
- Many non-LGBT jobseekers also value LGBT-supportive policies and practices,²⁶⁸ particularly younger and more highly educated workers.²⁶⁹

Productivity/Engagement

- LGBT-supportive policies and supportive workplace environments are associated with less discrimination and a greater likelihood that LGBT people will be out at work. Both outcomes have been linked to greater workplace engagement, improved psychological health, and increased productivity and job satisfaction.²⁷⁰ Given that an estimated 197,000 workers in Virginia identify as LGBT, the loss in productivity from a discriminatory environment could be significant.²⁷¹
- When LGBT employees are open about their sexual orientation or gender identity at work, teams that include both LGBT and non-LGBT workers may be more productive and more competent.²⁷²

²⁶⁵ 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>; SYLVIA ANN HEWLETT, TODD SEARS, KAREN SUMBERG & CHRISTINA FARGNOLI, *THE POWER OF "OUT" 2.0: LGBT IN THE WORKPLACE* 29 (2013).

²⁶⁶ 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.

²⁶⁷ Russell Shrader, *Broadening Partner Benefits to Improve Recruitment and Retention among LGBT Employees in United States Institutions of Higher Education*, 40 PUBLIC ADMIN. Q. 180 (2016).

²⁶⁸ SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); 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>.

²⁶⁹ Andrew R. Flores, *Attitudes toward Transgender Rights: Perceived Knowledge and Secondary Interpersonal Contact*, 3 POLITICS, GROUPS, AND IDENTITIES 398 (2015); Ilsa L. Lottes & Peter J. Kuriloff, *The Impact of College Experience of Political and Social Attitudes*, 31 SEX ROLES 31 (1994); *Gay Marriage*, PEWRESEARCH.ORG, <http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/> (last visited May 3, 2016).

²⁷⁰ 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); SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 20 (2016); BADGETT ET AL., *supra* note 263.

²⁷¹ LGBT PEOPLE IN THE U.S. NOT PROTECTED BY STATE NONDISCRIMINATION STATUTES, WILLIAMS INST. 2 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Equality-Act-March-2019.pdf>.

²⁷² 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, 409 (2012); SYLVIA ANN HEWLETT & KENJI YOSHINO, *OUT IN THE WORLD: SECURING LGBT RIGHTS IN THE GLOBAL MARKET PLACE* 22, 63 (2016).

- Negative outcomes related to unsupportive policies and environments could lead to economic losses for state and local governments as employers, and for private businesses in Virginia. Since the state government of Virginia employs 170,000 people,²⁷³ its own loss in productivity from a discriminatory environment could be significant.

Retention

- LGBT employees in supportive environments are more likely to say they are proud to work for their employer.²⁷⁴
- LGBT employees in unsupportive environments feel less committed to their jobs.²⁷⁵
- 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.²⁷⁶ A 2012 review of academic articles concluded that businesses spend about one-fifth of an employee's annual salary to replace a worker.²⁷⁷ 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 one's annual salary.²⁷⁸ Based on the average annual mean wage in Virginia,²⁷⁹ public and private employers are at risk of losing approximately \$11,060, on average, for each employee who leaves the state or changes jobs because of the negative environment facing LGBT people in the state.²⁸⁰

In addition, several studies have linked LGBT-supportive policies and workplace environments to bottom line gains, including improved productivity, profitability, and stock prices when compared to firms without such polices.²⁸¹

²⁷³ For the state government workforce: search American FactFinder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Nov. 16, 2019) (select advanced search, enter "Class of Worker By Sex" under topic or table name and "Virginia" under state, county or place, select "Class of Worker by Sex for the Civilian Employed Population 16 Years and Over" 2017 1-year estimates).

²⁷⁴ HEWLETT & YOSHINO, *supra* note 272 at 20.

