

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Theresa Kiernan, Office of the Revisor of Statutes  
Jason Long, Office of the Revisor of Statutes  
Julian Efirid, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Connie Burns, Committee Assistant

Conferees appearing before the committee:

George Wingert,  
Senator Julia Lynn,  
Maggie Childs, Kansas Equality Coalition  
Cora Holt, Manhattan  
Thomas Witt, Kansas Equality Coalition  
Pedro Irigonegaray, Counsel, Kansas Equality Coalition  
Judy Smith, Concerned Women of America of Kansas  
Representative Jan Pauls,  
Kansas Human Rights Commission,

Others attending:

See attached list.

**Introduction of Bills:**

George Wingert, Ruffin Company, requested a bill introduction regarding an amendment to expanded lottery relating to racetrack gaming facilities.

Senator Morris moved that this request should be introduced as a committee bill. Senator Faust-Goudeau seconded the motion. The motion carried.

Senator Julia Lynn requested a bill introduction adding prostitution, promoting prostitution, and patronizing prostitution to the list of offenses that could require forfeiture of assets.

Senator Owens moved that this request should be introduced as a committee bill. Senator Francisco seconded the motion. The motion carried.

Senator Owens requested a bill introduction regarding Driving Under the Influence.

Senator Owens moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Senator Reitz requested four bill introductions regarding:

- 1) concerning elections and voters residing outside the United States or as a member of the U.S. armed forces.
- 2) concerning criminal procedure relating to consolidation of community corrections and court services in certain judicial districts.
- 3) relating to bidding requirements on certain contracts.
- 4) relating to persons incompetent to stand trial.

Senator Reitz moved that the four requests should be introduced as committee bills. Senator Owens seconded the motion. The motion carried.

**SB 215 - Non-gubernatorial appointments subject to confirmation; procedure.**

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

Chairman Brungardt opened the hearing on **SB 215**.

Theresa Kiernan, Kansas Legislative Research Department, (KLRD) provided an overview of the changes in the bill. The bill is a technical clean up from the 2008 Legislative Session, and was introduced at the request of Senator Derek Schmidt, the Chair of the Confirmation Oversight Committee. (Attachment 1)

Chairman Brungardt closed the hearing on **SB 215**

**SB 169 - Kansas Act Against Discrimination, inclusion of sexual orientation and gender identity.**

Chairman Brungardt opened the hearing on **SB 169**.

Maggie Childs, Chair, Kansas Equality Coalition, appeared as a proponent of the bill. (Attachment 2) The Kansas Acts Against discrimination was established in 1953, and has been amended at least nine times since then; the law currently protects Kansans from discrimination in housing, employment, and public accommodations based on race, religion, color, sex, disability, familial status, national origin, or ancestry. This bill does not include any amendments to the current affirmative action statutes. There are no quotas, no mandate requiring benefits that must be offered, and private/fraternal/religious organizations are exempt.

Currently there are 26 states, plus Washington D.C., that have some level of protection against discrimination based on sexual orientation; more than 200 towns, cities and counties that ban sexual orientation discrimination, and a Presidential Executive Order banning discrimination in Federal employment. In September 2007, Governor Sebelius issued an executive order protecting state employees in Kansas from discrimination on the basis of sexual orientation. Also provided:

- 1) Policy Brief: "The Extent of Sexual Orientation discrimination in Topeka, KS" by Roddrick Colvin - National Gay and Lesbian Task Force Policy Institute
- 2) Statewide Employment Laws & Policies - Human Rights Campaign
- 3) Employer Information - Human Right's Campaign

Cora Holt, Manhattan, spoke in favor of the bill. (Attachment 3) Ms. Holt stated that in 2006 an attempt to have "sexual orientation and gender presentation" included in the list of protected groups in the Manhattan city ordinances, she provided a short "speech" and stated that by speaking out she could loose her job at a Manhattan area college. The next morning she received a phone call from the college's Academic Dean that she was on Academic Leave effective immediately, and was not to step foot on campus. Her teaching ability was never once called into question. Ms Holt felt it was not safe to speak out, because by speaking out many may lose what little safety they have. The situation, to her, seems untenable.

Thomas Witt, Kansas Equality Coalition, appeared as a proponent of the bill; and spoke to the cost of the bill. He believes that the number of complaints, as a percentage of current rates, will be small enough to address without any significant additional costs to the State of Kansas, and urged the committee to pass **SB 169**. (Attachment 4) Also provided were:

- 1) A report from the United States General Accounting Office, Washington D.C., subject: Sexual-Orientations-Based Employment Discrimination: States' Expenerience With Statutory Prohibitions Since 1997
- 2) An article: By William B. Rubenstein, Do Gay Right Laws Matter?: An Empirical Assessment

Pedro Irigonegaray, Counsel, Kansas Equality Coalition, spoke in favor of the bill. (Attachment 5) Mr. Irigonegarary stated he has been contacted by Kansas' homosexual citizens (gay men and lesbian women as well as transgendered persons) for his professional help for sufferings inflicted for no other reason than their sexual orientation, or gender identity issues. Mr Irigonegarary urged the committee to insure that all Kansas citizens are made to feel safe, equal, and respected.

James Wood, Prairie Village (Attachment 6) and Jason Chalka, Topeka, (Attachment 7) submitted written testimony in support of the bill.

Judy smith, Concerned Women of America of Kansas, (CWA) spoke in opposition of the bill. (Attachment 8) CWA is opposed to adding sexual orientation and gender identity to discrimination statutes; discrimination



## CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on February 12, 2009, in Room 136-N of the Capitol.

and civil rights laws have traditionally been based upon immutable characteristics such as gender, age, ethnicity, race, handicaps ...all things that are clearly visible and unchangeable. This bill places sexual orientation and self-perceived gender identity not as a protected class, but as a privileged group. Sexual orientation and other manifestations of gender identity do not fit into what constitutes a true minority and should not be added to laws dealing with discrimination.

Representative Jan Pauls appeared as an opponent to the bill. (Attachment 9) The bill amends the entire Kansas Act Against Discrimination. The Kansas Act protects against discrimination by reason of race, religion, color, sex, disability, national origin or ancestry. This bill adds two new categories to the classes protected: sexual orientation or gender identity. Page 4 lines 9-15 states "sexual orientation" means "male or female heterosexuality, homosexuality or bisexuality by indication, practice, or expression." The change in the law would have far reaching ramifications.

Kansas Human Rights Commission, provided written testimony as informational and the fiscal impact if the bill is enacted. (Attachment 10)

Chairman Brungardt closed the hearing on **SB 169**.

The next meeting is scheduled for February 13, 2009. The meeting was adjourned at 11:40 am.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 2/12/09

NAME	REPRESENTING
Meghan Walsh	Intern, Francisco
Phil BRADLEY	KLBA
Victor Hedlund	Paige, Francisco
Sawyer Green	Paige / Francisco
Eric Montgomery	Sen. Derek Schmidt
JAN PAULS	Ks House
Kari Presley	Kearney & Associates
Nick Jordan	Capitol Strategists.
Judi Tremaine	CWA
Judy Smith	CWA
Maggie Childs	Kansas Equality Coalition
THOMAS WETI	KANSAS EQUALITY COALITION
PEDRO LUIS IRIBONEGARAY	KANSAS EQUALITY COALITION
Brandon Myers	Ks. Human Rights Commission
William V. Munroe	Ks. Human Rights Commission
Sub Glover	Ks. Human Rights Commission
Jason Chaika	Kansas Equality Coalition
Clyde Mattson	Kansas Equality Coalition
Phillis Setchell	CWA
Cora Holt	Kansas Equality Coalition
RYAN EAGLESON	CAPITOL LOBBY GRP., LLC
Tom Palce	AmCA of Ks
Marlee Carpenter	KS SHRM

# SENATE BILL No. 215

By Committee on Federal and State Affairs

2-5

9 AN ACT concerning certain boards, commissions and officers; relating  
10 to the appointment thereof; amending K.S.A. 2008 Supp. 75-712 and  
11 75-4315d and repealing the existing sections.  
12

13 Be it enacted by the Legislature of the State of Kansas:

14 Section 1. K.S.A. 2008 Supp. 75-712 is hereby amended to read as  
15 follows: 75-712. (a) It is the duty of the members of the bureau to make  
16 full and complete investigations at the direction of the attorney general.  
17 Each member of the bureau shall possess all powers and privileges which  
18 are now or may be hereafter given to the sheriffs of Kansas.

19 (b) The bureau shall acquire, collect, classify and preserve criminal  
20 identification and other crime records, and may exchange such criminal  
21 identification records with the duly authorized officials of governmental  
22 agencies, of states, cities and penal institutions.

23 (c) For purposes of carrying out the powers and duties of the bureau,  
24 the director may request and accept grants or donations from any person,  
25 firm, association or corporation or from the federal government or any  
26 federal agency and may enter into contracts or other transactions with  
27 any federal agency in connection therewith.

28 (d) The bureau, ~~at the direction of the governor,~~ shall conduct back-  
29 ground investigations of: (1) Appointees to positions which are subject to  
30 confirmation by the senate of the state of Kansas ~~and;~~ and (2) ~~at the~~  
31 ~~direction of the governor,~~ all judicial appointments. The bureau shall re-  
32 quire the appointee to be fingerprinted. The fingerprints shall be sub-  
33 mitted to the bureau and to the federal bureau of investigation for the  
34 identification of the appointee and to obtain criminal history record in-  
35 formation, including arrest and nonconviction data. Background reports  
36 may include criminal intelligence information and information relating to  
37 criminal and background investigations. *Except as provided by this sub-*  
38 *section,* information received pursuant to this subsection shall be confi-  
39 dential and shall not be disclosed except to the appointing authority ~~or~~  
40 ~~members of the appointing authority's.~~ *If the appointing authority is the*  
41 *governor, information received pursuant to this subsection also may be*  
42 *disclosed to the governor's staff as necessary to determine the appointee's*  
43 *qualifications or as provided by K.S.A. 2008 Supp. 75-4315d, and amend-*

Introduced at the request  
of Senator Derek Schmidt  
who is the chair of the  
Confirmation Oversight Comm.

KBI background investigations  
would require background  
checks on appointees whose  
positions are subject to  
confirmation; delete the  
word that the governor request  
the check

→ Background information is confidential  
& could be disclosed to the appointing authority

STINCOX JIMM - also to go on staff

1 ments thereto.

2 (e) Reports of all investigations made by the members of the bureau  
3 shall be made to the attorney general of Kansas.

4 Sec. 2. K.S.A. 2008 Supp. 75-4315d is hereby amended to read as  
5 follows: 75-4315d. (a) As used in this section:

6 (1) "Office" means any state office or board, commission, council,  
7 committee, authority or other governmental body the members of which  
8 are required by law to be appointed by an appointing authority, and which  
9 appointment is subject to confirmation by the senate as provided in K.S.A.  
10 75-4315b, and amendments thereto.

11 (2) "Appointing authority" means a person, other than the governor,  
12 who is required by law to make an appointment to an office.

13 (3) "Chairperson" means the chairperson of the confirmation over-  
14 sight committee.

15 (4) "Committee" means the confirmation oversight committee estab-  
16 lished by K.S.A. 46-2601, and amendments thereto.

17 (5) "Director" means the director of the Kansas legislative research  
18 department or the director's designee.

19 (b) No person may be appointed to an office unless such person has  
20 completed and submitted a nomination form as required by the rules of  
21 the committee. No person may be appointed to an office unless such  
22 person has filed a statement of substantial interest as required by K.S.A.  
23 46-247, and amendments thereto. A copy of the nomination form and the  
24 statement of substantial interest shall be kept on file in the office of the  
25 director and shall be subject to disclosure under the Kansas open records  
26 act.

