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Employment and Housing Discrimination Based on Sexual Orientation and Gender Identity in Idaho



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Executive Summary

More than four percent of the American workforce identifies as lesbian, gay, bisexual, or transgender (LGBT). Approximately 32,000 LGBT people live in Idaho. Idaho does not have a statewide law that prohibits discrimination based on sexual orientation or gender identity in employment or housing.

This report summarizes evidence of sexual orientation and gender identity employment and housing discrimination, explains the limited current protections from sexual orientation and gender identity discrimination in Idaho, and estimates the administrative impact of passing a law prohibiting employment and housing discrimination based on these characteristics in Idaho.

Key findings of this report include:

- In total there are approximately 32,000 LGBT adults in Idaho, including over 20,700 who are part of the Idaho workforce.¹
- Local research documents that a number of Idaho employees and tenants have faced discrimination because of their sexual orientation or gender identity; these include reports from a retail worker, veterans and students.
- A 2003 survey of more than 2,000 Idahoans found that 16% of transgender respondents, 12% of gay and bisexual men, and 8% of gay and bisexual women were expressly told by their employer that they had been fired from a job, not promoted, or had not received compensation or a raise because of their sexual orientation or gender identity. More than half of the LGBT respondents felt that they had to hide or deny their sexual orientation or gender identity in the workplace.
- In 2008, a statewide survey conducted by Boise State University Public Policy found that 63% of Idahoans believed it should be illegal to fire an employee because they are perceived to be gay or lesbian, and a 2011 poll found that 81% of Idahoans believed it should be illegal to fire someone because they are lesbian, gay, bisexual or transgender.
- National surveys also confirm that discrimination against LGBT workers persists. Most recently, a 2013 Pew Research Center survey found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.
- As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity. Additionally, 19% reported being denied an apartment because of their transgender status.

- Disparities in wages are also a traditional way that discrimination has been measured. Census data show that in Idaho, the median income of men in same-sex couples is 25% lower than men in different sex marriages.
- Currently, seven localities in Idaho provide protection from sexual orientation and gender identity discrimination by local ordinance.
- Approximately 75% of Idahoans are not covered by a local ordinance that prohibits housing discrimination based on sexual orientation or gender identity, and 72% of Idaho's workforce is not covered by a local ordinance that prohibits employment discrimination based on sexual orientation or gender identity.
- Even Idahoans who live in localities with such local ordinances are not always as protected as they would be by state law. Some localities have greater investigatory and enforcement capacities than others, and none have a fully funded human rights commission like the statewide agency.
- Many of the state's top employers have internal corporate policies prohibiting sexual orientation discrimination, including three Fortune 1000 companies and eight of Idaho's top ten employers.
- Adding sexual orientation and gender identity to the state's current non-discrimination law would result in approximately 10 additional complaints of employment discrimination being filed with the Idaho Commission on Human Rights each year.
- Enforcing complaints of sexual orientation or gender identity employment discrimination is likely to have no impact or a negligible impact on the state budget. Estimates that include the highest possible figures indicate that the additional complaints could cost up to \$22,000 annually; which represents 2.2% of the Idaho Commission on Human Rights' budget in fiscal year 2013.

Evidence of Discrimination

Survey Data and Specific Examples of Sexual Orientation and Gender Identity Discrimination in Idaho

Research shows the existence of widespread and continuing employment and housing discrimination against LGBT people in the U.S. In response to surveys, LGBT workers consistently report having experienced discrimination, and non-LGBT people often report having witnessed discrimination against their LGBT co-workers. For example, a national survey conducted by Pew Research Center in 2013 found that 21% of LGBT respondents had been treated unfairly by an employer in hiring, pay, or promotions.² Additionally, the nationally representative 2008 General Social Survey found that 37% of gay men and lesbians had experienced workplace harassment in the last five years, and 12% had lost a job because of their sexual orientation.³ In June 2013, the U.S. Department of Housing and Urban Development released data from a national study which showed that gay and lesbian couples are significantly less likely to receive a response from a housing provider than similar heterosexual couples.⁴

As recently as 2010, 78% of respondents to the largest survey of transgender people to date reported having experienced harassment or mistreatment at work, and 47% reported having been discriminated against in hiring, promotion, or job retention because of their gender identity.⁵ Additionally, 19% reported being denied an apartment because of their transgender status.⁶

A 2003 survey of more than 2,000 Idahoans revealed that more than half of the LGBT respondents felt they had been expected to deny or hide their sexual orientation or gender identity at work.⁷ Of those, almost 60% had been explicitly asked by employers to do so.⁸ Almost a quarter of those surveyed reported that they believed they had been fired from a job, not promoted, or not received compensation or a raise as a result of anti-gay attitudes in their workplace, and 16.3% of transgender respondents, 12% of gay and bisexual men, and 7.6% of gay and bisexual women were expressly told by their employer that their sexual orientation or gender identity had led to such a result.⁹

In 2008, a statewide survey conducted by Boise State University Public Policy found that 63% of Idahoans believed it should be illegal to fire an employee because they are perceived to be gay or lesbian,¹⁰ and a 2011 poll found that 81% of Idahoans believed it should be illegal to fire someone because they are lesbian, gay, bisexual or transgender.¹¹

Campus climate surveys from Idaho universities also reflect negative attitudes that can result in discrimination against LGBT people. A 2005 survey at Boise State University, the largest campus in the state, found that LGBT students were “much more likely to agree that they ha[d] been harassed because of those characteristics or affiliations. Though the numbers were small, transgender individuals were most likely to agree that they had been harassed or intimidated due to gender.”¹² In fact, 25.9% of non-heterosexual respondents and 60% of transgender respondents reported being harassed because of their sexual orientation or gender identity.¹³ Additionally, 40% of transgender respondents and 11.9% of non-heterosexual respondents disagreed with the statement “I have received fair and equal treatment at Boise State.”¹⁴ These were the highest percentages reporting harassment or unequal treatment for any individual demographic category.¹⁵