²⁷⁵ 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); Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17, 23 (2001); IAN JOHNSON & DARREN COOPER, OUT NOW GLOBAL, LGBT DIVERSITY: SHOW ME THE BUSINESS CASE 4, 47 (2015), <http://www.outnowconsulting.com/media/13505/Report-SMTBC-Feb15-V17sm.pdf>; SYLVIA ANN HEWLETT & KAREN SUMBERG, THE POWER OF OUT (2011); 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; Janell L. Blazovich, Kristin A. Cook, Janet McDonald Huston, & William R. Strawser, Do Gay-Friendly Corporate Policies Enhance Firm Performance? 4 (Apr. 2013) (unpublished manuscript, available online).

²⁷⁶ 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/>.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ The annual mean wage in Virginia is \$55,310. May 2018 State Occupational Employment and Wage Estimates: Virginia, Bureau of Labor Stats, https://www.bls.gov/oes/current/oes_va.htm#00-0000 (last visited Dec. 12, 2019).

²⁸⁰ Calculated by applying the average replacement cost of 20% annual salary to the average annual salary in Virginia. *Id.*; BOUSHEY & GLYNN, *supra* note 276.

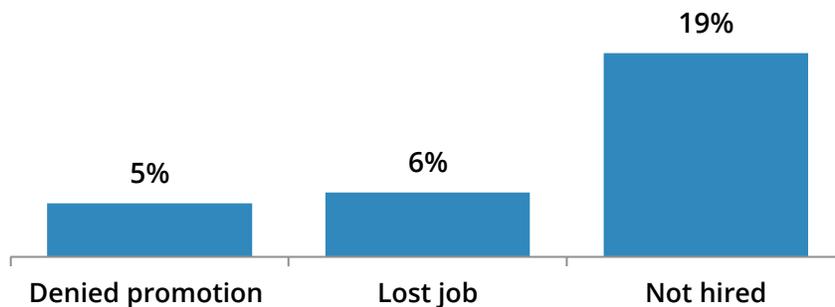
²⁸¹ CREDIT SUISSE ESG RESEARCH, LGBT: THE VALUE OF DIVERSITY (2016), <http://www.slideshare.net/creditsuisse/lgbt-the-value-of-diversity> (finding that a basket of 270 companies supporting LGBT employees outperformed the market in terms of stock price, return on equity (ROE), cash flow returns, and economic 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); Blazovich, Cook, Huston & Strawser, *supra* note 275 at 35-36 (Apr. 2013) (unpublished manuscript, available online) (finding that "firms with gay-friendly policies benefit on key factors of

This body of research suggests that if Virginia were to move toward a more supportive legal landscape for LGBT people, public and private employers in the state would likely be able to more easily recruit employees from outside of Virginia and retain current employees, and would likely see improved employee productivity.

Illustration of Costs of Discrimination against Transgender People

As discussed above, discrimination in employment, housing, and other areas of life can result in LGBT people being unemployed, underemployed, underpaid, less productive, and more reliant on government benefits and social services. The 2015 USTS found that in Virginia, among respondents who had a job or applied for a job in the past year, 5% reported having been denied a promotion, 6% reported having been fired from a job, and 19% reported having not been hired because of anti-transgender bias.²⁸²

Figure 15. Employment discrimination due to anti-transgender bias among Virginia USTS respondents who had or applied for a job in the past year (N=723)



Source: U.S. Transgender Survey, 2015

We used available data²⁸³ to estimate the fiscal impact of discrimination in one of many possible areas by estimating the costs associated with Medicaid participation that results from employment discrimination against transgender people in Virginia.

financial performance, which . . . increase the investor perception of the firm as proxied by stock price movements.”). See also BADGETT ET AL., *supra* note 263 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 the LGBT Corporate Equality Index report by the Human Rights Campaign).

²⁸² These findings are based on data generated from the 2015 USTS, which was conducted by the National Center for Transgender Equality. To find out more about the USTS, visit <http://www.ustranssurvey.org>. The USTS was based on a national convenience sample of 27,715 transgender and gender non-conforming people. Additional calculations for this report were completed by the authors at The Williams Institute.