27 (c) No person may be appointed to an office unless such person has  
28 consented to a background investigation conducted by the Kansas bureau  
29 of investigation. No person may be appointed to an office unless such  
30 person ~~consents to the release of tax information by the Kansas depart-~~  
31 ~~ment of revenue and the federal internal revenue service to determine if~~  
32 ~~is current in the payment of taxes and consents to the release of a tax~~  
33 ~~certification by the Kansas department of revenue which states whether~~  
34 ~~such person is, or is not, current in the payment of taxes.~~

35 (d) Any appointing authority who desires to appoint a person to an  
36 office shall forward to the chairperson a completed copy of the nomina-  
37 tion form, the statement of substantial interest, the consent to the release  
38 of ~~tax information~~ the tax certification and a written request that a back-  
39 ground investigation be conducted on the person nominated for appoint-  
40 ment to an office. Upon receipt of such information, the chairperson shall  
41 forward such information and a written direction to the director to re-  
42 quest the Kansas bureau of investigation to conduct a background inves-  
43 tigation of such nominee and to request the Kansas department of rev-

Procedure established last  
year in EB21 for non-gubernatorial  
appointing authorities

Amendments are designed to  
make the process more reasonable  
& eliminate release of unnecessary  
information from KSBK

tax information  
instead of releasing tax information  
The amendment would require an  
appee to consent to a release  
of a certification by KDA  
which states whether the  
appointee is current in the payment



1 enue to release tax information which is necessary to determine if such  
 2 person is current in the payment of taxes the tax certification for such  
 3 person. Upon written request of the director and the appointing authority  
 4 who nominated the person for appointment to an office, it shall be the  
 5 duty of the Kansas bureau of investigation to conduct a background in-  
 6 vestigation of any person nominated for appointment to an office. Any  
 7 person nominated for appointment to an office shall submit such person's  
 8 fingerprints to the Kansas bureau of investigation for the purposes of  
 9 verifying the identity of such person and obtaining records of criminal  
 10 arrests and convictions. Upon written request of the director, it shall be  
 11 the duty of the Kansas department of revenue to release to the director  
 12 tax information requested pursuant to this section.

13 (e) The director may receive from the Kansas bureau of investigation  
 14 or other criminal justice agencies, including, but not limited to, the fed-  
 15 eral bureau of investigation and the federal internal revenue service, such  
 16 criminal history record information (including arrest and nonconviction  
 17 data), criminal intelligence information and information relating to crim-  
 18 inal and background investigations as necessary for the purpose of deter-  
 19 mining qualifications of a person nominated to be appointed to an office.  
 20 Upon the written request of the director, the director may receive from  
 21 the district courts such information relating to juvenile proceedings as  
 22 necessary for the purpose of determining qualifications of a person nom-  
 23 inated to be appointed to an office.

24 (f) Any information received by the director pursuant to this section  
 25 from the Kansas department of revenue or the Kansas bureau of investi-  
 26 gation shall be kept on file in the office of the director or in a secure  
 27 location under the control of the director within the Kansas legislative  
 28 research department. After receipt of information, the director shall no-  
 29 tify the appointing authority who nominated the person for appointment  
 30 to an office and the nominee that the information is available for review  
 31 in the office of the director. Upon the written request of such appointing  
 32 authority or the nominee, the director shall allow such appointing au-  
 33 thority ~~or~~ and the nominee to review the information. Such information  
 34 shall not be removed from the office of the director and shall not be  
 35 duplicated or copied in any manner. If the appointing authority chooses  
 36 to proceed with the nomination of the person for appointment to an  
 37 office, the director shall notify the chairperson and the ranking minority  
 38 member vice chairperson of the committee that such information is avail-  
 39 able for review by either legislator, or both, upon the written request of  
 40 either legislator, or both.

41 (g) Any information received by the director pursuant to this section  
 42 from the Kansas department of revenue or the Kansas bureau of investi-  
 43 gation, other than conviction data received by the director pursuant to

director of KLRD would be  
 req'd to keep information from  
 & the KBI in a secure location  
 under control of the director

no fm

(except conviction data)  
 KDOOR/KBI, info confidential  
 Director can OAM + release SS14 questions

1 ~~subsection (e)~~, shall be confidential. Except as provided by section 22 of  
2 article 2 of the Kansas constitution and subsection (f), such confidential  
3 information shall not be disclosed to any other person. Any other inten-  
4 tional disclosure of such confidential information is a class A nonperson  
5 misdemeanor. Any person who intentionally or unintentionally discloses  
6 confidential information in violation of this section may be removed from  
7 office or employment.

8 (h) Any information received by the director pursuant to this section  
9 which relates to a person whose nomination for appointment to an office  
10 is confirmed by the senate as provided by K.S.A. 75-4315b, and amend-  
11 ments thereto, may be disposed of in the manner provided by K.S.A. 75-  
12 3501 et seq., and amendments thereto. Any information received by the  
13 director pursuant to this section which relates to a person whose nomi-  
14 nation is withdrawn or whose appointment is not confirmed by the senate  
15 as provided by K.S.A. 75-4315b, and amendments thereto, shall be de-  
16 stroyed by the director. The destruction of such records shall occur no  
17 sooner than one year, and no later than two years, following the with-  
18 drawal of the nomination of the appointment or the failure of the senate  
19 to confirm the appointment of such person.

20 Sec. 3. K.S.A. 2008 Supp. 75-712 and 75-4315d are hereby repealed.

21 Sec. 4. This act shall take effect and be in force from and after its  
22 publication in the statute book.



Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans

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Testimony of Maggie Childs, Chair, Kansas Equality Coalition
Senate Committee on Federal and State Affairs
February 12, 2009

Good morning Mr. Chairman and members of the committee. I am here today to speak in support of SB169, and I thank you for the opportunity to do so.

My name is Maggie Childs. I am Chair of the Kansas Equality Coalition, which works to eliminate discrimination based on sexual orientation and gender identity. In the three years since we formed, we have organized nine chapters around the state and have nearly 1000 members. Today we ask you to amend the Kansas Acts Against Discrimination to add protection for sexual orientation and gender identity.

This law currently protects Kansans from discrimination in housing, employment, and public accommodations based on race, religion, color, sex, disability, familial status, national origin, or ancestry. Kansas Acts Against Discrimination was originally established in 1953, and has been amended at least nine times since then. We have continued to amend the Kansas Acts Against Discrimination as the need has been shown to protect the fundamental rights of employment, housing, and public accommodations for those who have been - and still are - targets of discrimination.

This bill does not include any amendments to the current affirmative action statutes. There are no quotas, no mandate requiring benefits that must be offered, and private/fraternal/religious organizations are exempt from this bill. Furthermore, this law does not apply to private organizations such as the Boy Scouts, Elks, and others.

There are currently 26 states, plus Washington DC, that have some level of protection against discrimination based on sexual orientation. There are more than 200 towns, cities and counties that ban sexual orientation discrimination. There is also a Presidential Executive Order banning discrimination in Federal employment. In September 2007 Governor Sebelius issued an executive order protecting state employees in Kansas from discrimination on the basis of sexual orientation.

A statewide poll conducted by Jayhawk Consulting Services taken in mid-January of 2008 showed that Kansans support extending protection from discrimination based on sexual orientation. 79 % of Kansans believe that no one should be fired just because they are gay or lesbian. 68% of those who oppose such discrimination support passing legislation to make such discrimination illegal, as SB 169 would.

More than 90% of Fortune 500 companies have banned discrimination based on sexual orientation in their workplaces. These companies know that to remain competitive, that to attract qualified people, and to maintain a safe working environment for their employees, they must insist on fair treatment for all.

Some claims that those who oppose nondiscrimination laws often make:

“Sexual orientation laws are special rights.” The concept of “special rights” is legally meaningless. Nondiscrimination laws simply prevent discrimination for everyone based on certain characteristics. In this case, everyone has a sexual orientation and this bill would protect everyone based on that characteristic.

“Sexual orientation is a choice that shouldn’t be protected.” First, we currently

protect people from discrimination based on other things that are a choice, such as religion. Secondly, courts across the country have ruled that sexual orientation is an immutable. More and more cities and states have recognized unfair treatment occurs and that protecting people from discrimination based on sexual orientation is the fair thing to do.

“Sexual orientation discrimination does not exist:” Opponents of nondiscrimination legislation make two conflicting claims: 1) discrimination based on sexual orientation does not exist and 2) nondiscrimination laws will lead to a flood of litigation. The General Accounting Office report in 2002 showed that both of these claims were false. People have taken advantage of legal protections by filing grievances, but not to the extent of straining our judicial system.

A survey of discrimination in Topeka conducted in 2004 clearly shows that gay and lesbian Kansans are indeed victims of discrimination. Examples of people who have been harmed by discrimination include:

- Angel, a single mom of two, who was fired for being “too out” and for working with a local equal rights organization;
- Vernon Jantz, a heterosexual man with a wife and kids, who was passed over for a permanent teaching job in Wichita because a high school principal thought he “acted gay;”
- Jon, an experienced Topeka bartender who was refused a job specifically because of his sexual orientation;
- Paul, a retail sales manager, who was interrogated by a new supervisor about his sexual orientation and then fired;
- A woman, dependent on public transportation to get to work, who was harassed and denied transport by a bus driver;
- Sandra Stenzel, formerly the Economic Development Director for Trego County, who lost her job after taking a vacation day to come and testify before the Senate Judiciary Committee in opposition to the marriage amendment.

Such discrimination is wrong. I urge you to stand for fair treatment, and to support SB169.

I thank you for your time and attention. I would be happy to take questions or to provide further information.

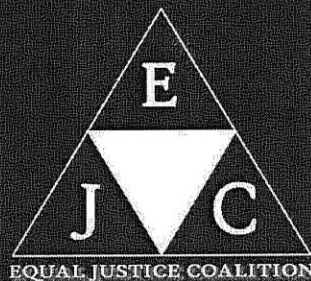
Maggie Childs  
Chair, Kansas Equality Coalition, Inc.  
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POLICY BRIEF

# The Extent of Sexual Orientation Discrimination in Topeka, KS

by Roddrick Colvin



National Gay and Lesbian Task Force Policy Institute

# The Extent of Sexual Orientation Discrimination in Topeka, KS

## INTRODUCTION

Ten years after a mayoral task force called for government action to stop discrimination against lesbians and gay men in Topeka, KS, a new survey of 121 gay, lesbian, and bisexual city residents conducted from October 2003 through January 2004 has documented continued widespread sexual orientation discrimination in employment, housing and government services.<sup>1</sup>

On July 9, 1993, the Mayor's Task Force on Gay and Lesbian Concerns issued a report on lesbian and gay people in the City of Topeka and their experiences. The report noted that despite being integrated into every aspect of local life, lesbians and gay men faced pervasive harassment and discrimination in Topeka. The report recommended action by the City to help curb harassment and discrimination against lesbian and gay people. Ten years later, harassment and discrimination against gay, lesbian, and bisexual people in Topeka continues, and the city government still has not passed legislation banning discrimination on the basis of sexual orientation and gender identity.

This report is based on an analysis of 121 surveys completed by residents of Topeka from October 2003 to January 2004. This project is the result of collaboration between the Equal Justice Coalition of Topeka and the National Gay and Lesbian Task Force Policy Institute.

The conclusions of the survey are inescapable: discrimination in employment, housing, and public accommodation on the basis of sexual orientation continues to be a problem in the City of Topeka.

1. None of the 121 respondents identified as transgender. Thirty-nine percent were female, 60% male, and 1% identified their gender as "other." Thirty-one percent identified as lesbian, 58% as gay (this includes some women who identified as gay), 10% as bisexual, and 2% as "other."



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## RESULTS IN BRIEF

- 16% of respondents reported that they were *denied employment* because of their sexual orientation or gender identity
- 11% reported that they were *denied a promotion*, and 18% reported that they were *overlooked for additional responsibilities* at work due to their sexual orientation or gender identity
- One fifth to one third of respondents reported that they *had observed people being denied employment, denied a promotion, or overlooked for additional responsibilities at work* due to their sexual orientation or gender identity
- 15% of respondents reported that they were *fired* because of their sexual orientation or gender identity, and another 24% have observed someone being fired for those reasons
- 35% had received *harassing letters, e-mails, or faxes* at work because of their sexual orientation
- 17% of respondents reported experiencing discrimination *buying or renting a home*, and another 20% observed such discrimination
- 11% of respondents reported that they experienced discrimination *seeking police protection*, and another 27% observed such discrimination
- 29% of respondents had observed discrimination based on sexual orientation *seeking social or government services*. 9% reported experiencing such discrimination

The conclusions of the survey are inescapable: discrimination in employment, housing, and public accommodation on the basis of sexual orientation continues to be a problem in the City of Topeka. This climate has a direct impact on the lesbian, gay, bisexual and transgender community as well as the city at large. These results underscore the need for the City of Topeka to adopt and enforce an ordinance to ban discrimination based on sexual orientation and gender identity.

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## EMPLOYMENT DISCRIMINATION

In Topeka, sexual orientation bias in employment is pervasive. Sixteen percent of the gay, lesbian and bisexual residents surveyed reported that they were denied employment because of their sexual orientation or gender identity. Fifteen percent reported that they were fired because of their sexual orientation or gender identity. Sixteen percent of respondents reported that their workspace was vandalized, and 24% reported being teased and harassed because of their sexual orientation or gender identity. As a result of a discriminatory work environment, 47% of respondents reported that they had to conceal their sexual orientation or gender identity to protect their jobs.