Discrimination against LGBT people in employment and housing has also been documented in court cases, state and local administrative complaints, complaints to community-based organizations, academic journals, newspapers, books, and other media. Additionally, a number of federal, state, and local administrative agencies and legislative bodies have acknowledged that LGBT people have faced widespread discrimination in these areas.¹⁶

Formal documentation of individual incidents of discrimination in Idaho is rare, in part due to fear of backlash. In 2013, at a joint meeting of the House and Senate State Affairs Committees, the administrator of the Idaho Commission on Human Rights stated that approximately 21 people had contacted the Commission regarding discrimination based on sexual orientation or gender identity since they began collecting that information in 2009-2010.¹⁷ However, 16 of those people failed to file a complaint for fear of reprisal.¹⁸ In April, 2013, a closeted lesbian grandmother outed herself at a Pocatello City Council meeting, where local residents were debating whether to pass a local non-

discrimination ordinance that was inclusive of sexual orientation and gender identity.¹⁹ By the time she went to her car at the end of the meeting, she found \$700 worth of vandalism on her car tires.²⁰

The fear of being outed and can impact people's daily lives, creating persistent anxiety and fear. A gay man from Idaho wrote anonymously about his fear of losing his job if his employer found out about his sexual orientation:

My employer does not know. I most certainly will lose my job if he finds out. He is very outspoken about his feelings towards 'homos.' I solely support my family. I live in a state of constant panic. I am a dedicated, hardworking employee and I deserve to be employed. My boss wouldn't agree. The other day a soccer mom in our neighborhood called me a faggot in front of my children. How long will it be before it is common knowledge? How much longer will I be employed?²¹

One partner in a same-sex couple in Idaho wrote of the "elaborate rituals and rules" that the couple follows to keep their relationship a secret from their landlord who has expressed her belief that "homosexuals are not people and don't deserve civil and human rights":²²

[W]e do not hold hands in public if we are within 100 miles of our address in case our landlord or her friends or family see us. We have to be extremely careful who we tell. We must have an elaborate vetting system for potential friends because we don't want our relationship status to get back to our landlord. All of our friends are told that they can't "out" us or we'll be evicted. Finally, and most painfully, we must have separate bedrooms in our apartment in case our landlord comes to do maintenance.²³

Several recent instances of employment and housing discrimination against LGBT people in Idaho have been documented in the media, city council testimony and reports to local human rights officials:

- In 2013, a transgender police officer transitioned from male to female on the job. In a meeting with her sheriff, he told her that he had contacted some state administrators regarding her transition. The sheriff stated that several administrators said that they would have fired her on the spot, regardless of potential legal consequences. They stated that they would rather "pay out than deal with [her]."²⁴
- In 2012, a third generation Idahoan reported at a city council meeting that he had been denied employment because of his sexual orientation. After two weeks of successful job interviews and on-site visits with an Idaho business, he was told that he had only a final meet and greet with the company owner as a formality. At the end of the meeting, which had gone well for over an hour, the company owner began asking questions about the applicant's personal and family life, such as whether he had met and married his wife while he was a student. When the applicant replied that he was not married, the owner pressed on, asking why he had stated that he returned to Idaho for family. While the applicant tried to explain without disclosing his sexual

orientation, the meeting promptly ended. The next day, he was called and told he was not the right fit for the company.²⁵

- In 2012, a pastor reported that a young adult told him that he was fired from his retail job because of his sexual orientation. The man stated that he did not know how his employer found out that he was gay, but one morning, when he arrived for work, his employer called him a “fucking fag” and demanded that he leave the store before he “kicked his ass.” The man never received his final paycheck.²⁶
- The same pastor reported that a young college student came to her for help. She was renting an apartment in a house near the college. She had only been there approximately three months. The landlord, who did not live on the premises, came to her apartment one night, around 10 p.m. When he arrived, he was very agitated and used his key to enter without knocking. He asked her if she was a lesbian, did not wait for an answer, and told her if she was not out of the apartment by the next night he would throw her belongings out in the street. Out of fear, the student left and moved in with friends.²⁷
- In 2012, a gay man reported that he was fired from a job where he had been excelling because of his sexual orientation. He stated that he had been commended for his work performance, but after six months of employment, his boss learned of his sexual orientation. When his employer confronted him and asked his sexual orientation, the worker truthfully stated that he was gay. His employer fired him on the spot and told him to never contact him or put him down as a reference.²⁸
- In 2012, a business owner reported that when seeking new sales associates for a retail location, a store manager sent a resume that “sounded great” to the owner. However, the store manager warned the owner that the applicant was a gay man in case the owner “might have an issue with it.”²⁹
- In 2012 a former fast food chain manager and veteran applied for a job at the same fast food chain in Idaho. She was rejected from the job and later told by a friend who worked there that it was because she had short hair and dressed in masculine clothing. She then found work assisting people with disabilities, but after being attacked by one client because of her sexual orientation and harassed by another, she felt forced to resign. When returning to seek work at another fast food restaurant, she was told by the manager that they were not hiring, even though another restaurant worker contradicted the manager, and the restaurant marquee stated that they were hiring.³⁰
- In March of 2011, a woman’s girlfriend moved into her apartment with her. When she told the landlord that she then had a roommate, the landlord had no problem with it. However, when he found out on the first of August that they were a couple, their rent increased to the point that the apartment was no longer affordable and they were forced to move. In talking to neighbors, it became apparent that they were the only tenants whose rent had been raised.³¹