²⁸³ We use prevalence findings from the USTS, coupled with estimates on the size of the transgender population in Virginia (reported in Section I.A.), to estimate the number of transgender adults in Virginia who have experienced anti-transgender bias in employment. SANDY JAMES ET AL., *supra* note 87 AT 12. We use data from the Henry J. Kaiser Foundation to estimate state spending per Medicaid enrollee in

Job loss, including due to 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. Estimates from the Centers for Medicare and Medicaid Services indicate that, as of June 2018, more than 1.3 million people were enrolled in Medicaid or the Children’s Health Insurance Program (CHIP) in Virginia.²⁸⁴

Based on findings from the USTS, we estimate that 4.5% of transgender adults in Virginia who have ever lost a job due to anti-transgender bias are currently enrolled only in Medicaid. An estimated 1.7% of transgender adults in Virginia who have never experienced such discrimination are enrolled only in Medicaid. We attribute the difference in Medicaid enrollment between these two groups (2.8%) to the elevated need for Medicaid coverage resulting from employment discrimination based on gender identity. Applying this figure to the population of transgender adults in Virginia who have ever held a job and then lost a job because of transgender bias, we estimate that 114 transgender people in Virginia have enrolled in Medicaid because of employment discrimination based on gender identity.²⁸⁵ In 2014, average state spending per Medicaid enrollee in Virginia was approximately \$3,455.²⁸⁶ Therefore, we estimate that employment discrimination experienced by transgender adults on the basis of gender identity costs Virginia approximately \$394,000 annually in state Medicaid expenditures.

ECONOMIC IMPACT OF LGBT HEALTH DISPARITIES

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.”²⁸⁷ For these reasons, poor health, in general, imposes costs on employers and governments.²⁸⁸ When LGBT people experience poorer health outcomes than their non-LGBT counterparts, there are economic costs beyond those which would exist in the absence of the

Virginia. Henry J. Kaiser Family Foundation, Virginia: Medicaid Spending per Enrollee (Full or Partial Benefit), FY2014

<https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D>.

²⁸⁴ Medicaid & CHIP in Virginia, Center for Medicare and Medicaid Services, Medicaid.gov, <https://www.medicare.gov/state-overviews/stateprofile.html?state=virginia> (last visited June 14, 2019).

⁴¹⁸ According to the USTS, approximately 13.8% of transgender adults in Virginia who have ever worked at a job or business have experienced job loss due to anti-transgender bias. By applying this estimate to the number of transgender adults in Virginia who have ever worked at a job or business (an estimated 85.6% of the population of transgender adults in Virginia, or 29,525 people), it is possible to estimate the number who have lost a job because of anti-transgender bias (4,086). Multiplying this figure by 2.8 percent yields 114 transgender adults who have enrolled in Medicaid due to job loss resulting from anti-transgender bias in Virginia.

²⁸⁶ Medicaid per enrollee figure available at Henry J. Kaiser Family Foundation, New York: Medicaid Spending per Enrollee (Full or Partial Benefit), FY2014 <https://www.kff.org/medicaid/state-indicator/medicaid-spending-per-enrollee/?currentTimeframe=0&sortModel=%7B%22colld%22:%22Location%22,%22sort%22:%22asc%22%7D> (last accessed June 14, 2019). Further calculations to determine the state proportion of expenditures, based off of the 2014 Federal Medical Assistance Percentage or FMAP (50.0%), were conducted by the authors. It is unclear how changes since 2014 have impacted the per-enrollee state expenditure for Medicaid. Virginia adopted Medicaid expansion under the Patient Protection and Affordable Care Act (ACA) in 2018, with enrollment beginning in 2019 following data collection in the USTS. USTS data from Virginia residents, therefore, reflect Medicaid enrollment rates prior to the enactment of Medicaid expansion in the state.

²⁸⁷ BADGETT, NEZHAD, WAALDIJK & RODGERS, *supra* note 245.