Forty-seven percent of respondents reported that they had to conceal their sexual orientation or gender identity to protect their jobs.



“My job found out that I was a lesbian and my ‘friend’ that came in every night was my girlfriend. She was told not to come in anymore or I would be fired. And later because she came in I was fired.”

—A lesbian Topeka resident

“I’ve had a boss that told gay jokes about an employee he perceived to be gay. That boss gave the dirty work assignments to that man.”

—A gay Topeka resident

“As soon as my newly appointed Republican boss suspected I was gay, he harassed me until I took a job with another state agency. Prior to that I had three outstanding employee evaluations, but he couldn’t find anything I did right. There was no protection. The various state affirmative action and discrimination offices were a slow-moving joke.”

—A gay Topeka resident

<b>JOB DISCRIMINATION</b>	<b>Personally Experienced</b>	<b>Observed</b>
Terminated	15%	24%
Denied Employment	16%	31%
Denied Promotion	11%	18%
Overlooked for Additional Responsibilities	18%	31%

<b>JOB HARASSMENT AND VIOLENCE</b>	<b>Personally Experienced</b>	<b>Observed</b>
Verbal or Physical Abuse	41%	35%
Vandalized Workspace	16%	22%
Harassing Communications	35%	28%
Teased or Harassed	24%	27%

## HOUSING DISCRIMINATION

According to survey respondents, living in Topeka can be a challenge. Residents face numerous difficulties getting settled in the city. The most challenging difficulty is renting an apartment or buying a home. Seventeen percent of survey respondents reported anti-gay discrimination buying a home or renting and apartment in Topeka, and 20% observed such housing discrimination. Furthermore, 20% reported having trouble getting housing and renters’ insurance because of their sexual orientation or gender identity.

<b>HOUSING DISCRIMINATION</b>	<b>Personally Experienced</b>	<b>Observed</b>
Buying/Renting a Home	17%	20%
Seeking Insurance	20%	19%





This discrimination did not end after the survey respondents found a place to live. In fact, 9% of respondents reported moving to a different home within the last five years as a result of harassment and discrimination. Additionally, 33% of survey respondents stopped walking together or holding hands, and 10% left a local house of worship as a result of harassment and discrimination.

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## PUBLIC ACCOMMODATIONS AND SERVICES

In the sphere of public accommodations, sexual orientation discrimination in Topeka is pervasive and damaging. These survey results suggest that gay, lesbian and bisexual people face hostility and discrimination when they try to access many basic services.

“My boyfriend is not allowed to see his kids anymore because he is gay, and his ex-wife thinks we will do something to the boys.”

—A gay Topeka resident

“My BF [boyfriend] at the time got violent with me. When I called the police, 911 did not seem concerned and when the officers showed up and realized it was a same-sex domestic [incident], they basically laughed, told us to work it out, and left. I did not feel secure.”

—A gay Topeka resident

“[The i]nsurance company cancelled [my] auto insurance after I put a non-related person ([my same-sex] spouse) living in [the] same residence as a principle driver of one of the vehicles I own.”

—A gay Topeka resident

“My son read a book on AIDS in 5th grade and was harassed for years, being singled out by other students and called ‘fag’ and rumors circulated about, ‘He must have AIDS and be a faggot.’ The school system must educate children more in both areas because the parents are definitely not doing their job.”

—A Topeka mother

<b>PUBLIC ACCOMMODATION DISCRIMINATION</b>	<b>Personally Experienced</b>	<b>Observed</b>
Seeking Medical Care	12%	15%
Seeking Police Protection	11%	27%
Applying for Bank Credit or a Loan	4%	9%
Seeking Custody or Visitation Rights	10%	25%



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## THE CONSEQUENCES OF DISCRIMINATION

The results of the survey reveal the effects of harassment and discrimination on lesbian, gay, and bisexual Topekans. This climate of hostility has a detrimental effect on the lesbian, gay, bisexual and transgender (LGBT) community, and on the City of Topeka as a whole. Almost half (45%) of respondents reported that discrimination had an effect on their physical or emotional health. Furthermore, respondents expressed real concern about discrimination in Topeka. Forty-three percent were “somewhat” or “very” concerned about housing discrimination and 54% were concerned about employment discrimination. Such anxieties about discrimination help to explain the high rates of physical and emotional stress.

Almost half (45%) of respondents reported that discrimination had an effect on their physical or emotional health.

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## THE POLICY SOLUTION: A NONDISCRIMINATION LAW

While many aspects of discrimination cannot be solved solely through nondiscrimination laws, many of the concerns raised in this report can be addressed with a local ordinance. A comprehensive nondiscrimination law that includes sexual orientation and gender identity or expression could address the pervasive forms of discrimination in employment, housing, and public accommodation documented in this study. Respondents of the survey agree with this assessment: 89 % would prefer a formal remedy to discrimination.

Despite the mayoral commission’s call to action to stop anti-gay discrimination a decade ago, no action has been taken. As this study shows, discrimination on the basis of sexual orientation or gender identity continues to be a problem and a concern of many Topeka residents. Only with corrective action and enforcement of nondiscrimination statutes by local government can Topeka decrease anti-gay harassment and discrimination in Topeka.

A comprehensive nondiscrimination law could address the pervasive forms of discrimination documented in this study.

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## METHODOLOGY

The findings in this report are based on 121 surveys completed and returned to the Equal Justice Coalition of Topeka. The National Gay and Lesbian Task Force Policy Institute then analyzed these survey data. Five hundred surveys were distributed, with an acceptable response rate of 24%. While not identical, the socioeconomic demographics of respondents closely resemble the Census data for the City of Topeka. This suggests that the respondents of the survey closely match the population of lesbian, gay, bisexual and transgender people in Topeka.

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2. Respondents were asked what, if any, corrective action they would prefer if they experienced harassment or discrimination. Eighty-nine percent selected register a complaint, file a lawsuit, or going to a Human Rights Commission. Eleven percent preferred some other option.



## SURVEY DEMOGRAPHICS

AGE	Number	Percent
18-24	30	25%
25-34	27	23%
35-44	32	27%
45-54	19	16%
55-64	10	8%
65-74	2	2%
75+	0	0%

RACE	Number	Percent
White	87	73%
Latino/a or Hispanic	12	10%
Multi-racial	10	8%
African American	6	5%
Native American	4	3%
Other	1	1%
Middle Eastern/Arab	0	0%
Asian Pacific Islander	0	0%

GENDER	Number	Percent
Male	73	60%
Female	47	39%
Transgender or Intersex	0	0%
Other	1	1%

SEXUAL ORIENTATION	Number	Percent
Gay	69	58%
Lesbian	37	31%
Bisexual	12	10%
Other	2	2%
Questioning	0	0%

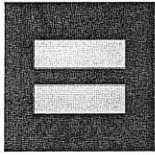
EDUCATION	Number	Percent
Some High School	5	4%
High School	15	13%
Some College	51	43%
Two Year Degree	7	6%
Four Year Degree	25	21%
Post Graduate Work	8	7%
Post Graduate Degree	9	8%

EMPLOYMENT	Number	Percent
Part-time	11	9%
Full-time	69	57%
Self Employed	10	8%
Retired	6	5%
Stay Home Parent	0	0%
Unemployed	15	12%
Student	7	6%
Other	3	2%





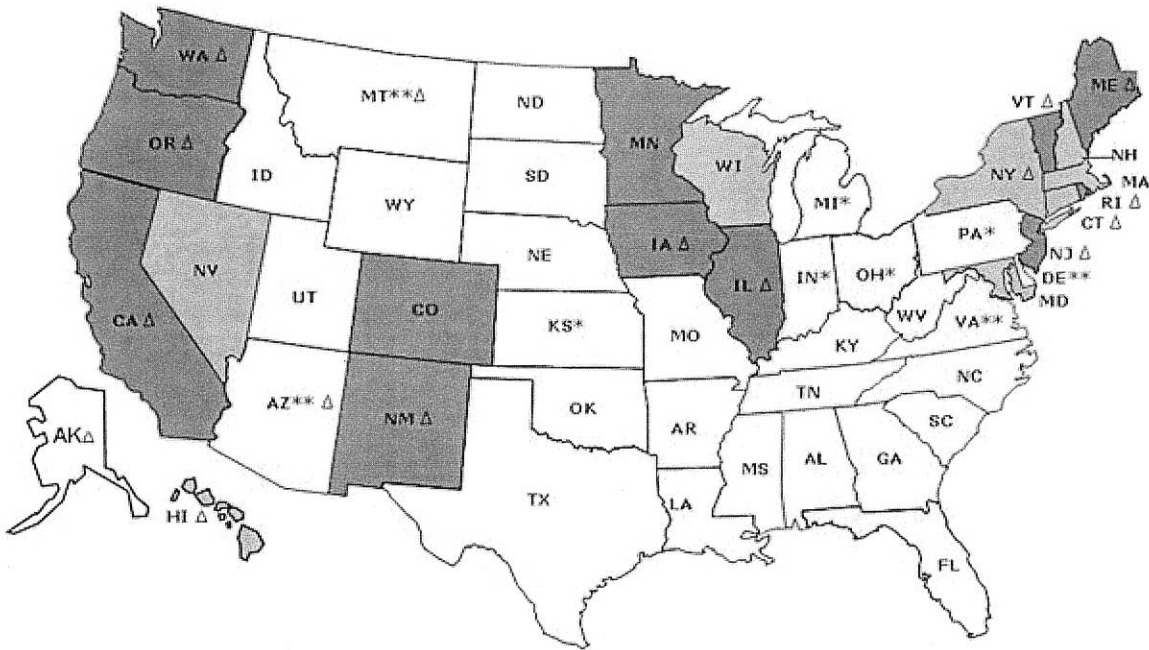




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## Statewide Employment Laws & Policies



States that prohibit discrimination based on sexual orientation and gender identity. (12 states and D.C.)

- *California (1992, 2003), Colorado (2007), District of Columbia (1977, 2006), Illinois (2006), Iowa (2007), Maine (2005), Minnesota (1993), New Jersey (1992, 2007), New Mexico (2003), Oregon (Jan. 2008), Rhode Island (1995, 2001), Vermont (1991, 2007) and Washington (2006).*
- *State courts, commissions, agencies, or attorney general have interpreted the existing law to include some protection against discrimination against transgender individuals in Connecticut, Florida, Hawaii, Massachusetts and New York.*



States that prohibit discrimination based on sexual orientation. (20 states and D.C.)  
*In addition to the same states above – Connecticut (1991), Hawaii (1991), Maryland (2001), Massachusetts (1989), Nevada (1999), New Hampshire (1998), New York (2003), and Wisconsin (1982).*

### Laws and Policies Covering Public Employees Only:

The laws referenced above apply to public and private employers (with some limitations) in the respective states. Additionally, there are 6 states (\*) that have an executive order, administrative order or personnel regulation prohibiting discrimination against public employees based on sexual orientation *and* gender identity and 4 states (\*\*) prohibit discrimination against public employees based on sexual orientation *only*. In 16 states and the District of Columbia (Δ) state employees are provided with domestic partner benefits. In Massachusetts, same-sex couples can marry and are treated as married couples for purposes of state employee benefits.