- In 2010, a lesbian veteran was fired from her job at a credit union. When she asked the management why she was fired, they stated, “Because we heard rumors, and we can.” She stated that two years later, she had still not found a well-paying job.³²
- In 2010, a federal judge allowed a gay prisoner’s claim of a violation of his constitutional rights under the Equal Protection Clause to move forward in court.³³ The prisoner worked in a decal print shop, where he claimed that his supervisor repeatedly harassed him, printing name tags for him with female names and cutting out pictures of men and putting them on his coffee cup.³⁴ The worker claimed that the harassment was so pervasive that he took a different job to avoid it, which he later had to leave due to back problems.³⁵

Wage Inequity

Census data show that men in same-sex couples in Idaho earn less than men married to different-sex partners. On average, men in same-sex couples in Idaho earn \$28,448 each year, significantly less than the \$39,698 for men married to different-sex partners.³⁶ The median income of men in same-sex couples in Idaho is \$24,000, or 25% less than that of married men (\$32,000).³⁷ Men with same-sex partners earn lower wages, despite the fact that they are more likely to have a college degree than men married to different-sex partners,³⁸ a comparison that supports the possibility that people in same-sex couples are not treated equally by employers. A 2009 study indicated that the wage gap for gay men is smaller in states that implement non-discrimination laws, suggesting that such laws reduce discrimination against LGBT people.³⁹

Women in same-sex couples in Idaho earn an average of \$41,379 per year (with a median of \$37,500), which is more than married women, whose earnings average \$ 19,364 (with a median of \$16,000).⁴⁰

These findings are not unique to Idaho. Analyses of national data consistently find that men in same-sex couples and gay men earn 10-32% less than similarly qualified men who are married to different-sex partners, or men who identify as heterosexual.⁴¹ Surveys of transgender people find that they have high rates of unemployment and very low earnings.⁴²

Current Protections from Discrimination

Idaho does not have a statewide law that prohibits discrimination based on sexual orientation and/or gender identity in private employment.⁴³ Advocates have worked to pass such a law in the Idaho legislature for the past eight legislative sessions.⁴⁴ Proposed bills were introduced in senate committees in 2008⁴⁵ and 2011.⁴⁶ However, before a proposed bill can be printed, a committee must vote to print the bill (in what is known as a print hearing) in order to hold a committee hearing on that bill. In the committee hearing, the committee must then vote to move the bill to the floor to be discussed and voted on by the Senate as a whole. Both bills were denied passage in their print hearings, preventing their printing or larger consideration.⁴⁷ Through these bills, the Idaho Legislature sought to prohibit employment discrimination based on sexual orientation and gender identity and expression by adding

the characteristics to its existing employment discrimination statute, the Idaho Human Rights Act (IHRA).⁴⁸

The Idaho Human Rights Act

Currently, the Idaho Human Rights Act (IHRA) prohibits employment discrimination by any employer with five or more employees⁴⁹ on the basis of race, color, religion, sex, national origin, disability or age (40 or older).⁵⁰ The law applies to both public sector and private sector employers.⁵¹ The IHRA also prohibits discrimination in the rental or sale of property as well as in the provision of housing loans.⁵²

The IHRA exempts religious corporations, associations or societies from coverage to the extent that such organizations may give employment preference to “individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities.”⁵³ It also allows “a religious educational institution or an educational organization to limit employment or give preference to members of the same religion.”⁵⁴

The Idaho Commission on Human Rights enforces the IHRA. The Commission has the power to intake, investigate, and act on complaints of employment, housing, public accommodations and education discrimination, and to study and report on discrimination statewide.⁵⁵ An employee must file a complaint with the Commission within one year after the discriminatory practice occurred.⁵⁶

In 2013, the Idaho Commission on Human Rights received 463 new complaints of employment and housing discrimination, and resolved 468 cases.⁵⁷ The Commission also does intake and investigations regarding claims of discrimination in public accommodations, but these cases were not included in the final numbers reported.⁵⁸

Local-Level and Private Protections from Discrimination

Seven localities in Idaho explicitly prohibit discrimination in housing and private employment based on sexual orientation and gender identity by local ordinance. They are: the cities of Boise,⁵⁹ Coeur d’Alene,⁶⁰ Idaho Falls,⁶¹ Ketchum,⁶² Moscow,⁶³ Pocatello⁶⁴ and Sandpoint.⁶⁵ Approximately 72% of Idaho’s workforce is not covered by a local ordinance that prohibits private employment discrimination based on sexual orientation and gender identity, and approximately 75% of Idaho’s population is not covered by a local ordinance that prohibits housing discrimination based on sexual orientation and gender identity.⁶⁶ Two cities in Idaho prohibit discrimination based on sexual orientation alone in their city hiring policies: Lewiston and Twin Falls.⁶⁷

Even within localities that have laws that prohibit discrimination based on sexual orientation and gender identity, the enforcement mechanisms and capacities vary and are generally not as well-resourced as the Idaho State Commission on Human Rights. For example, some localities use their local police departments and city attorneys’ offices to enforce their local non-discrimination ordinances.⁶⁸ While these are powerful bodies with strong enforcement powers, there may be hesitation or fear from people in the LGBT community to file a complaint with the police, because of a history of police

harassment and abuse within the LGBT community.⁶⁹ Other localities have volunteer-run Human Relations Review Boards established through their ordinances, but the size and actual development of the boards has also varied from place to place.⁷⁰ On the other hand, the Idaho Commission on Human Rights has 10 full-time staff members at their disposal to review and investigate complaints and enforce the state non-discrimination law.⁷¹ In addition to the concerns about localities' enforcement capacity, local ordinances may potentially be subject to legal challenges.⁷²