²⁸⁸ *Id.*

disparity. Thus, to the extent that factors contributing to LGBT health disparities can be reduced or eliminated, the economy will benefit.²⁸⁹

To illustrate the cost savings that would result from eliminating health disparities facing LGBT people in Virginia, we followed a model used by Canadian research organization Community – University Institute for Social Research (CUISR). CUISR estimated the costs associated with LGB 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 populations from that for LGB populations;
- Multiplying the difference in prevalence by the total LGB population to determine the number of LGB people who would have not had those health outcomes if the rates were the same; and
- 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 three health outcomes – major depressive disorder, smoking, and binge drinking – in LGBT adults in Virginia. To the extent possible, we used data on these health outcomes and related costs specific to Virginia. Where we could not find reliable cost data for these health outcomes at the state-level, we used national data as a proxy.

Since there are a variety of factors leading to each disparity, we assume that improving the laws and social climate of Virginia for LGBT people would reduce observed disparities by a fraction. 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 lower in states with more supportive laws, but were still present.²⁹⁰

Specifically, we assume that a range of a 25% to 33.3% reduction in the *disparity* between LGBT and non-LGBT people on each outcome could be achieved if the state were to move towards extending legal protections and improving the social climate for LGBT people. This range is a conservative assumption based on our review of the best available research on LGB-health disparities in LGBT-supportive and unsupportive environments, including the 2009 and 2010 Hatzenbuehler et al. studies.

Further, we note that there may be significant overlap in the costs that we estimate because some people may both have depression and smoke, and the costs associated with each condition 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 observed for any one of these health outcomes were reduced.

²⁸⁹ *Id.*

²⁹⁰ Hatzenbuehler, Keyes & Hasin, *supra* note 225 at 2277.

Excess Costs Associated with Major Depressive Disorder among LGBT People

In order to best estimate the annual costs associated with Major Depressive Disorder (MDD), we rely on data from the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC), a general population study with a large, nationally representative sample of adults. An analysis of 2004-2005 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.²⁹¹ Given the limited data about MDD among transgender people, we assume, for purposes of our analysis, that transgender people have the same rate of MDD as LGB people. The available research on health outcomes for transgender people indicates that this is a conservative assumption.²⁹²

Applying the percentage of excess prevalence of MDD among LGB people (18.0% - 8.1% = 9.9%) to Virginia's adult LGBT population (an estimated 257,000 adults)²⁹³ indicates that there are approximately 25,400 more LGBT adults who have MDD in Virginia than would be expected in the general population. As shown in Table 3 below, we further estimate that if 25% to 33.3% of the sexual orientation and gender identity disparity were reduced by improving the social climate for LGBT people, there would be between 6,400 and 8,400 fewer LGBT people living with MDD in the state.

To estimate the annual cost per person suffering from MDD, we drew from a 2015 study, *The Economic Burden of Adults with Major Depressive Disorder in the United States (2005 and 2010)*.²⁹⁴ The study found that the annual total cost of MDD, nationwide, was \$210.5 billion in 2010. 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 2010.²⁹⁵ Next, we adjusted the cost per person with MDD in 2010 for inflation.²⁹⁶ In inflation-adjusted dollars, the 2019 cost per person with MDD was \$16,239.²⁹⁷

²⁹¹ *Id.* 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), https://pubs.niaaa.nih.gov/publications/NESARC_DRM2/NESARC2DRM.pdf.

²⁹² *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).

²⁹³ See Section I.A.1, *supra*.

²⁹⁴ 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 a major depressive episode within the past year. The cost estimates are largely based on medical claims filed by those who had been diagnosed with MDD (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.

²⁹⁵ The study found that, in 2010, 15,446,771 adults in the U.S. suffered from MDD. *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.

²⁹⁶ 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 Oct. 18, 2019).

²⁹⁷ We assume that the costs associated with depression would be the same in 2016 as they were in 2010 (adjusted for inflation).

For the reasons described above, we estimate that Virginia 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 for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with MDD in Virginia of approximately \$103.4 to \$136.4 million.