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2/5/2009

EMPLOYER INFORMATION

For: Detail

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
40	1	Wal-Mart Stores Inc.	Bentonville	AR
100	3	Chevron Corp.	San Ramon	CA
100	4	General Motors Corp.	Detroit	MI
60	5	ConocoPhillips	Houston	TX
80	6	General Electric Co.	Fairfield	CT
100	7	Ford Motor Co.	Dearborn	MI
100	8	Citigroup Inc.	New York	NY
100	9	Bank of America Corp.	Charlotte	NC
100	10	AT&T Inc.	San Antonio	TX
	11	Berkshire Hathaway Inc.	Omaha	NE
100	12	J.P. Morgan Chase & Co.	New York	NY
85	13	American International Group Inc.	New York	NY
100	14	Hewlett-Packard Co.	Palo Alto	CA
100	15	International Business Machines Corp. (IBM)	Armonk	NY
	16	Valero Energy Corp.	San Antonio	TX
70	17	Verizon Communications Inc.	New York	NY
68	18	McKesson Corp.	San Francisco	CA
100	19	Cardinal Health	Dublin	OH
100	20	Goldman Sachs Group Inc., The	New York	NY
100	21	Morgan Stanley	New York	NY
85	22	Home Depot Inc.	Atlanta	GA
85	23	Procter & Gamble Co.	Cincinnati	OH
90	24	CVS Corp.	Woonsocket	RI
95	25	UnitedHealth Group Inc.	Minnetonka	MN
75	26	Kroger Co., The	Cincinnati	OH

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
100	27	Boeing Co.	Chicago	IL
	28	AmerisourceBergen Corp.	Chesterbrook	PA
93	29	Costco Wholesale Corp.	Issaquah	WA
100	30	Merrill Lynch & Co.	New York	NY
100	31	Target Corp.	Minneapolis	MN
80	32	State Farm Group	Bloomington	IL
95	33	WellPoint Inc.	Indianapolis	IN
100	34	Dell Inc.	Round Rock	TX
100	35	Johnson & Johnson	New Brunswick	NJ
	36	Marathon Oil Corp.	Houston	TX
100	37	Lehman Brothers Holdings Inc.	New York	NY
100	38	Wachovia Corp.	Charlotte	NC
65	39	United Technologies Corp.	Hartford	CT
100	40	Walgreen Co.	Deerfield	IL
100	41	Wells Fargo & Co.	San Francisco	CA
100	42	Dow Chemical Co.	Midland	MI
100	43	MetLife Inc.	New York	NY
100	44	Microsoft Corp.	Redmond	WA
100	45	Sears Holdings Corp.	Hoffman Estates	IL
100	46	United Parcel Service Inc. (UPS)	Atlanta	GA
100	47	Pfizer Inc.	New York	NY
	48	Lowe's Companies, Inc.	Mooresville	NC
100	49	Time Warner Inc.	New York	NY
55	50	Caterpillar Inc.	Peoria	IL
	51	Medco Health Solutions	Franklin Lakes	NJ
15	52	Archer Daniels Midland Co.	Decatur	IL
100	53	Fannie Mae	Washington	DC
85	54	Freddie Mac	McLean	VA
75	55	Safeway Inc.	Pleasanton	CA
	56	Sunoco Inc.	Philadelphia	PA
100	57	Lockheed Martin Corp.	Bethesda	MD
	58	Sprint PCS Group	Overland Park	KS
100	59	PepsiCo Inc.	Purchase	NY



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
100	60	Intel Corp.	Santa Clara	CA
	61	Altria Group, Inc.	Richmond	VA
100	62	Supervalu Inc.	Eden Prairie	MN
95	63	Kraft Foods Inc.	Northfield	IL
100	64	Allstate Corp., The	Northbrook	IL
100	65	Motorola Inc.	Schaumburg	IL
100	66	Best Buy Co. Inc.	Richfield	MN
100	67	Walt Disney Co.	Burbank	CA
55	68	FedEx Corp.	Memphis	TN
	69	Ingram Micro	Santa Ana	CA
	70	SYSCO Corp.	Houston	TX
100	71	Cisco Systems Inc.	San Jose	CA
	72	Johnson Controls Inc.	Milwaukee	WI
100	73	Honeywell International Inc.	Morristown	NJ
100	74	Prudential Financial Inc.	Newark	NJ
100	75	American Express Co.	New York	NY
100	76	Northrop Grumman Corp.	Los Angeles	CA
	77	Hess Corp.	New York	NY
80	79	Comcast Corp.	Philadelphia	PA
85	80	Alcoa Inc.	New York	NY
100	81	DuPont (E.I. du Pont de Nemours)	Wilmington	DE
100	82	New York Life Insurance Co.	New York	NY
100	83	Coca-Cola Co., The	Atlanta	GA
	84	News Corp.	New York	NY
100	85	Aetna Inc.	Hartford	CT
78	86	Teachers Insurance and Annuity Association - College Retirement Equities Fund	New York	NY
40	87	General Dynamics Corp.	Falls Church	VA
	88	Tyson Foods, Inc.	Springdale	AR
	89	HCA - Hospital Corporation of America	Nashville	TN
	90	Enterprise GP Holdings L.P.	Houston	TX
100	91	Macy's Inc.	Cincinnati	OH
45	92	Delphi Corp.	Troy	MI
50	93	Travelers Companies Inc., The	St. Paul	MN

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
100	95	Hartford Financial Services Co.	Hartford	CT
80	96	Abbott Laboratories	Abbott Park	IL
100	97	Washington Mutual Inc.	Seattle	WA
45	98	Humana Inc.	Louisville	KY
100	99	Massachusetts Mutual Life Insurance Co.	Springfield	MA
100	100	3M Co.	St. Paul	MN
100	101	Merck & Co. Inc.	Whitehouse Station	NJ
33	102	Deere & Co.	Moline	IL
100	103	Apple Inc.	Cupertino	CA
100	105	Tech Data Corp.	Clearwater	FL
85	106	McDonald's Corp.	Oak Brook	IL
	107	Publix Super Markets	Lakeland	FL
100	108	Nationwide	Columbus	OH
100	109	AMR Corp. (American Airlines)	Fort Worth	TX
	110	Northwestern Mutual Life Insurance	Milwaukee	WI
45	111	Emerson Electric Co.	St. Louis	MO
100	112	Raytheon Co.	Waltham	MA
80	113	Wyeth	Madison	NJ
70	114	International Paper Co.	Memphis	TN
95	115	Electronic Data Systems Corp.	Plano	TX
100	117	Constellation Energy Group Inc.	Baltimore	MD
100	118	Coca-Cola Enterprises Inc.	Atlanta	GA
	119	Goodyear Tire & Rubber Co.	Akron	OH
	120	Manpower Inc.	Milwaukee	WI
100	122	U.S. Bancorp	Minneapolis	MN
	123	Occidental Petroleum	Los Angeles	CA
88	124	UAL Corp. (United Airlines)	Chicago	IL
100	125	Bristol-Myers Squibb Co.	New York	NY
100	126	J.C. Penney Co. Inc.	Plano	TX
100	127	Whirlpool Corp.	Benton Harbor	MI
93	128	Staples Inc.	Framingham	MA
85	129	Delta Air Lines Inc.	Atlanta	GA
100	130	Capital One Financial Corp.	McLean	VA



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
95	131	Exelon Corp.	Chicago	IL
100	132	TJX Companies, Inc., The	Framingham	MA
100	133	Eli Lilly & Co.	Indianapolis	IN
	135	Express Scripts Inc.	St. Louis	MO
100	136	Kimberly-Clark Corp.	Irving	TX
100	137	Oracle Corp.	Redwood City	CA
	138	AutoNation Inc.	Fort Lauderdale	FL
	139	Loews Corp.	New York	NY
	140	Freeport-McMoRan Copper & Gold Inc	Phoenix	AZ
95	141	CIGNA Corp.	Philadelphia	PA
85	142	Rite Aid Corp.	Camp Hill	PA
	143	DIRECTV Group, Inc., The	El Segundo	CA
100	144	Xerox Corp.	Norwalk	CT
	146	United States Steel Corp.	Pittsburgh	PA
75	147	Weyerhaeuser Co.	Federal Way	WA
	148	Fluor Corp	Irving	TX
100	149	Anheuser-Busch Companies Inc.	St. Louis	MO
100	150	Google Inc.	Mountain View	CA
	151	Nucor Corp.	Charlotte	NC
	152	Kohl's Corp.	Menomonee Falls	WI
100	153	Nike Inc.	Beaverton	OR
58	154	Union Pacific Corp.	Omaha	NE
68	155	Illinois Tool Works Inc.	Glenview	IL
20	157	Lear Corp.	Southfield	MI
	158	Arrow Electronics	Melville	NY
30	160	BNSF Railway Co.	Fort Worth	TX
90	161	Dominion Resources Inc.	Richmond	VA
100	162	Gap Inc.	San Francisco	CA
30	163	Avnet Inc.	Phoenix	AZ
60	164	Office Depot Inc.	Delray Beach	FL
	165	AFLAC Inc.	Columbus	GA
48	166	Southern Co.	Atlanta	GA
	167	Halliburton Co.	Houston	TX

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	168	FPL Group Inc.	Juno Beach	FL
	169	Paccar Inc.	Bellevue	WA
	170	Computer Sciences Corp.	Falls Church	VA
80	171	Amazon.com Inc.	Seattle	WA
70	173	Amgen Inc.	Thousand Oaks	CA
	174	TRW Automotive Holdings Corp.	Livonia	MI
100	175	Progressive Corp., The	Mayfield Village	OH
	177	Centex Corp.	Dallas	TX
100	178	Continental Airlines Inc.	Houston	TX
93	179	Health Net Inc.	Woodland Hills	CA
100	180	Chubb Corp.	Warren	NJ
	181	CBS Corp.	New York	NY
	183	AES Corp., The	Arlington	VA
100	184	Sun Microsystems Inc.	Santa Clara	CA
100	185	Texas Instruments Inc.	Dallas	TX
73	186	Colgate-Palmolive Co.	New York	NY
80	187	Qwest Communications International Inc.	Denver	CO
65	189	Toys 'R' Us Inc.	Wayne	NJ
100	190	Pepsi Bottling Group Inc., The	Somers	NY
100	191	Viacom Inc.	New York	NY
	192	ONEOK Inc	Tulsa	OK
100	193	SunTrust Banks Inc.	Atlanta	GA
	194	Penske Automotive Group	Bloomfield Hills	MI
95	195	Consolidated Edison Co.	New York	NY
	196	American Electric Power Co. Inc.	Columbus	OH
100	197	Marriott International Inc.	Bethesda	MD
	198	Public Service Enterprise Group	Newark	NJ
85	199	Waste Management Inc.	Houston	TX
100	200	PG&E Corp.	San Francisco	CA
95	201	EMC Corp.	Hopkinton	MA
	202	Textron Inc.	Providence	RI
75	203	Sara Lee Corp.	Downers Grove	IL

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
75	204	Duke Energy Corp.	Charlotte	NC
35	205	Edison International	Rosemead	CA
100	206	Cummins Inc.	Columbus	IN
	207	Eaton Corp.	Cleveland	OH
55	208	Williams Companies Inc.	Tulsa	OK
	209	FirstEnergy Corp.	Akron	OH
90	210	ConAgra Foods Inc.	Omaha	NE
80	211	Omnicom Group	New York	NY
100	212	Schering-Plough Corp.	Kenilworth	NJ
85	213	Northwest Airlines Corp.	Eagan	MN
95	214	General Mills Inc.	Minneapolis	MN
55	215	Circuit City Stores Inc.	Richmond	VA
75	216	Aramark Corp.	Philadelphia	PA
95	217	Medtronic Inc.	Minneapolis	MN
45	218	PPG Industries Inc.	Pittsburgh	PA
	219	Jabil Circuit Inc.	St. Petersburg	FL
100	220	Marsh & McLennan Companies Inc.	New York	NY
	222	Smithfield Foods Inc.	Smithfield	VA
	223	Masco Corp.	Taylor	MI
73	224	Dean Foods Co.	Dallas	TX
100	225	State Street Corp.	Boston	MA
80	226	National City Corp.	Cleveland	OH
60	227	Kellogg Co.	Battle Creek	MI
100	228	US Airways Group Inc.	Tempe	AZ
55	229	R.R. Donnelley & Sons Co.	Chicago	IL
	230	Kinder Morgan Energy Partners, L.P.	Houston	TX
95	231	Entergy Corp.	New Orleans	LA
100	232	Sempra Energy	San Diego	CA
100	234	Visteon Corp.	Van Buren Township	MI
80	236	Baxter International Inc.	Deerfield	IL
75	237	Reliant Energy Inc.	Houston	TX
100	238	Eastman Kodak Co.	Rochester	NY
	241	American Standard Companies Inc.	Piscataway	NJ