Private Company Non-Discrimination Policies

Private companies adopt internal policies prohibiting discrimination based on sexual orientation and gender identity for a variety of reasons including improved recruitment and retention of talented employees, increasing employee productivity and customer satisfaction, and attracting a larger customer base.⁷³ One study of corporate motivations behind adopting workplace non-discrimination policies found that 53% of the top companies in the U.S. with LGBT-supportive policies had adopted the policies for economic reasons.⁷⁴

Academic research has found that LGBT-supportive corporate policies are linked to positive business-related outcomes, including greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.⁷⁵ For example, a 2006 national poll found that 89% of LGBT respondents and 72% of non-LGBT respondents reported that when deciding where to work, it was important that an employer have a written non-discrimination policy that includes race, ethnicity, sex, religion, age, sexual orientation and disability.⁷⁶ Research also suggests that employers limit their available talent pool by screening out applicants based on their sexual orientation. One study found that the rate of screening out gay male applicants was twice as high in regions without sexual orientation non-discrimination laws.⁷⁷

Idahoans have reported on circumstances where a lack of legal protections based on sexual orientation and gender identity have driven business opportunities and talented workers from the state:

- A heterosexual Idahoan reported that a high-tech business development investment broker and professional engineer from Connecticut came to Idaho in search of a vacation home. He would have brought with him opportunities to connect to finance and investment for local start-up and technology firms. However, when the man came to visit, he witnessed several homophobic newspaper articles and incidents. He questioned whether Idaho would be a safe place for his family, particularly his gay son, and he chose not to purchase real estate in Idaho.⁷⁸
- A local gay Idahoan reported that recently after college, he began working for a small web company. He reported that, even though his co-workers did not know his sexual orientation, there was an environment of homophobia and hostility to people who were not homophobic, including "fag" jokes and calling those who voted for Democrats "fag-enablers." When the man could no longer handle working at the company, he moved to a state where he could feel safe in the workplace.⁷⁹

- The mother of a gay man reported that her son was top of his high school class, an Eagle Scout and graduated in the top ten of his college class at Boise State University. He had a great job and was on the road to a good career, but he chose to move to a state with non-discrimination laws that included sexual orientation and gender identity for his own protection.⁸⁰

Additionally, LGBT-supportive workplace policies can expand opportunities to secure potentially lucrative government contracts for corporate employers. A 2011 study found that 68 local governments had laws requiring contractors to have LGBT-inclusive non-discrimination policies.⁸¹ A number of states have similar laws that apply to state government contracts.⁸² Without such policies, companies would not be eligible to bid for contracts with these state and local governments.

Some of Idaho's top companies and employers have adopted internal corporate policies that prohibit sexual orientation and gender identity discrimination. According to the Human Rights Campaign, at least five companies headquartered in Idaho prohibit discrimination based on sexual orientation, including three Fortune 1000 companies: Micron Technology Inc., Boise Cascade Holdings LLC and Boise Inc.⁸³ Eight of Idaho's top ten employers, as ranked by a *StateImpact* analysis of Idaho Department of Labor data⁸⁴ have non-discrimination policies that explicitly include sexual orientation: St. Luke's Health Systems,⁸⁵ Walmart Stores Inc.,⁸⁶ Micron Technology,⁸⁷ University of Idaho,⁸⁸ Meridian Joint School District #2,⁸⁹ Batelle Energy Alliance,⁹⁰ Boise State University⁹¹ and Albertson's/Supervalu.⁹² St. Luke's, Walmart and the University of Idaho also include gender identity in their non-discrimination policies.⁹³

Administrative Impact

Estimate of Employment Discrimination Complaints

Despite the persistence and pervasiveness of employment discrimination against LGBT people, studies show that enforcing sexual orientation and gender identity provisions in non-discrimination laws has only a minimal burden on state agencies. Complaints of sexual orientation discrimination are filed by LGBT people at approximately the same rate as complaints of race and sex discrimination are filed by people of color and women, respectively.⁹⁴ However, because the LGBT population is so small, the absolute number of sexual orientation and gender identity complaints filed under state non-discrimination laws is very low.⁹⁵

We estimate that approximately 10 complaints of sexual orientation or gender identity employment discrimination would be filed with the Idaho Commission on Human Rights each year. To reach this estimate, we drew on Gallup polling data and Census data from Idaho to estimate the size of the LGBT workforce in the state, and applied a national sexual orientation and gender identity complaint rate to that population. We have previously used this methodology to estimate the number of complaints that would be filed on the basis of sexual orientation and gender identity in other states, including Missouri, Ohio, Pennsylvania, South Carolina, Texas, Utah, and West Virginia.⁹⁶

Results from a 2012 Gallup poll show that 2.7% of people in Idaho identify as LGBT.⁹⁷ Applying this percentage to the number of people in Idaho’s workforce (767,626⁹⁸) indicates that there are 20,726 LGBT workers in Idaho.

Next, we applied the rate of complaints filed on the basis of sexual orientation or gender identity to the number of LGBT workers in Idaho to determine how many complaints will be filed annually if these characteristics are added to the employment non-discrimination law. We used the national average complaint rate from a 2008 study that analyzed administrative complaint data from 17 states that prohibited sexual orientation discrimination at that time.⁹⁹ The study found that across these states, the average rate of complaints filed on the basis of sexual orientation was 4.7 per 10,000 LGB workers.¹⁰⁰ There is not sufficient data to make a similar calculation of the average rate of complaints filed on the basis of gender identity.¹⁰¹ Therefore, we assume that this rate is also 4.7 per 10,000 transgender workers.

Applying the national complaint rate (4.7 per 10,000 LGBT workers) to the number of LGBT workers in Idaho (20,726) suggests that 10 complaints of sexual orientation and gender identity discrimination would be filed annually if these characteristics were added to the state’s employment non-discrimination law.