Table 3. Reduction in Costs Associated with MDD in Virginia if LGBT Disparity Was Reduced

Reduction in disparity between LGBT and non-LGBT people in Virginia	LGBT individuals impacted	Annual reduction in costs (millions)
25%	6,400	\$103.4
33.3%	8,400	\$136.4

Excess Costs Associated with Smoking among LGBT People

Our analysis of Virginia's 2017 BRFSS data found that 29.6% of LGBT respondents were current smokers, compared to 16.0% of non-LGBT respondents. Applying the percentage (13.6%) of excess prevalence of smoking among LGBT people in Virginia to the state's LGBT population (257,000 adults)²⁹⁸ indicates that there are approximately 35,000 more LGBT people who currently smoke in Virginia than would be expected in the general population.

A 2010 study estimated the annual costs per current smoker in Virginia to be \$7,170.29.²⁹⁹ The total included costs from workplace productivity losses (\$1,664.66), medical care costs (\$2,279.74), and premature death (\$2,437.75).³⁰⁰ We adjusted for inflation³⁰¹ to estimate that the 2019 cost per current smoker in Virginia is \$7,413.75.

For the reasons described above, we estimate that Virginia may be able to reduce the disparity in current smoking between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with smoking in Virginia of approximately \$104.4 to \$139.2 million.

²⁹⁸ See Section I.A. *supra*.

²⁹⁹ JILL S. RUMBERGER, CHRISTOPHER S. HOLLENBEAK, & DAVID KLINE, POTENTIAL COSTS OF SMOKING CESSATION: AN OVERVIEW OF THE APPROACH TO STATE SPECIFIC ANALYSIS (2010), <http://www.lung.org/assets/documents/tobacco/economic-benefits.pdf>.

³⁰⁰ *Id.*

³⁰¹ 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 Nov. 23, 2019).

Table 4. Reduction in Costs Associated with Smoking in Virginia if LGBT Disparity Was Reduced

Reduction in disparity between LGBT and non-LGBT people in Virginia	LGBT individuals impacted	Annual reduction in costs (millions)
25%	8,800	\$65.2
33.3%	11,700	\$86.7

Excess Costs Associated with Binge Drinking among LGBT People

Our analysis of Virginia’s 2017 BRFSS data found that 26.8% of LGBT respondents were binge drinkers, compared to 15.3% of non-LGBT respondents. Applying the percentage (11.5%) of excess prevalence of binge drinking among LGB people in Virginia to the state’s LGBT population (257,000 adults)³⁰² indicates that there are approximately 29,600 more LGBT adults who currently binge drink in Virginia than would be expected in the general population.

We drew from a 2015 study, *2010 National and State Costs of Excessive Alcohol Consumption*, to estimate the annual cost per binge drinker in Virginia.³⁰³ The study found that the annual total cost of binge drinking in Virginia in 2010 was \$4.782 billion.³⁰⁴ 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.³⁰⁵ We adjusted the cost per binge drinker for inflation³⁰⁶ for an estimated cost per binge drinker in Virginia in 2017 of \$5,139.18.³⁰⁷

³⁰² See Section I.A.1. *supra*.

³⁰³ 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).

³⁰⁴ *Id.* at 77.

³⁰⁵ *Id.* at 75.

³⁰⁶ 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 July 11, 2017).

³⁰⁷ In order to determine the annual cost per binge drinker, we divided the total cost by the number of binge drinkers in Virginia in 2010. According to the 2010 Virginia BRFSS, 16.9% of the respondents were binge drinkers. BRFSS Prevalence & Trends Data: Virginia, U.S. Centers for Disease Control & Prevention, https://nccd.cdc.gov/BRFSSPrevalence/rdPage.aspx?rdReport=DPH_BRFSS.ExploreByLocation&rdProcessAction=&SaveFileGenerated=1&irbLocationType=States&islLocation=51&islState=&islCounty=&islClass=CLASS01&islTopic=TOPIC07&islYear=2010&hidLocationType=States&hidLocation=51&hidClass=CLASS01&hidTopic=TOPIC07&hidTopicName=Binge+Drinking&hidYear=2010&irbShowFootnotes=Show&rdICL-iclIndicators=_RFBING4&iclIndicators_rdExpandedCollapsedHistory=&iclIndicators=_RFBING4&hidPreviouslySelectedIndicators=&DashboardColumnCount=2&rdShowElementHistory=divYearUpdating%3dHide%2cisYear%3dShow%2c&rdScrollX=0&rdScrollY=0&rdRnd=81382 (last visited Dec. 5, 2019). Applying this percentage to Virginia’s adult population in 2010 (6,170,930) (data from 2010 American