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
95	242	Principal Financial Group	Des Moines	IA
	243	Genuine Parts Co.	Atlanta	GA
100	244	Harrah's Entertainment Inc.	Las Vegas	NV
	245	Regions Financial	Birmingham	AL
95	246	Lincoln National Corp.	Radnor	PA
	247	Parker Hannifin Corp.	Cleveland	OH
68	248	Progress Energy Inc.	Raleigh	NC
48	250	BB&T Corp.	Winston-Salem	NC
88	251	Unum Group	Chattanooga	TN
	252	Baker Hughes Inc.	Houston	TX
65	253	Yum! Brands Inc.	Louisville	KY
	255	Sanmina-SCI	San Jose	CA
	256	Lennar Corp	Miami	FL
80	257	Limited Brands Inc.	Columbus	OH
75	258	Air Products & Chemicals Inc.	Allentown	PA
60	260	Xcel Energy	Minneapolis	MN
75	261	CSX Corp.	Jacksonville	FL
	262	Apache Corp.	Houston	TX
100	263	Aon Corp.	Chicago	IL
80	264	PNC Financial Services Group Inc.	Pittsburgh	PA
60	265	Avon Products Inc.	New York	NY
	266	Coventry Health Care	Bethesda	MD
90	267	Southwest Airlines Co.	Dallas	TX
	269	Thermo Fisher Scientific Inc	Waltham	MA
88	270	Applied Materials Inc.	Santa Clara	CA
	271	CenterPoint Energy Inc.	Houston	TX
30	272	YRC Worldwide Inc.	Overland Park	KS
75	273	DTE Energy Co.	Detroit	MI
	275	Liberty Media Corp.	Englewood	CO
	276	Norfolk Southern Corp.	Norfolk	VA
100	277	Starbucks Corp.	Seattle	WA
25	278	Praxair Inc.	Danbury	CT
65	279	Pepco Holdings Inc.	Washington	DC
35	280	Tenet Healthcare	Dallas	TX

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
95	281	Automatic Data Processing Inc.	Roseland	NJ
	282	Pulte Homes Inc.	Bloomfield Hills	MI
20	283	Dana Holding Corp.	Toledo	OH
75	285	ITT Industries Inc.	White Plains	NY
60	286	SLM Corp. (Sallie Mae)	Reston	VA
	287	Terex Corporation	Westport	CT
80	288	OfficeMax Inc.	Naperville	IL
	289	Science Applications International Corp.	San Diego	CA
100	290	Reynolds American Inc.	Winston-Salem	NC
	291	B J's Wholesale Club	Natick	MA
68	293	H.J. Heinz Co.	Pittsburgh	PA
53	294	Land O'Lakes	Arden Hills	MN
80	295	Rohm and Haas Co.	Philadelphia	PA
100	296	Ameriprise Financial Inc.	Minneapolis	MN
95	297	QUALCOMM Inc.	San Diego	CA
	298	Sonic Automotive Inc	Charlotte	NC
100	299	Nordstrom Inc.	Seattle	WA
80	300	ALLTEL Corp.	Little Rock	AR
	301	ArvinMeritor Inc.	Troy	MI
	302	Smith International Inc.	Houston	TX
85	305	Monsanto Co.	St. Louis	MO
	306	CIT Group Inc.	New York	NY
75	307	Fifth Third Bancorp	Cincinnati	OH
	310	Boston Scientific Corp.	Natick	MA
	311	Fortune Brands Inc.	Deerfield	IL
	312	First American Corp.	Santa Ana	CA
	314	Owens-Illinois Inc.	Perrysburg	OH
	315	First Data Corp.	Greenwood Village	CO
	316	Sherwin-Williams Co., The	Cleveland	OH
	317	Energy Future Holdings Corp	Dallas	TX
48	318	Calpine Corp.	San Jose	CA
	319	NiSource Inc.	Merrillville	IN
100	320	Campbell Soup Co.	Camden	NJ



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
100	321	KeyCorp	Cleveland	OH
	322	Ashland Inc.	Covington	KY
85	323	MGM Mirage	Las Vegas	NV
	325	Crown Holdings	Philadelphia	PA
100	326	eBay Inc.	San Jose	CA
65	328	Mohawk Industries Inc.	Calhoun	GA
45	329	Ameren Corp.	St. Louis	MO
	331	Dover Corp.	New York	NY
65	332	Gannett Co. Inc.	McLean	VA
100	333	Carmax Inc.	Richmond	VA
	334	Smurfit-Stone Container Corp.	Chicago	IL
	335	VF Corp.	Greensboro	NC
58	336	Ball Corp.	Broomfield	CO
	338	Dillard's Inc.	Little Rock	AR
100	339	Clear Channel Communications Inc.	San Antonio	TX
75	340	KB Home	Los Angeles	CA
	341	C. H. Robinson Worldwide	Eden Prairie	MN
	343	Enbridge Energy Partners	Houston	TX
	345	Reliance Steel & Aluminum Co.	Los Angeles	CA
65	346	PPL Corp.	Allentown	PA
	347	Winn-Dixie Stores Inc.	Jacksonville	FL
100	348	GameStop Corp.	Grapevine	TX
100	349	Estee Lauder Companies	New York	NY
95	352	American Family Insurance Group	Madison	WI
100	353	Yahoo! Inc.	Sunnyvale	CA
	355	Federal-Mogul Corp.	Southfield	MI
60	356	MeadWestvaco Corp.	Glen Allen	VA
	359	Agco	Duluth	GA
55	360	Owens & Minor Inc.	Mechanicsville	VA
80	362	McGraw-Hill Companies Inc., The	New York	NY
85	365	Quest Diagnostics Inc.	Madison	NJ
	366	CMS Energy Services	Jackson	MI
	367	Celanese Corp.	Dallas	TX
	368	Bed Bath & Beyond Inc.	Union	NJ

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
90	369	Whole Foods Market Inc.	Austin	TX
	370	InterActiveCorp	New York	NY
93	371	Ryder System Inc.	Miami	FL
55	372	Black & Decker Corp., The	Towson	MD
60	373	Interpublic Group of Companies Inc.	New York	NY
	374	Cablevision Systems Corp.	Bethpage	NY
	375	Goodrich Corp.	Charlotte	NC
	377	W.W. Grainger	Lake Forest	IL
100	378	Newell Rubbermaid Inc.	Atlanta	GA
	379	Group 1 Automotive	Houston	TX
	380	Becton, Dickinson and Co.	Franklin Lakes	NJ
	381	Embarq Corp.	Overland Park	KS
	382	Avery Dennison	Pasadena	CA
	384	Performance Food Group Co.	Richmond	VA
	385	Peter Kiewit Sons' Inc	Omaha	NE
	386	Omnicare	Covington	KY
75	388	SAFECO Corp.	Seattle	WA
50	389	Franklin Resources Inc.	San Mateo	CA
	390	Hormel Foods Corp.	Austin	MN
100	391	NCR Corp.	Dayton	OH
100	392	Coors Brewing Co.	Denver	CO
	393	Tenneco Inc.	Lake Forest	IL
25	394	AutoZone Inc.	Memphis	TN
	395	TravelCenters of America	Westlake	OH
100	396	Starwood Hotels & Resorts Worldwide	White Plains	NY
	397	Harley-Davidson Inc.	Milwaukee	WI
	398	Thrivent Financial for Lutherans	Minneapolis	MN
85	399	Pitney Bowes Inc.	Stamford	CT
	400	Allied Waste Industries	Phoenix	AZ
	401	Stryker Corp.	Kalamazoo	MI
100	402	Charles Schwab Corp., The	San Francisco	CA
	403	NRG Energy Inc.	Princeton	NJ
	404	CB Richard Ellis Group Inc.	Los Angeles	CA
80	406	Advanced Micro Devices Inc.	Sunnyvale	CA

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	407	EMCOR Group Inc	Norwalk	CT
	408	WESCO International Inc.	Pittsburgh	PA
	409	Charter Communications	St. Louis	MO
	410	Henry Schein	Melville	NY
80	411	Avis Budget Group Inc.	Parsippany	NJ
	412	Ross Stores	Pleasanton	CA
93	413	Mattel Inc.	El Segundo	CA
80	414	Realogy Corp.	Parsippany	NJ
80	415	Darden Restaurants	Orlando	FL
100	417	Corning Inc.	Corning	NY
65	419	Northeast Utilities	Berlin	CT
	421	Asbury Automotive Group	New York	NY
60	423	Affiliated Computer Services	Dallas	TX
	424	Brunswick Corp.	Lake Forest	IL
	426	The Shaw Group Inc.	Baton Rouge	LA
	427	Micron Technology Inc.	Boise	ID
70	429	Unisys Corp.	Blue Bell	PA
	430	Newmont Mining Corporation	Denver	CO
100	431	Owens Corning	Toledo	OH
	432	Peabody Energy Corp	St. Louis	MO
	434	Blockbuster Inc.	Dallas	TX
	436	XTO Energy, Inc.	Fort Worth	TX
	438	Ecolab Inc.	St. Paul	MN
	439	Western Digital Corp.	Lake Forest	CA
45	440	Host Hotels & Resorts	Bethesda	MD
	442	Foot Locker	New York	NY
100	443	Agilent Technologies Inc.	Santa Clara	CA
	444	Precision Castparts Corp	Portland	OR
	445	Boise Cascade Holdings LLC	Boise	ID
100	446	Barnes & Noble Inc.	New York	NY
100	447	Northern Trust Corp.	Chicago	IL
	448	Wm. Wrigley Jr. Co.	Chicago	IL
	449	URS Corp.	San Francisco	CA
	450	Rockwell Automation Inc.	Milwaukee	WI



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
65	452	Pacific Mutual Holding Co.	Newport Beach	CA
	453	Longs Drug Stores Corp.	Walnut Creek	CA
	454	DaVita Inc.	El Segundo	CA
	460	USG Corp	Chicago	IL
100	461	Symantec Corp.	Cupertino	CA
	463	Energy East Corp.	New Gloucester	ME
	464	NVR Inc.	Reston	VA
	467	Tribune Co.	Chicago	IL
	468	Fiserv Inc.	Brookfield	WI
	469	Sovereign Bancorp Inc.	Philadelphia	PA
100	470	Lexmark International Inc.	Lexington	KY
70	471	Hershey Co., The	Hershey	PA
	472	SunGard Data Systems Inc.	Wayne	PA
100	474	Clorox Co.	Oakland	CA
	476	Advance Auto Parts (Advance Holding)	Roanoke	VA
	478	Telephone & Data Systems (US Cellular)	Chicago	IL
100	479	Liz Claiborne Inc.	New York	NY
	483	Hovnanian Enterprises	Red Bank	NJ
	485	Universal Health Services	King of Prussia	PA
	486	El Paso Corp	Houston	TX
	489	PetSmart Inc.	Phoenix	AZ
	491	Chiquita Brands International, Inc.	Cincinnati	OH
	493	Big Lots	Columbus	OH
	494	Sealed Air Corp	Elmwood Park	NJ
	495	Toll Brothers, Inc.	Horsham	PA
	496	United Stationers Inc.	Deerfield	IL
	497	Robert Half International Inc.	Menlo Park	CA
	500	SCANA Corp.	Columbia	SC
80	501	Comerica Inc.	Dallas	TX
	502	General Cable Corp.	Highland Heights	KY
	503	Conseco Inc.	Carmel	IN
	504	Nash Finch	Minneapolis	MN

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	505	Lubrizol Corporation	Wickliffe	OH
	506	Stanley Works	New Britain	CT
95	508	PepsiAmericas Inc.	Minneapolis	MN
	509	M&T Bank Corp.	Buffalo	NY
	513	Neiman Marcus Group, Inc.	Dallas	TX
75	514	Rockwell Collins Inc.	Cedar Rapids	IA
	516	Con-way Inc.	San Mateo	CA
	518	Kindred Healthcare	Louisville	KY
100	519	Brinker International Inc.	Dallas	TX
80	520	CH2M HILL Companies Ltd.	Englewood	CO
100	522	Levi Strauss & Co.	San Francisco	CA
100	523	Wyndham Worldwide Corp.	Parsippany	NJ
	524	Legg Mason, Inc.	Baltimore	MD
80	525	Mutual of Omaha Insurance	Omaha	NE
45	526	Jones Apparel Group Inc.	New York	NY
	527	Brightpoint, Inc	Plainfield	IN
	528	Polo Ralph Lauren Corp.	New York	NY
	529	Level 3 Communications Inc.	Broomfield	CO
	530	Cincinnati Financial Corp.	Fairfield	OH
40	531	RadioShack Corp.	Fort Worth	TX
	533	Dollar Tree Stores, Inc.	Chesapeake	VA
55	534	Wisconsin Energy Corp.	Milwaukee	WI
	536	Gilead Sciences Inc	Foster City	CA
	538	EOG Resources	Houston	TX
	540	Washington Post Co.	Washington	DC
65	541	IKON Office Solutions	Malvern	PA
	542	NYSE Euronext Inc.	New York	NY
	543	NVIDIA Corp.	Santa Clara	CA
65	544	H&R Block	Kansas City	MO
	546	Harsco Corp.	Camp Hill	PA
	547	Laboratory Corporation of America Holdings	Burlington	NC
100	548	MasterCard Inc.	Purchase	NY
100	549	Borders Group Inc.	Ann Arbor	MI