Cost of Enforcement

Using Information from the most recent Idaho Commission on Human Rights Annual Report,¹⁰² we can estimate the cost associated with handling the additional 10 complaints that would be filed if sexual orientation and gender identity were added to the Idaho Human Rights Act.

In fiscal year 2013, the Idaho Commission on Human Rights launched investigations of 463 illegal discrimination complaints.¹⁰³ That year, the Commission had a budget of \$1,021,800.¹⁰⁴ Dividing the Commission’s budget by the number of complaints received suggests that enforcement costs an average of \$2,207 per complaint filed. Based on this assumption, if 10 complaints of sexual orientation or gender identity discrimination were filed each year, it would cost the state approximately \$22,070, or 2.2% of its current budget, to enforce them.

This estimate is likely to be conservatively high. Annual fluctuations in the number of complaints filed with the Commission have been greater than 10. From fiscal year 2010 to fiscal year 2013, the number of complaints filed from year to year varied by 35, on average. There was no corresponding impact on the Commission’s budget. This information suggests that the additional complaints could be absorbed into the existing budget with no noticeable impact on the budget.

Fiscal Year	Number of Complaints Handled ¹⁰⁵	Budget ¹⁰⁶
2010	480	\$882,500
2011	524	\$832,900
2012	491	\$799,200
2013	463	\$1,021,800

Conclusion

Documented evidence shows that LGBT people face employment and housing discrimination across the country, including in Idaho. There is currently no law that prohibits employment or housing discrimination based on sexual orientation or gender identity in Idaho. Adding these characteristics to the Idaho Human Rights Act would provide protection from discrimination to approximately 32,000 LGBT adults in the state. Based on data from other state administrative enforcement agencies, we estimate that approximately 10 complaints of sexual orientation or gender identity employment discrimination would be filed in Idaho annually if the law were amended. A conservatively high estimate based on data from the Idaho Commission on Human Rights suggests that it would cost the state approximately \$22,000 to enforce these complaints each year; which represents 2.2% of the Commission's budget in fiscal year 2013. This amount represents a small percentage of the Commission's budget; and given fluctuations in the annual budget and the number of complaints filed, it is likely that 10 additional complaints would have no noticeable impact on the Commission's budget.

About the Williams Institute

The Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy at UCLA School of Law advances law and public policy through rigorous, independent research and scholarship, and disseminates its work through a variety of education programs and media to judges, legislators, lawyers, other policymakers and the public. These studies can be accessed at the Williams Institute website.

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Endnotes

¹ These estimates were reached by applying the percentage of people in Idaho that are LGBT (2.7%) to the population of Idaho aged 16 years and older (1,188,341) and the number of people in the Idaho labor force (767,626), respectively. Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>; *American Community Survey, 2008-2012 ACS Table DP03: Selected Economic Characteristics, 5-Year Estimates*, U.S. CENSUS BUREAU, AMERICAN FACTFINDER, available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_5YR_DP03.

² *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times*, PEW RESEARCH CENTER, June 13, 2013, <http://www.pewsocialtrends.org/2013/06/13/a-survey-of-lgbt-americans/>.

³ 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>.

⁴ SAMANTAN FRIEDMAN ET AL., AN ESTIMATE OF HOUSING DISCRIMINATION AGAINST SAME-SEX COUPLES 14; 15-26 (Dep't Hous. & Urban Dev. June 2013), available at http://www.huduser.org/publications/pdf/Hsg_Disc_against_SameSexCpls.pdf.

⁵ JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN, & MARA KEISLING, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 51 (2011), http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

⁶ *Id.* at 113.

⁷ IDAHO LESBIAN, GAY, BISEXUAL, AND TRANSGENDER SURVEY (2003), available at <http://www.safeschoolscoalition.org/Nicole-SURVEYREPORT-%20final.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ SOC. SCI. RESEARCH CTR., BOISE STATE UNIV., 18TH ANNUAL IDAHO PUBLIC POLICY SURVEY, 17, 2008, available at <http://sspa.boisestate.edu/pprc/files/2010/05/2008-annualsurvey19.pdf?file=2010/05/2008-annualsurvey19.pdf>.

¹¹ ACLU OF IDAHO FOUNDATION, HUMAN RIGHTS CITY ORDINANCES FACT SHEET 1 (2012), available at <http://acluidaho.org/wpsite/wp-content/uploads/2013/01/Fact-Sheet-Human-Rights-City-Ordinances.pdf>.

¹² BOISE STATE UNIV., CAMPUS CLIMATE SURVEY STUDENT RESULTS SUMMARY 4, 2006, available at <http://academics.boisestate.edu/provost/files/2009/01/report-students.pdf>.

¹³ *Id.* at 5.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 5, 7.

¹⁶ SEARS & MALLORY, *supra* note 3.

¹⁷ *Presentation to the Joint Senate and House State Affairs Committees on Adding Language to the Idaho Human Rights Act Before the J. S. State Affairs Comm. and H. State Affairs Comm.*, 2013 Leg., 62nd Sess., 3 (Idaho 2013) (statement of Pamela Parks, Administrator of the Idaho Human Rights Comm'n), available at <http://legislature.idaho.gov/sessioninfo/2013/standingcommittees/sstafmin.pdf#page=155>.

¹⁸ *Id.*

¹⁹ Carissa Wolfe, *The Patchwork Rainbow: Spotty Laws Mean Hidden Lives for Idaho's LGBT Community: Five Communities Now Have Anti-Discrimination Ordinances*, BOISE WEEKLY (June 12, 2013), available at <http://www.boiseweekly.com/boise/the-patchwork-rainbow-spotty-laws-mean-hidden-lives-for-idahos-lgbt-community/Content?oid=2880639>.