For the reasons described above, we estimate that Virginia may be able to reduce the disparity in binge drinking between LGBT and non-LGBT people by 25% to 33.3% by taking measures to improve legal protections for LGBT people. Applying this range would mean an eventual annual reduction in costs associated with binge drinking in Virginia of approximately \$38.0 to \$50.9 million.

Table 5. Reduction in Costs Associated with Binge Drinking in Virginia if LGBT Disparity Was Reduced

Reduction in disparity between LGBT and non-LGBT people in Virginia	LGBT individuals impacted	Annual reduction in costs (millions)
25%	7,400	\$38.0
33.3%	9,900	\$50.9

If Virginia were to extend legal protections to LGBT people and if social acceptance of LGBT people increased, the state would likely see improvements in the health of LGBT people. Furthermore, consideration of just three health disparities for LGBT people in the state – MDD, smoking, and binge drinking – suggests that Virginia would see hundreds of millions of dollars in returns on both savings associated with reduced health care and social service costs and in greater productivity.

ECONOMIC IMPACT OF BULLYING, HARASSMENT, AND FAMILY REJECTION OF LGBT YOUTH

School-based bullying and harassment of LGBT youth is pervasive³⁰⁸ and associated with an increased likelihood of school dropout,³⁰⁹ poverty,³¹⁰ and suicide.³¹¹ Educational attainment, especially high school

Community Survey. U.S. Census Bureau, American Fact Finder,

<https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (select Geographies, State, Virginia; Select table “Age and Sex”; select year 2010) indicates that 1,042,887 people in Virginia were binge drinkers in 2010. Dividing the total cost (\$4,782,400,000) by the number of binge drinkers (1,042,887) indicates that the cost per binge drinker in Virginia was \$4,585.73 in 2010. We assume that the costs associated with binge drinking would be the same in 2017 as they were in 2010 (adjusted for inflation).

³⁰⁸ See, e.g., Kate L. Collier, Gabriël van Beusekom, Henny M.W. Bos & Theo G.M. Sandfort, *Sexual Orientation and Gender Identity/Expression Related Peer Victimization in Adolescence: A Systematic Review of Associated Psychological and Health Outcomes*, 50 J. SEX ROLES 299 (2013); Elise D. Berlan et al., *Sexual Orientation and Bullying among Adolescents in the Growing Up Today Study*, 46 J. ADOLESCENT HEALTH 366 (2010); Laura Kann et al., *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); JOSEPH G. KOSCIW ET AL., GLSEN, THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION’S SCHOOLS (2015), <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28%20NCS%29%20-%20Full%20Report.pdf>; EMILY A. GREYAK, JOSEPH G. KOSCIW & ELIZABETH M. DIAZ, GLSEN, HARSH REALITIES: THE EXPERIENCES OF TRANSGENDER YOUTH IN OUR NATION’S SCHOOLS (2009), available at <http://www.teni.ie/attachments/c95b5e6b-f0e6-43aa-9038-1e357e3163ea.PDF>.