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	550	Sonoco Products Company	Hartsville	SC
	552	Sirva Inc	Westmont	IL
	553	CA Inc.	Islandia	NY
	554	Allergan Inc.	Irvine	CA
	555	Amerigroup Corp.	Virginia Beach	VA
	556	Williams-Sonoma Inc.	San Francisco	CA
	557	Temple-Inland	Austin	TX
	558	Chemtura Corp.	Middlebury	CT
	560	Zimmer Holdings Inc.	Warsaw	IN
	564	Michaels Stores	Irving	TX
65	566	CUNA Mutual Insurance Group	Madison	WI
50	567	Hasbro Inc.	Pawtucket	RI
	568	BlueLinx Holdings Inc.	Atlanta	GA
	569	Trinity Industries, Inc.	Dallas	TX
	571	Popular, Inc.	Hato Rey	PR
	572	Genzyme Corp.	Cambridge	MA
	573	OGE Energy Corp	Oklahoma City	OK
	574	St. Jude Medical Inc.	St. Paul	MN
	575	Broadcom Corp.	Irvine	CA
	577	Consol Energy, Inc.	Pittsburgh	PA
100	578	Abercrombie & Fitch Co.	New Albany	OH
	579	Lennox International	Richardson	TX
	580	United Rentals, Inc.	Greenwich	CT
	581	Cintas Corp.	Cincinnati	OH
	582	LandAmerica Financial Group Inc.	Glen Allen	VA
	585	Simon Property Group, Inc	Indianapolis	IN
	586	Bemis Co. Inc.	Neenah	WI
	592	Sierra Pacific Resources	Reno	NV
65	594	Alliant Techsystems	Edina	MN
	597	Pinnacle West Capital	Phoenix	AZ
	598	VWR International Inc.	West Chester	PA
100	599	Alaska Air Group Inc.	Seattle	WA
	600	Cytec Industries Inc.	West Paterson	NJ
	604	BearingPoint, Inc.	McLean	VA

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	605	Forest Laboratories Inc.	New York	NY
85	607	Alliant Energy Corp.	Madison	WI
100	608	Hospira Inc.	Lake Forest	IL
	609	ServiceMaster	Memphis	TN
75	610	Huntington Bancshares	Columbus	OH
	611	Del Monte Foods	San Francisco	CA
	612	Dynegy Inc.	Houston	TX
	614	Corn Products International Inc.	Westchester	IL
	615	Warner Music Group	New York	NY
	617	Energizer Holdings, Inc.	St. Louis	MO
	620	Vulcan Materials Company	Birmingham	AL
45	623	Allegheny Energy	Greensburg	PA
	625	Saks Incorporated	New York	NY
	628	Great Plains Energy Inc.	Kansas City	MO
	629	Molex Incorporated	Lisle	IL
	630	General Growth Properties, Inc.	Chicago	IL
	631	NSTAR	Boston	MA
	632	Windstream Corp.	Little Rock	AR
100	637	New York Times Co.	New York	NY
	638	Puget Energy Inc.	Bellevue	WA
	643	Commerce Bancorp, Inc.	Cherry Hill	NJ
	644	Mercury General Corporation	Los Angeles	CA
	646	Nicor Inc	Naperville	IL
	648	Biogen Idec Inc	Cambridge	MA
	649	Olin Corporation	Clayton	MO
	650	First Horizon National Corp.	Memphis	TN
95	651	Adobe Systems Inc.	San Jose	CA
	652	Country Insurance & Financial Services	Bloomington	IL
	653	Unified Western Grocers, Inc.	Commerce	CA
	657	W.R. Grace & Co.	Columbia	MD
100	658	Raymond James Financial Inc.	St. Petersburg	FL
60	659	Steelcase Inc.	Grand Rapids	MI
100	660	Electronic Arts Inc.	Redwood City	CA
	661	Standard Pacific Corp.	Irvine	CA

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	662	American National Insurance Company	Galveston	TX
	663	American Eagle Outfitters Inc.	Pittsburgh	PA
	664	Berry Plastics Group Inc.	Evansville	IN
	665	Protective Life Corp.	Birmingham	AL
	666	Blackstone Group L.P., The	New York	NY
	668	Collective Brands	Topeka	KS
30	670	Ryland Group	Calabasas	CA
	671	New Jersey Resources Corporation	Wall	NJ
68	676	Tiffany & Co.	New York	NY
100	677	Hewitt Associates	Lincolnshire	IL
	680	CVR Energy Inc.	Sugar Land	TX
	682	Exide Technologies	Alpharetta	GA
	684	MDC Holdings	Denver	CO
	687	PHH Mortgage Corporation	Mt. Laurel	NJ
	688	Interstate Bakeries	Kansas City	MO
	690	Benchmark Electronics Inc	Angleton	TX
	691	Snap-on Inc.	Kenosha	WI
	692	Rent-A-Center, Inc.	Plano	TX
	693	Carlisle Companies Inc.	Charlotte	NC
	694	Jack in the Box Inc.	San Diego	CA
	697	Teleflex	Limerick	PA
80	703	Convergys Corp.	Cincinnati	OH
	704	ABM Industries Inc.	San Francisco	CA
80	705	JetBlue Airways Corp.	Forest Hills	NY
	706	Juniper Networks, Inc.	Sunnyvale	CA
45	708	Mirant Corp.	Atlanta	GA
	709	Network Appliance, Inc	Sunnyvale	CA
	710	Patterson Companies (Patterson Dental Supply)	St. Paul	MN
	712	Hanover Insurance Group Inc.	Worcester	MA
	713	Systemax, Inc.	Port Washington	NY
	717	United Natural Foods, Inc.	Dayville	CT
	718	Analog Devices Inc.	Norwood	MA
	720	Granite Construction Inc.	Watsonville	CA



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
58	721	KLA-Tencor Corp.	San Jose	CA
100	724	Intuit Inc.	Mountain View	CA
	726	Jefferies Group	New York	NY
	727	StanCorp Financial Group, Inc.	Portland	OR
	731	Wynn Resorts, Ltd	Las Vegas	NV
	732	R.H. Donnelley	Cary	NC
	733	Coach Inc.	New York	NY
	736	Mylan Laboratories Inc.	Canonsburg	PA
50	737	Expedia Inc.	Bellevue	WA
	738	Regal Entertainment Group	Knoxville	TN
	739	CenturyTel Inc	Monroe	LA
	740	Spectrum Brands Inc.	Atlanta	GA
	741	Jones Lang LaSalle	Chicago	IL
	742	WGL Holdings, Inc.	Washington	DC
	745	FMC Corp.	Philadelphia	PA
	747	Regis Corp.	Edina	MN
	748	International Game Technology	Reno	NV
	750	Southern Union Company	Houston	TX
	751	Cabot Corp.	Boston	MA
0	752	Perot Systems Corp.	Plano	TX
	753	LSI Corp	Milpitas	CA
	755	Sentry Insurance Group	Stevens Point	WI
	756	Phoenix Companies, Inc.	Hartford	CT
	758	HNI Corp.	Muscatine	IA
	761	Joy Global Inc.	Milwaukee	WI
	764	Hawaiian Electric Industries	Honolulu	HI
	765	Hubbell Inc.	Orange	CT
15	772	CBRL Group Inc. (Cracker Barrel)	Lebanon	TN
	774	Spansion Inc.	Sunnyvale	CA
	777	Graham Packaging Holdings Company	York	PA
	778	Molina Healthcare Inc.	Long Beach	CA
	781	Wendy's International Inc.	Dublin	OH
63	783	AMC Entertainment Inc.	Kansas City	MO
	784	Zale Corporation	Irving	TX

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	787	Phillips-Van Heusen Corporation	New York	NY
43	788	PNM Resources Inc.	Albuquerque	NM
	793	Ann Taylor Stores	New York	NY
	798	Terra Industries	Sioux City	IA
	799	Brown Shoe Company, Inc.	St. Louis	MO
	800	Solo Cup	Highland Park	IL
	813	McClatchy Co.	Sacramento	CA
	814	A. O. Smith	Milwaukee	WI
	815	AirTran Holdings Inc.	Orlando	FL
	816	DST Systems Inc.	Kansas City	MO
	817	Alliance Data Systems Corp.	Dallas	TX
	818	Citizens Communications Company	Stamford	CT
	821	International Flavors & Fragrances	New York	NY
	822	Cleveland-Cliffs Inc.	Cleveland	OH
20	823	Brown-Forman Corp.	Louisville	KY
83	824	Moody's Corp.	New York	NY
	826	Pall Corp.	East Hills	NY
	831	T. Rowe Price Associates Inc.	Baltimore	MD
93	833	E*TRADE Financial Corp.	New York	NY
	834	Church & Dwight Co. Inc.	Princeton	NJ
	835	Martin Marietta Corp.	Raleigh	NC
	837	C. R. Bard Inc	Murray Hill	NJ
	838	Univision Communications Inc.	New York	NY
	839	Andrew Corp.	Westchester	IL
	840	IMS Health Inc.	Norwalk	CT
50	841	Scholastic Corp.	New York	NY
	842	Autodesk Inc.	San Rafael	CA
	844	Thomas & Betts Corporation	Memphis	TN
	845	NewPage Corporation	Miamisburg	OH
	847	Children's Place Retail Stores, Inc.	Secaucus	NJ
	848	Briggs & Stratton Corp.	Wauwatosa	WI
	849	Magellan Health Services Inc.	Avon	CT
	852	J. M. Smucker Co.	Orrville	OH
	853	Equity Residential	Chicago	IL



CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	857	King Pharmaceuticals, Inc	Bristol	TN
	859	Cognizant Technology Solutions Corp.	Teaneck	NJ
	861	Applera Corp.	Norwalk	CT
50	865	Men's Wearhouse Inc., The	Houston	TX
	866	Biomet Inc.	Warsaw	IN
	869	West Corp.	Omaha	NE
88	877	Imation Corp.	Oakdale	MN
	882	Sigma-Aldrich Corp.	St. Louis	MO
	885	Source Interlink Companies	Bonita Springs	FL
	887	IDT Corp.	Newark	NJ
	888	Warnaco Group, Inc.	New York	NY
	891	Spherion Corp.	Fort Lauderdale	FL
100	893	IndyMac Bancorp Inc.	Pasadena	CA
	896	DENTSPLY International, Inc.	York	PA
	901	ScanSource Inc.	Greenville	SC
	902	Commerce Group, Inc.	Webster	MA
	903	Tupperware Brands Corporation	Orlando	FL
	905	Pacer International, Inc.	Concord	CA
	908	CACI International Inc.	Arlington	VA
	910	National Semiconductor	Santa Clara	CA
	912	USEC Inc.	Bethesda	MD
100	914	Herman Miller Inc.	Zeeland	MI
	915	Donaldson Co. Inc.	Minneapolis	MN
	916	Tellabs Inc	Naperville	IL
88	917	Sierra Health Services Inc.	Las Vegas	NV
	918	CSK Auto Corp.	Phoenix	AZ
	920	AptarGroup Inc.	Crystal Lake	IL
	922	Jo-Ann Stores, Inc.	Hudson	OH
	927	IASIS Healthcare Corp.	Franklin	TN
85	929	Selective Insurance Group	Branchville	NJ
	932	Xilinx Inc	San Jose	CA
20	935	Baldor Electric Co.	Fort Smith	AR
	938	Regal-Beloit Corp.	Beloit	WI

CEI RATING	FORTUNE 1000 RANK	EMPLOYER NAME	CITY	STATE
	940	Career Education	Hoffman Estates	IL
	943	Perkin-Elmer Corp.	Waltham	MA
	944	A. Schulman, Inc.	Akron	OH
	946	Alexander & Baldwin	Honolulu	HI
	948	Polaris Industries Inc.	Medina	MN
	949	Varian Medical Systems	Palo Alto	CA
	950	Agilysys, Inc.	Boca Raton	FL
83	956	Dollar Thrifty Automotive Group Inc.	Tulsa	OK
	957	American Greetings Corp.	Cleveland	OH
	958	Modine Manufacturing Company	Racine	WI
	962	Portland General	Portland	OR
	965	PSS World Medical, Inc.	Jacksonville	FL
	968	Louisiana-Pacific Corp	Nashville	TN
	974	MGIC Investment Corporation	Milwaukee	WI
	976	Duane Reade, Inc.	New York	NY
	977	ExpressJet Holdings, Inc.	Houston	TX
	980	BE Aerospace Inc.	Wellington	FL
	981	Arthur J. Gallagher & Co.	Itasca	IL
	982	Plum Creek Timber Co.	Seattle	WA
	984	Fairchild Semiconductor Corp.	South Portland	ME
35	987	Dun & Bradstreet Corp., The	Short Hills	NJ
	990	Potlatch Corporation	Spokane	WA
	992	Bob Evans Farms Inc.	Columbus	OH
	993	Meredith Corp.	Des Moines	IA
	995	Atmel Corp.	San Jose	CA

Testimony of Cora Holt  
In Support of SB169  
Federal and State Affairs  
February 12, 2009

Good morning, Mr. Chairman and members of the committee.