²⁰ *Id.*

²¹ CITY OF POCA TELLO HUMAN RELATIONS ADVISORY COMMITTEE, NON-DISCRIMINATION ORDINANCE FINDINGS ADDENDUM FOR THE CITY COUNCIL STUDY SESSION 1 (Oct. 11, 2012) (on file with the author).

²² *Id.* at 7.

²³ *Id.*

²⁴ E-mail from Danielle Lundgren, Detective, Sheriff's Office in E. Idaho, to Amira Hasenbush, Jim Kepner Law and Policy Fellow, The Williams Inst. Univ. of Cal. L.A. Sch. of Law (May 4, 2014, 10:14 PM PST) (on file with author).

²⁵ Boise City Council Video Archive, *November 13, 2012 Regularly Scheduled City Council Meeting*, CITY OF BOISE CITY CLERK, 2:32, <http://cityclerk.cityofboise.org/city-council-meetings/council-video-archive/> (last visited Apr. 4, 2014).

²⁶ CITY OF POCA TELLO HUMAN RELATIONS ADVISORY COMMITTEE, *supra* note 21 at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 5.

³⁰ *Id.* at 6.

³¹ *Id.* at 4.

³² Boise City Council Video Archive, *supra* note 25 at 2:54.

³³ *Mintun v. Peterson*, No. CV06-447-S-BLW, 2010 WL 1338148 at *15 (D. Idaho Mar. 30, 2010).

³⁴ *Id.* at *14.

³⁵ *Id.*

³⁶ ADAM P. ROMERO, CLIFFORD J. ROSKY, M.V. LEE BADGETT & GARY GATES, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, CENSUS SNAPSHOT: IDAHO 2 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/IdahoCensus2000Snapshot.pdf>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ GARY J. GATES, CAL. CTR. 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>.

⁴⁰ ROMERO ET AL., *supra* note 36 at 2.

⁴¹ M.V. Lee Badgett, Holning Lau, Brad Sears & Deborah Ho, *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination 1998-2008*, 84 CHI.-KENT L. REV. 559, 559-60 (2009).

⁴² *Id.*

⁴³ See JEROME HUNT, CTR. AM. PROG. ACTION FUND, A STATE-BY-STATE EXAMINATION OF NONDISCRIMINATION LAWS AND POLICIES 3 (June 2012), available at http://www.americanprogress.org/issues/2012/06/pdf/state_nondiscrimination.pdf.

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- ⁴⁴ *What is Add the Words*, ADD THE WORDS <http://www.addthewords.org/#!about/aboutPage> (last visited May 2, 2014).
- ⁴⁵ S.B. 1323, 59th Leg., 2nd Reg. Sess. (Idaho 2008).
- ⁴⁶ S.B. 1033, 61st Leg., 1st Reg. Sess. (Idaho 2011).
- ⁴⁷ E-mail from Jessica McCafferty, LGBT Equality Fellow, ACLU of Idaho, to Amira Hasenbush, Jim Kepner Law and Policy Fellow, The Williams Inst. Univ. of Cal. L.A. Sch. of Law (May 8, 2014, 2:38 PM PST) (on file with author).
- ⁴⁸ IDAHO CODE ANN. §§ 67-5901 et seq. (West 2005).
- ⁴⁹ IDAHO CODE ANN. § 67-5902(6) (West 2005).
- ⁵⁰ IDAHO CODE ANN. § 67-5901 (West 2005).
- ⁵¹ IDAHO CODE ANN. § 67-5902(6)(b) (West 2005).
- ⁵² IDAHO CODE ANN. § 67-5909 (West 2005).
- ⁵³ IDAHO CODE ANN. § 67-5910(1) (West 2005).
- ⁵⁴ IDAHO CODE ANN. § 67-5910(2)(c) (West 2005).
- ⁵⁵ IDAHO CODE ANN. § 67-5906 (West 2005).
- ⁵⁶ IDAHO CODE ANN. § 67-5907 (West 2010).
- ⁵⁷ IDAHO HUMAN RIGHTS COMM'N, FY 2013 STATISTIC MEASURES, 1 (2014).
- ⁵⁸ *Id.*
- ⁵⁹ BOISE, IDAHO, CODE § 6-02-03 (2012).
- ⁶⁰ COEUR D'ALENE, IDAHO, CODE § 9.56.030 (2013).
- ⁶¹ IDAHO FALLS, IDAHO, CODE § 5-11-3 (2013).
- ⁶² KETCHUM, IDAHO, CODE § 9.24.030 (2013).
- ⁶³ MOSCOW, IDAHO, CODE § 10-19-3 (2013).
- ⁶⁴ POCATELLO, IDAHO, CODE § 9.36.030 (2013). There is currently a referendum on the May, 2014 ballot to repeal the Pocatello non-discrimination ordinance. *Referendum/Bond/Levy Sample Ballot*, OFFICIAL BANNOCK COUNTY PRIMARY ELECTION, <http://www.co.bannock.id.us/elections/REFERENDUM.pdf> (last visited May 5, 2014).
- ⁶⁵ SANDPOINT, IDAHO, CODE § 5-2-10-3 (2011).
- ⁶⁶ Calculated by authors using data from the *American Community Survey, 2011 1-Year-Estimates & 5-Year-Estimates Tables*, U.S. CENSUS BUREAU, AMERICAN FACTFINDER, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited April 7, 2014).
- ⁶⁷ *Legislative*, LESBIAN AND GAY LAW NOTES 42 (Feb., 2013), available at http://www.nyls.edu/documents/justice-action-center/lesbiangay_law_notes/lgln-02-2013.pdf.
- ⁶⁸ These localities include Boise, Couer d'Alene, Idaho Falls and Pocatello. Telephone interview with Elizabeth Koeckeritz, Assistant City Attorney, City of Boise (May 7, 2014); telephone Interview with Kootenai County Task Force on Human Relations (May 6, 2014); telephone Interview with Idaho Falls City Attorney (May 6, 2014); E-mail from Susan Matsuura, Board of Directors Member, Pride Foundation, to Amira Hasenbush, Jim Kepner Law and Policy Fellow, The Williams Inst. Univ. of Cal. L.A. Sch. of Law (May 6, 2014, 12:23 PM PST) (on file with author).