³⁰⁹ Jorge Srabstein & Thomas Piazza, *Public Health, Safety and Educational Risks Associated with Bullying Behaviors in American Adolescents*, 20 INT. J. ADOLESCENT MED. HEALTH 223 (2008).

completion, is a significant determinant of economic status and health across the life course.³¹² As a result, early experiences of harassment may not only shape the economic lives of LGBT people, but also have a negative effect on a state's economy. As the authors of the USAID and Williams Institute study explained, "education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity."³¹³

Laws in Virginia do not adequately protect LGBT youth from bullying and harassment in schools.³¹⁴ To the extent the state'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, as well as costs associated with an overrepresentation of LGBT youth in foster care, the juvenile justice system, and among those experiencing homelessness. This section reviews research that links negative outcomes for LGBT youth to future reductions in economic output.

School Outcomes

Research shows that bullying can lead to skipping school and low academic performance among LGBT youth. Several studies, relying on representative samples of youth, found that LGB students were more likely than non-LGB students to skip school as a result of feeling unsafe. According to 2017 YRBS data, LGB students in Cleveland were more than twice as likely as heterosexual students to report skipping school because they felt unsafe (15.5% vs. 7.5%).³¹⁵ Similarly, a 2014 analysis of pooled YRBS data from 13 sites found that LGB³¹⁶ high school students reported significantly higher rates of skipping school because they felt unsafe.³¹⁷ And, a 2011 analysis of national YRBS data collected from 2001 through 2009 found that, on average, LGBQ students were almost three times as likely to report not going to school because of safety concerns as their heterosexual counterparts.³¹⁸

Studies based on convenience samples also indicate that many LGBT youth skip 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

³¹⁰ Sarah Brown & Karl Taylor, *Bullying, Education and Earnings: Evidence from the National Child Development Study*, 27 *ECONOMICS EDUC. REV.* 387 (2008).

³¹¹ Young Shin Kim & Bennett Leventhal, *Bullying and Suicide. A Review*, 20 *INT. J. ADOLESCENT MED. HEALTH* 133 (2008).

³¹² John Lynch & George Kaplan, *Socioeconomic Factors*, in *SOCIAL EPIDEMIOLOGY* 13 (Lisa F. Berkman & Ichiro Kawachi, eds., 2000).

³¹³ M.V. Lee Badgett, Sheila Nezhad, Kees Waaldijk & Yana van der Meulen Rodgers, *supra* note 245 at 26.

³¹⁴ See Section I.B., *supra*.

³¹⁵ Kann et al., *supra* note 27 at 172.

³¹⁶ The study defined LGB students as those students who reported in response to the survey that they had sexual contact with others of the same sex or had 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).

³¹⁷ *Id.*

³¹⁸ Kann et al., *supra* note 27 at 12.

than once a month.³¹⁹ The report also found that LGBT youth were almost twice as likely to consider dropping out of school as their non-LGBT peers.³²⁰ In response to the 2011 National Transgender Discrimination Survey, of those respondents who experienced verbal, physical, or sexual harassment at school, 14% said the harassment was so severe that they had to leave school as a result.³²¹ Other studies have found that bullying of LGBT youth is related to poorer academic performance and higher rates of absenteeism for these students.³²²

Overrepresentation in State Systems and Services

Challenging environments at home and at school contribute to an overrepresentation of LGBT youth in the child welfare system, the population of youth experiencing homelessness, and the juvenile justice system. In addition to the human toll, there are costs to government and social service systems created by the overrepresentation of LGBT youth in these systems.³²³

LGBT youth are overrepresented in the foster care system; 19% of youth in foster care in Los Angeles County are LGBT, two to three times their proportion of the general youth and young adult population.³²⁴ Research suggests that LGBT youth are more likely than non-LGBT youth to age out of the system.³²⁵ Of those who age out of foster care: more than one in five will experience homelessness after age 18; one in four 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% of all 25-year-olds); and at the age of 24, only half will be employed.³²⁶

³¹⁹ ROBERT KIM, NATIONAL EDUC. ASSN., 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>.

³²⁰ *Id.*

³²¹ NATIONAL CENTER FOR TRANSGENDER EQUALITY & NATIONAL GAY AND LESBIAN TASK FORCE, *supra* note 94.