My name is Cora Holt, I live in Manhattan, KS.

In the spring of 2006, there was an attempt to have "sexual orientation and gender presentation" included in the list of protected groups in the Manhattan city ordinances, specifically the ordinances covering housing, employment, and right of access. As is often the case, arguments against this included: we were already covered by existing rights, we don't deserve "special" rights, and that simply being a member of the gay community would not cause a person to lose their employment.

One limiting factor in the fight for equality in Manhattan has been getting people to speak publicly about the discrimination and violence we have experienced. If one loses one's employment through being "found out" at work, it is reasonable that the person would be fearful of speaking in a public forum which could result in history repeating itself. If the choice is between keeping quiet and being able to keep a job and a roof over one's head, or, exercising the right of free speech under the First Amendment, no blame can be laid at the door of someone who chooses to stay silent and safe. For us, exercising First Amendment rights can be a very dangerous choice. I chose to speak at the Human Rights and Services Board meeting because the myth of employment safety needed to be challenged, and I'd had enough.

My "speech" at the Human Rights and Services Board meeting was very short. I identified myself as Lesbian, and told the Board that I taught Economics, Marketing, and Business Ethics at a Manhattan area college. I said that by speaking out at this meeting and being openly gay I would lose my job. The next morning, I received a phone call from college's Academic Dean telling me I was on academic leave, effective immediately, and that I was not to step foot on campus.

My attorney exchanged "lawyer letters" back and forth with the college's attorney. In one of the college's letters, they told me that my "sinful lifestyle and immoral behavior" meant that I would never be allowed back to teach, despite having signed contracts between myself and the Academic Dean for specific classes. The college eventually paid me for the two teaching contracts that they had not honored. They had me sign a statement of confidentiality that would prevent public disclosure of these events, but since this had already been reported in various public forums, including the Manhattan Mercury News and a radio interview broadcast in Manhattan, it wasn't clear why. Through all this, my teaching ability was never once called into question.

I stood beside Governor Kathleen Sebelius when she signed the Executive Order protecting rights for State of Kansas employees, and I look forward to the day when we are all safe so we can just move on. However, we won't be safe unless we speak out, but by speaking out many of us may lose what little safety we have. The situation, to me, seems untenable.

Please recommend SB169 for passage. Thank you for your time.



**This Meeting Is Being Held In The City Commission Room of the City Hall Building At 1101 Poyntz Avenue. Persons Requiring Assistance Should Contact The City's Department Of Human Resources. Voice (785) 587-2440 TDD (785) 587-2448.**

**AGENDA  
MANHATTAN HUMAN RIGHTS AND SERVICES BOARD**

**Thursday March 9, 2006**

**7:00 P.M.**

**City Commission Room  
City Hall, 1101 Poyntz Avenue  
Manhattan, Kansas 66502**

**QUARTERLY MEETING:**

1. Call To Order
2. Welcome And Introduction Of Board Members, Staff, And Public
3. Approval Of Minutes Of The MHRSB Meeting Of December 8, 2005
4. Continued consideration of a request by the Flint Hills Human Rights Project for the board to recommend the addition of "sexual orientation and gender identity/expression," as protected classes, to the City's Anti-Discrimination Ordinance
  - A. Staff Request for Human Rights Project Name Clarification
  - B. Additional Requests for Information by Board Members
  - C. Presentation: One Voice – Flint Hills
  - D. Questions of the Board
  - E. Public Comment
  - F. Board Discussion
5. New Board Members / Exiting Board Members
6. Election of Officers
7. Next Meeting Date (June 22)
8. Adjournment



[REDACTED]  
[REDACTED] COLLEGE  
[REDACTED] Manhattan, Kansas 66502-4081  
[REDACTED]  
[REDACTED]

March 10, 2006

Cora Holt  
907 Pine  
Wamego, KS 66547

Dear Cora:

This letter is to inform you of my decision to place you on a paid administrative leave in regard to your contract for teaching MAN 440 Economics for Managers, class dates being every Tuesday evening from March 14 through May 9, 2006. [REDACTED] College will pay you on the dates as stated in the signed contract until further notice.

The administrative leave will allow the [REDACTED] administration and me time to investigate and determine the appropriate response to your possible violations of the [REDACTED] Faculty Handbook and [REDACTED] Staff Handbook and other employment standards. Until a final determination is made, you are asked not to be on campus to teach the above contracted course.

If you have questions regarding this decision, please contact me.

Sincerely,

[REDACTED]

Vice President for Academic Affairs



*Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans*

### **State Office**

6505 E. Central PMB 219  
Wichita, Kansas 67206  
(316) 260-4863  
fax (316) 858-7196

www.KansasEqualityCoalition.org

### **Chapters**

#### **Central Plains**

PO Box 916  
Emporia, KS 66801  
(620) 794-3375

#### **Johnson County**

11944 W. 95th St., Suite 200  
Lenexa, KS 66215  
(913) 648-4459

#### **Lawrence/Douglas County**

PO Box 1225  
Lawrence, KS 66044  
(785) 842-2264

#### **North Central Kansas**

PO Box 3020  
Salina, KS 67402-3020  
(785) 825-7847

#### **Riley/Geary Counties**

PO Box 1512  
Manhattan, KS 66505  
(785) 587-8890

#### **Southeast Kansas**

PO Box 1194  
Pittsburg, KS 66762  
(620) 704-7588

#### **Southwest Kansas**

PO Box 1261  
Dodge City, KS 67801  
(620) 635-5213

#### **Topeka**

PO Box 4214  
Topeka, KS 66604  
(785) 234-5932

#### **Wichita/Sedgwick County**

6505 E. Central PMB 219  
Wichita, Kansas 67206  
(316) 260-4863  
fax (316) 858-7196

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Testimony of Thomas Witt, Lobbyist, Kansas Equality Coalition  
Senate Committee on Federal and State Affairs  
Statement in Support of SB169  
February 12, 2009

Good morning Mr. Chairman and members of the committee.

My testimony in support of SB169 will be brief, and will focus on an important question the Legislature must ask, especially in a year of shrinking budgets: How much do we expect this to cost?

In April of 2000, the United States General Accounting Office released a report (attached) of the number of complaints that had been filed in eleven states that had enacted protections similar to those in SB169 during the 1990s. The GAO report found that complaints ranged from 0.8% to 3.3% of the total complaints filed. A study by the Southern California Law Review (attached) further found that the rate of complaints based on sexual orientation or gender identity matched, when adjusted for percentage of the workforce, state-by-state rates of gender-bias complaints.

Over the past 10 years, the average number of complaints filed with the Kansas Human Rights Commission has been 960. That number has ranged from a low of 710 complaints in 2002 to a high of 1120 in 2000. The last three years, 2006, 2007 and 2008, have seen 1076, 821, and 918 complaints respectively. In the past decade, the number of complaints reported by the KHRC has varied significantly from year to year, with a maximum annual variation in excess of 300 complaints. The last three years variance is typical of the decade.

If the number of Kansas complaints based on sexual orientation or gender identity is similar to those of other states at the higher 3.3% rate, we can expect an average of 32 such complaints per year. However, if we look at the state-by-state numbers of two other Midwestern states, I believe that the number of complaints Kansas can expect will be lower than the 32 cited above. From the GAO report, Wisconsin (2000 census population 5.3 million) and Minnesota (2000 census population 4.9 million) show complaint rates of ~8 to ~10 per million in population. That would put Kansas, with a 2008 population estimate of 2.8 million, at 25 or so complaints per year.

As late as the day prior to today's hearing, the fiscal note for SB169 was not available. However, in the fiscal note for the 2007 version of this bill, the KHRC suggested additional staffing will be required to handle the increase in complaints, for a cost in excess of \$80,000. KHRC asserted an additional 50 complaints per year; we have tried to reconcile that prediction with the GAO data, and we believe our estimate of half as many complaints to be more accurate. In either scenario, however, the number of additional complaints KHRC can expect falls far below their current annual variation in complaints. In other words, if KHRC can absorb variations in complaints in the hundreds per year without requesting \$80,000 in extra staffing, we believe an extra 25 to 33 complaints, or even 50 complaints per year, is well within their current staffing capacity. Another concern we have with KHRC's 2007 cost estimate is for \$14,000 in remodeling. Our assumption is that remodeling would be to accommodate the extra staffing; again, we are convinced that KHRC can handle the relatively small increase in complaints with current staff.

In summation, we believe the number of complaints, as a percentage of current rates, will be small enough to address without any significant additional costs to the State of Kansas, and we urge you to recommend passage of SB169.

Sen Fed & State  
Attachment 4  
2-12-09



GAO

Accountability \* Integrity \* Reliability

United States General Accounting Office  
Washington, DC 20548

Office of the General Counsel

B-284923

April 28, 2000

The Honorable James M. Jeffords  
Chairman, Committee on Health, Education, Labor and Pensions  
United States Senate

Subject: Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions Since 1997

Dear Mr. Chairman:

Three federal statutes—Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, and the Age Discrimination in Employment Act—together make it unlawful for an employer to discriminate against an employee on the basis of characteristics such as race, color, religion, sex, national origin, disability, and age; these laws do not cover discrimination based on sexual orientation. In 1997, we reported to you our findings regarding the experience of 11 states and the District of Columbia<sup>1</sup> with statutes prohibiting discrimination in employment on the basis of sexual orientation.<sup>2</sup>

As a principal sponsor of S. 1276, the Employment Non-Discrimination Act of 1999 (ENDA-99), a bill that would prohibit employment discrimination on the basis of sexual orientation, you asked, in a March 7 letter, that we update our earlier report. Specifically, you asked that we report on (1) characteristics, coverage, and exclusions of any new state laws and (2) the enforcement experience of the states since our earlier report.

To respond to your request, we looked for changes in state statutes or new state statutes since 1997. To get information about states' experience, we spoke with

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<sup>1</sup> The states were California, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, and Wisconsin. In the following discussion, "state" includes the District of Columbia.

<sup>2</sup> Sexual-Orientation-Based Employment Discrimination: States' Experience With Statutory Prohibitions, (GAO/OGC-98-7R, Oct. 23, 1997).

officials charged with enforcing the state laws governing employment discrimination. Specifically, we collected readily available data from each state on the numbers of employment discrimination complaints filed, and the proportion of those complaints involving sexual orientation, for fiscal years since our earlier report. All data are as reported by the state agency; we did not independently verify them. We also asked state officials to identify any significant litigation of which they were aware; and we searched electronic databases for court decisions addressing state laws that prohibit employment discrimination on the basis of sexual orientation. To update that portion of our earlier report that discussed pending federal legislation, we compared ENDA-99 to its counterpart in the 105th Congress, S. 869 (ENDA-97).

### SUMMARY

Twelve states currently have laws that prohibit discrimination in employment on the basis of sexual orientation.<sup>3</sup> The content of these laws varies, but they share many significant features. Eleven of the states were on the list in our earlier report, but Maine is no longer included—a 1998 referendum repealed that part of Maine's law that made it unlawful to discriminate in employment on the basis of sexual orientation<sup>4</sup>—and we have added Nevada, where a law barring employment discrimination on the basis of sexual orientation took effect on October 1, 1999.<sup>5</sup>

Formal complaints of employment discrimination based on sexual orientation continue to be filed in the states that permit them. However, as was the case in 1997, we found that these complaints are a relatively small proportion of all employment discrimination complaints in those states. We also found, as before, no indication that these laws have generated a significant amount of litigation.

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<sup>3</sup>California, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, New Jersey, Nevada, Rhode Island, Vermont, Wisconsin, and the District of Columbia. Since our earlier report, a presidential directive has expanded equal employment opportunity protections in the federal government to include sexual orientation. Executive Order 13087, May 28, 1998.