⁶⁹ See generally GRANT ET AL., *supra* note 5 at 158-173; NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE VIOLENCE IN 2012 38 (2013), http://www.avp.org/storage/documents/ncavp_2012_hvreport_final.pdf; FRANK H. GALVAN & MOHSEN BAZARGAN, INTERACTIONS OF LATINA TRANSGENDER WOMEN WITH LAW ENFORCEMENT 1-2 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>; AMNESTY INT'L U.S., STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. (2005), available at <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/17385cd5-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.html>; KATAYOON MAJD, JODY MARKSAMER & CAROLYN REYES, HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 61-62 (2009), http://www.equityproject.org/pdfs/hidden_injustice.pdf.

⁷⁰ Ketchum and Sandpoint established Human Relations Review Boards in their non-discrimination ordinances. KETCHUM, IDAHO, CODE § 9.24.050 (2013); SANDPOINT, IDAHO, CODE § 5-2-10-5 (2011). However, Ketchum's has not yet been set up, and Sandpoint's City Clerk's office stated that the only way to reach their Human Relations Review Board was through the City Clerk's office. Telephone Interview with Ketchum City Clerk's Office (May 6, 2014); Telephone Interview with Sandpoint City Clerk's Office (May 6, 2014). On the other hand, Moscow has a well-developed and easy to find website for complainants to use. See *Human Rights Commission*, CITY OF MOSCOW, <https://www.ci.moscow.id.us/commissions/Pages/human-rights.aspx> (last visited May 6, 2014).

⁷¹ IDAHO HUMAN RIGHTS COMM'N, *supra* note 57 at 1.

⁷² A local ordinance's vulnerability may depend upon the state's interpretation of the power of localities to legislate. Many states follow Dillon's Rule, which holds that a locality's powers are limited to those expressly granted by the state, implied by those powers granted or indispensable to the locality's purposes. In those states, unless there has been a clear grant of authority through the state constitution or by the state legislature, local non-discrimination ordinances may be found to have extended beyond the locality's legislative power. On the other hand, other states follow Home Rule, which grants localities legislative authority "as broad as the police power of the state, except as that power may be restricted by terms of the grant or by the state constitution." *D.C. v. John R. Thompson Co.*, 346 U.S. 100, 109 (1953). In states that follow Home Rule, unless there is an explicit restriction against localities establishing local non-discrimination ordinances, each locality will have the authority to establish broad non-discrimination ordinances as they see fit. Many states follow a combination of Dillon's Rule and Home Rule. In those states, the default rule is Dillon's Rule, limiting the power of localities; however, the state may also authorize localities to write their own Home Rule charters, which will then allow those localities to have the same broad police powers that the state does, limited only by the restraints that the locality places upon itself in their charter.

Idaho follows Dillon's rule. *Caesar v. State*, 610 P.2d 517, 519 (1980). However, the state Constitution grants any county or incorporated city or town the right to make and enforce "all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." IDAHO CONST. art. XII, § 2. The only other limitation on such laws is that they "must not be unreasonable or arbitrary." *Plummer v. City of Fruitland*, 87 P.3d 297, 300 (2004). While a non-discrimination ordinance may not be in conflict with the state's general laws, a 2008 news article reported that the state attorney general's office issued a non-binding opinion that Moscow's extension of domestic partner benefits to city employees was a violation of the state constitution, which bans same-sex marriage, domestic partnerships and civil unions. The opinion is not available on the attorney general's website. Heath Druzin, *AG Says Moscow Violating Idaho Law*, IDAHO STATESMAN, Feb. 13, 2008, at Main 3.

⁷³ See BRAD SEARS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, ECONOMIC MOTIVES FOR ADOPTING LGBT-RELATED WORKPLACE POLICIES (2011), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