³²² 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, GLESEN, SHARED DIFFERENCES: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS OF COLOR IN OUR NATION'S SCHOOLS (2009), <https://www.glsen.org/sites/default/files/Shared%20Differences.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, 2019); 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).

³²³ 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 BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS & SHEILA NEZHAD, WILLIAMS INST., SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES 41 (2014).

³²⁴ *Id.* at 6.

³²⁵ *Id.* (finding that LGBTQ youth in foster care have a higher total number of placements, are more likely to be in congregate care, and are more likely to have experienced homelessness).

³²⁶ 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.jimcaseyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief_EMBARGOED%20until%20May%206.pdf.

In response to surveys conducted in 2012 and 2015, homeless youth service providers across the U.S. estimated that between 20% and 40% of their clients were LGBT.³²⁷ A 2011 study of youth in Massachusetts found that approximately 25% of lesbian and gay youth, and 15% of bisexual youth, in public high schools were experiencing homelessness, compared to 3% of heterosexual youth.³²⁸ Similarly, a 2015 survey of youth in Atlanta, Georgia experiencing homelessness found that 28.2% of the respondents identified as LGBT.³²⁹

Data from the National Survey of Youth in Custody indicate that 12.2% of youth in custody identify as LGBT.³³⁰ Another study found that LGBT youth made up 15% of detained youth.³³¹ Research has shown that LGBT 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.³³² Other studies have shown that in some instances, LGBT youth have been punished for defending themselves against their harassers,³³³ and there is evidence of selective enforcement against LGBT youth.³³⁴

Collectively, school-based harassment and family rejection contribute to significant “welfare and Medicaid costs, the cost of incarceration, lost wages and other significant costs to individuals and to society.”³³⁵ For example, nationally, the Anne E. Casey Foundation estimates that homelessness, juvenile justice involvement, and poor educational and employment outcomes cost nearly \$8 billion per cohort of youth aging out of foster care each year.³³⁶ The best available data suggest that LGBT youth make up one-fifth, if not more, of each annual cohort.

³²⁷ LAURA DURSO & GARY J. GATES, WILLIAMS INST., *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., *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 323.

³²⁸ 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).

³²⁹ AYCNA 2016 Key Findings, Atlanta Youth Count, <http://atlantayouthcount.weebly.com/2016-key-findings.html> (last visited Nov. 29, 2016).

³³⁰ Allen J. Beck & David Cantor, Bureau of Justice Stats., U.S. Dep't of Justice, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012 at 20* (2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

³³¹ 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).

³³² Katayoon Majd, Jody Marksamer & Carolyn Reyes, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts 71* (2009), http://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf; 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>.

³³³ MAJD ET AL., *supra* note 332 at 77.

³³⁴ Katherine E. W. Himmelstein & Hannah Bruckner, *Criminal-Justice and School Sanctions against Non-Heterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49 (2011).

³³⁵ *Id.*

³³⁶ Annie E. Casey Foundation, *Cost Avoidance: The Business Case for Investing in Youth Aging out of Foster Care 5* (2013), <https://www.aecf.org/resources/cost-avoidance-the-business-case-for-investing-in-youth-aging-out-of-foster/>.

CONCLUSION

Virginia is home to an estimated 257,400 LGBT adults and 50,400 LGBT youth. LGBT people in Virginia lack important legal protections that have been extended in other states. For example, statewide statutes in Virginia do not explicitly prohibit discrimination based on sexual orientation or gender identity in areas such as employment, housing, and public accommodations. State laws in Virginia also fail to adequately protect LGBT students from bullying and harassment. In terms of social climate, Virginia ranks 23rd in the nation on public support for LGBT rights and acceptance of LGBT people.

Virginia's legal landscape and social climate contribute to an environment in which LGBT adults experience stigma and discrimination in employment and other areas, and LGBT youth experience bullying in schools and family rejection. Such experiences have a negative impact on LGBT individuals in terms of health and economic stability, which in turn have economic consequences for the state. If Virginia were to take steps toward a more supportive legal landscape, the state's economy would likely benefit.