⁷⁴ *Id.*

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- ⁷⁵ M.V. LEE BADGETT, LAURA E. DURSO, ANGELIKI KASTANIS & CHRISTY MALLORY, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, THE BUSINESS IMPACT OF LGBT-SUPPORTIVE WORKPLACE POLICIES (2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf>.
- ⁷⁶ Out & Equal, Harris Interactive & Witeck Combs Commc'n, *Majority of Americans: Companies Not Government Should Decide Benefits Offered to Same-Sex Employees*, OUTANDEQUAL.ORG (May 22, 2006), http://outandequal.org/documents/2006_Workplace_Survey052306.pdf.
- ⁷⁷ Andras Tilcsik, *Pride and Prejudice: Employment Discrimination against Openly Gay Men in the United States*, 117 AM. J. SOC. 586, 590-93 (2011).
- ⁷⁸ CITY OF POCATELLO HUMAN RELATIONS ADVISORY COMMITTEE, *supra* note 21 at 1.
- ⁷⁹ *Id.* at 3.
- ⁸⁰ *Id.*
- ⁸¹ Christy Mallory & Brad Sears, *An Evaluation of Local Laws Requiring Government Contractors to Adopt LGBT-Related Workplace Policies*, 5 ALBANY GOV'T L. REV. 478, 481 (2011).
- ⁸² For example, California (CAL. GOV. CODE § 12990 (2013)), Delaware (DEL. CODE ANN. tit., 29 § 6962(d)(7) (2013)), and Maryland (MD. CODE ANN., STATE FIN. & PROC. § 19-101 (LexisNexis 2013)), among others.
- ⁸³ Human Rights Campaign, Corporate Employer Database, http://asp.hrc.org/issues/workplace/search.asp?form=private_detailed_search.aspx (last visited May 6, 2014) (search for Headquarters State: Idaho; Key Policies: Sexual Orientation in Non-discrimination Policy; and Includes Policy: Yes).
- ⁸⁴ Jessica Pupovac, *Where the Jobs Are (and Aren't) in Idaho*, STATEIMPACT, JAN. 31, 2012, <http://stateimpact.npr.org/idaho/2012/01/31/where-the-jobs-are-and-arent-in-idaho/>.
- ⁸⁵ *Non-discrimination Statement*, ST LUKE'S HEALTH SYSTEM, http://www.stlukesonline.org/about_us/nondiscrimination.php (last visited May 6, 2014).
- ⁸⁶ *Non-Discrimination*, WALMART ETHICS, <http://ethics.walmartstores.com/IntegrityIntheWorkplace/NonDiscrimination.aspx> (last visited May 6, 2014).
- ⁸⁷ *Equal Employment Opportunity*, JOBS – MICRON TECHNOLOGY, <http://www.micron.com/jobs> (last visited May 6, 2014).
- ⁸⁸ *University of Idaho Nondiscrimination Policy*, UNIVERSITY OF IDAHO, <http://www.uiweb.uidaho.edu/schedule/catalog/2011/university-of-idaho-nondiscrimination-policy.htm> (last visited May 6, 2014).
- ⁸⁹ JOINT SCHOOL DISTRICT NO. 2, MERIDIAN, ADVERTISING AND COMMERCIAL ACTIVITIES POLICY 1 (2010), *available at* <http://www.meridianschools.org/Community/PolicyManual/Documents/1000/p100230.pdf>.
- ⁹⁰ *Career Opportunities*, BATELLE, <https://career8.successfactors.com/career?company=battelle> (last visited May 6, 2014) (click "view jobs," and select any job posting. All job postings have the Affirmative Action/Equal Opportunity statement at the bottom of the description).
- ⁹¹ *Boise State University's Non-Discrimination Policy*, DEAN OF STUDENTS, <http://deanofstudents.boisestate.edu/boise-state-universitys-non-discrimination-policy/> (last visited May 6, 2014).
- ⁹² *Great Careers*, ALBERTSON'S, http://www.albertsons.com/employment_position/retail_jobs/ (last visited May 6, 2014).
- ⁹³ *Non-discrimination Statement*, ST LUKE'S HEALTH SYSTEM, http://www.stlukesonline.org/about_us/nondiscrimination.php (last visited May 6, 2014); *Human Rights Campaign Applauds Walmart for Adding Gender Identity Non-Discrimination Protections*, HUMAN RIGHTS CAMPAIGN

(Sept. 28, 2011) <http://www.hrc.org/press-releases/entry/hrc-applauds-walmart-for-adding-gender-identity-non-discrimination-protect> (gender identity); *University of Idaho Nondiscrimination Policy*, UNIVERSITY OF IDAHO, <http://www.uiweb.uidaho.edu/schedule/catalog/2011/university-of-idaho-nondiscrimination-policy.htm> (last visited May 6, 2014).

⁹⁴ M.V. LEE BADGETT, CHRISTOPHER RAMOS & BRAD SEARS, WILLIAMS INST., EVIDENCE OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY: COMPLAINTS FILED WITH STATE ENFORCEMENT AGENCIES 1999-2007 (2008), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Ramos-Empl-Discrim-1999-2007-Nov-08.pdf>; William B. Rubenstein, *Do Gay Rights Laws Matter?: An Empirical Assessment*, 75 S. CAL. L. REV. 66, 79-81 (2001).

⁹⁵ BADGETT, RAMOS, & SEARS, *supra* note 94.

⁹⁶ *See Workplace*, THE WILLIAMS INST., <http://williamsinstitute.law.ucla.edu/category/research/workplace/> (last updated Apr. 10, 2014).

⁹⁷ Gary J. Gates & Frank Newport, *LGBT Percentage Highest in D.C., Lowest in North Dakota*, GALLUP, Feb. 15, 2013, <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

⁹⁸ *American Community Survey, 2008-2012 ACS Table DP03: Selected Economic Characteristics, 5-Year Estimates*, U.S. CENSUS BUREAU AMERICAN FACT FINDER, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP03.

⁹⁹ “National average” refers to the average of the complaint rates in 17 states across the country that prohibited sexual orientation discrimination in 2008. BADGETT, RAMOS & SEARS, *supra* note 94.

¹⁰⁰ The data gathered for the 2008 study included all employment discrimination complaints filed on the basis of sexual orientation; it was not limited to complaints filed by LGB employees. Heterosexual employees may also file complaints under sexual orientation non-discrimination laws if they were discriminated against because of their heterosexuality or because they were perceived to be LGB. However, we use the LGB workforce as the underlying population for purposes of our analysis because LGB employees likely file the vast majority of sexual orientation discrimination complaints. See Rubenstein, *supra* note 94.

¹⁰¹ BADGETT, RAMOS & SEARS, *supra* note 94, at 5.

¹⁰² IDAHO HUMAN RIGHTS COMM’N *supra* note 57.

¹⁰³ *Id.* at 2.

¹⁰⁴ *Id.* at 1.

¹⁰⁵ *Id.* at 2.

¹⁰⁶ *Id.* at 1.