<sup>4</sup>It is possible that coverage in Maine will be restored. The Governor has signed into law a statute that would protect against discrimination on the basis of sexual orientation in employment, housing, public accommodations and credit. However, by its terms, this law will not take effect unless of majority of those voting in the state's general election in November endorse it.

<sup>5</sup>In the discussion below, we compare Nevada's new law to those of the other states, but significant information on enforcement does not yet exist. Like the laws in the other 11 states, Nevada's law shares a number of features with ENDA-99.



### STATE LAWS AND ENDA-99 SHARE FEATURES

State laws that protect against employment discrimination on the basis of sexual orientation differ in some respects, but generally address the same issues and share a number of features with one another and with ENDA-99. In our earlier report, we discussed in detail the significant features that are common to state laws barring employment anti-discrimination statutes on the basis of sexual orientation and to ENDA-97.<sup>6</sup> The significant features shared by these laws, and how ENDA-99 compares, may be summarized as follows:

- State statutes define the term “sexual orientation” as heterosexual, homosexual, or bisexual, and generally include both actual and perceived sexual orientation.
  - ◆ ENDA-99’s coverage is similar; in addition, it would bar discrimination based on the sexual orientation of anyone with whom the employee has or is believed to have associated.
- Coverage provided by the state statutes is not universal: whether an employer is subject to the law depends on the number of workers employed and the nature of the work. Concerning the latter point, all the state laws cover both private and public employment; all exempt religious organizations; most exempt nonprofit organizations.
  - ◆ ENDA-99 generally applies to employers with 15 or more employees. Civilian federal employees, including the Congress, the White House, and the Executive Office of the President, are covered. ENDA-99 exempts religious organizations to the extent they are engaged in religious activities,<sup>7</sup> as well as tax-exempt private membership clubs (other than labor organizations).

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<sup>6</sup> See GAO/OGC-98-7R, Oct. 23, 1997. Except for Maine, where voters repealed the sexual orientation provision, the state laws analyzed in our 1997 report have not changed. ENDA-99 differs from its predecessor, ENDA-97, in two noteworthy respects: ENDA-99’s description of discriminatory conduct proscribed now tracks Title VII of the Civil Rights Act of 1964; in addition, ENDA-99 excludes imposition of affirmative action as a remedy. See the enclosure for a summary comparison of ENDA-97 and ENDA-99.

<sup>7</sup> The exemption would not be available where an employee’s duties for a religious organization pertain solely to an activity that generates “business taxable income” unrelated to the organization’s religious activities.

- The state laws designate a state agency to handle discrimination complaints, but differ concerning the circumstances under which complainants may seek judicial enforcement.
  - ◆ ENDA-99 provides that the enforcement procedure would be the same as that now followed for complaints of employment discrimination under Title VII of the Civil Rights Act of 1964. That procedure is analogous to those state procedures under which the complainant must bring the complaint to an administrative agency before being allowed to sue.<sup>8</sup>
- State laws protect complainants and witnesses from retaliation.
  - ◆ ENDA-99's provisions are comparable.
- All state statutes provide a range of remedies, which can include back pay awards, punitive damages, or civil penalties.
  - ◆ ENDA-99's range of remedies does not include civil penalties.
- States are split on the use of quotas or preferential treatment: five of the state statutes prohibit quotas or preferential treatment; two permit preferential treatment; five are silent.
  - ◆ ENDA-99 prohibits employers from adopting or implementing quotas, or from giving preferential treatment to individuals on the basis of sexual orientation and provides explicitly that affirmative action may not be imposed. This is an exception to the general provision of ENDA-99 that the same procedures and remedies applicable to a violation of Title VII of the Civil Rights Act of 1964 are applicable to claims under ENDA-99. The Civil Rights Act, under certain conditions, permits employers to voluntarily adopt race- or gender-based preferences.

#### Nevada Law Similar to Other States' Laws and to ENDA-99

Nevada's statute, which took effect on October 1, 1999, is similar in substance to the other states' laws barring employment discrimination on the basis of sexual orientation:

- Sexual orientation is defined as having, or being perceived to have, an orientation for heterosexuality, homosexuality, or bisexuality.

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<sup>8</sup> For more information, see GAO/OGC-98-7R, at 7.

- The law applies to private and state employers with 15 or more employees, employment agencies, and labor organizations. Exempted are out-of-state employees, religious organizations,<sup>9</sup> Indian tribes, and tax-exempt private membership clubs.
- Employees may file a complaint concerning unlawful employment practices with Nevada's Equal Rights Commission and, after an unfavorable decision, may seek court relief. A complainant is entitled to file suit once administrative remedies have been exhausted, and to have a trial *de novo*. (This means in effect that the court will proceed as if there had been no administrative proceeding.)
- Discrimination against anyone for filing a complaint, appearing as a witness, or assisting in an investigation is explicitly prohibited.
- The enforcement agency has authority only to assess back pay and seek the reemployment of the complainant. It cannot assess penalties, or award punitive damages or attorney's fees.
- Preferential treatment as a remedy for correcting imbalance in the percentage of persons employed who belong to a protected group appears to be permitted but is not required.

NO SUBSTANTIAL INCREASE IN COMPLAINTS OF EMPLOYMENT  
DISCRIMINATION BASED ON SEXUAL ORIENTATION SINCE 1997

In 1997, we reported that, in those states with statutes making it illegal to discriminate in employment on the basis of sexual orientation, relatively few formal complaints or lawsuits alleging such discrimination had been filed. Subsequent data provided by the states show that complaints of employment discrimination based on sexual orientation continue to be filed in the states. While there has been some variation over time, both the number and the percentage of such complaints as a portion of overall complaints of employment discrimination filed may still be characterized as relatively small. We also found no indication of a substantial amount of litigation since 1997; the number of lawsuits brought under these laws remains small.

Few Complaints of Sexual Orientation Discrimination in Employment Filed

Of the 12 state statutes prohibiting discrimination in employment on the basis of sexual orientation, 3 have been in effect for over 10 years. The earliest, in the District

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<sup>9</sup> A religious organization is not exempt if the employee is performing work not connected with the employer's religious activities. This provision is similar to those in ENDA-99 and in some of the other states' laws.

of Columbia, was enacted 23 years ago. Seven laws date from between 1991 and 1995. The most recent is Nevada's, which took effect in October 1999.

Overall, the states' data show that relatively few complaints of discrimination in employment on the basis of sexual orientation have been filed each year, whether measured in absolute numbers or as a percentage of all employment discrimination complaints. The data do not reveal any obvious growth trend in the number of complaints, nor is there evidence of large numbers of complaints filed immediately after a sexual orientation protection statute takes effect.

For example, in California, 159 complaints of sexual orientation discrimination (1.2 percent of all employment discrimination complaints) were filed in 1993, the year California's statute became effective. In 1999, 154 complaints were filed (0.8 percent of all employment discrimination complaints). Nevada has had one complaint filed since its law took effect 6 months ago.

Similarly, 12 complaints of sexual orientation discrimination were filed in Hawaii in 1992, the year after its anti-discrimination statute took effect. This was 2.2 percent of its overall employment discrimination complaints. In 1998, the most recent year for which statistics are available, six complaints were filed, representing 1.1 percent of the state's overall discrimination complaints.

Since 1997, New Jersey has seen a decline in the number of complaints filed based on sexual orientation discrimination in employment. There were 35 such complaints in 1997 as compared to 21 complaints in 1999. However, the total number of employment discrimination complaints filed during the same period also decreased, from 1,580 complaints in 1997 to 1,202 complaints in 1999. As a result, the percentage of complaints based on sexual orientation discrimination remained constant.

Detailed information on numbers and percentages of complaints filed in the states by fiscal year is shown in table 1. The latest years for which complete data were available are shown for each state.



Table 1: Data on States' Experience With Sexual Orientation Employment  
Discrimination Complaints

Fiscal year	Total employment discrimination complaints	Sexual orientation employment discrimination complaints	Sexual orientation complaints as a percentage of total employment discrimination complaints
<b>California (law effective 1993)</b>			
1993	13,362	159	1.2
1994	15,730	159	1.0
1995	16,206	161	1.0
1996	17,164	173	1.0
1997	18,752	151	0.8
1998	18,892	127	0.7
1999	18,644	154	0.8
<b>Connecticut (law effective 1991)</b>			
1993	2,035	20	1.0
1994	2,404	32	1.3
1995	2,668	23	0.9
1996	2,262	44	1.9
1997	2,355	41	1.7
1998	2,107	48	2.2
1999	2,100	28	1.3
<b>District of Columbia (law effective 1977)</b>			
1992	214	7	3.3
1993	304	9	3.0
1994	344	3	0.9
1995	337	8	2.4
1996	230	7	3.0
1997	277	6	2.1
1998	295	5	
<b>Hawaii (law effective 1991)</b>			
1992	555	12	2.2
1993	364	6	1.6
1994	367	13	3.5
1995	396	15	3.8
1996	415	11	2.7
1997	483	10	2.0
1998	537	6	1.1

Massachusetts (law effective 1989)*			
1990	3,232	43 <sup>d</sup>	1.3
1991	3,496	83	2.3
1992	3,225	73	2.2
1993	4,372	135	3.0
1994	4,592	142	3.0
1995	5,144	146	2.8
1996	4,990	155	3.1
1997	5,173	148	2.9
1998	4,558	169	3.7
1999	4,180	113	2.7
Minnesota (law effective 1993)			
1995	886	34	3.8
1996	980	24	2.4
1997	1,436	34	2.3
1998	1,299	26	2.0
1999	1,268	32	2.5
Nevada (law effective October 1, 1999)*			
New Hampshire (law effective 1998)			
1998	220	2	0.9
1999	241	8	3.3
New Jersey (law effective 1992)			
1992	2,712	17	0.6
1993	2,159	20	0.9
1994	1,919	25	1.3
1995	2,127	30	1.4
1996	1,277	20	1.6
1997 <sup>e</sup>	1,580	35	2.0
1998	1,495	27	2.0
1999	1,202	21	2.0
Rhode Island (law effective 1995)			
1996	317	2	0.6
1997	449	14	3.1
1998	428	5	1.1
1999	337	5	1.4
Vermont (law effective 1991)*			
1993	139	4	2.9
1994	136	5	3.7
1995	152	2	1.3
1996	129	2	1.6
1997	115	6	5.2
1998	200	6	3.0
1999	150	4	2.7
Wisconsin (law effective 1982)			
1996 <sup>e</sup>	3,653	43	1.2
1997	4,619	61	1.4
1998	4,073	64	1.6
1999	3,598	65	1.8

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<sup>a</sup> For 1998 and 1999, Connecticut gave us exact data on the number of employment sexual orientation cases. At the time of our 1997 correspondence, they did not have those data and estimated that approximately 90 percent of the total sexual orientation cases involved employment.

<sup>b</sup> Data on the number of complaints based on sexual orientation were not available for 1998.

<sup>c</sup> Massachusetts provided data for all discrimination complaints filed and the number of sexual orientation complaints filed. The state does not keep separate records on the number of employment discrimination complaints. The figures are for calendar years.

<sup>d</sup> These are actual numbers of sexual orientation complaints filed between 1990 and 1999.

<sup>e</sup> Only one employment discrimination complaint on the basis of sexual orientation has been filed since the new law went into effect (fiscal year 2000). In fiscal year 1999, the total number of employment discrimination complaints for Nevada was 1,070.

<sup>f</sup> In our previous correspondence, the data for fiscal year 1997 were estimates.

<sup>g</sup> Data provided are for calendar years.

<sup>h</sup> Data were not readily available for these earlier fiscal years.

As table 1 indicates, complaints of employment discrimination based on sexual orientation have remained low as a portion of total discrimination complaints filed each year with the 12 states. The percentage of sexual orientation cases relative to total complaints ranged in 1999 from 0.8 percent to 3.3 percent. The highest percentage in the 1992-1999 period was 5.2 percent in Vermont in 1997. However, that percentage is the result, not of an unusually large number of complaints based on sexual orientation—six were filed, just as in the following year when they were 3 percent of the total—but rather of an unusually small number of total employment discrimination complaints, less than any of the other years.

#### Litigation under State Laws on Sexual Orientation Rare

In 1997, we found few decisions by courts under the states' laws prohibiting discrimination in employment on the basis of sexual orientation, and that has not changed in the intervening time. A current search of standard sources for the 12 states found few court rulings under the states' laws prohibiting discrimination in employment on the basis of sexual orientation since 1997. Follow-up discussions with state officials responsible for enforcing the prohibition against employment discrimination confirmed that since 1997, a small number of lawsuits have been filed in court under their employment discrimination statutes.

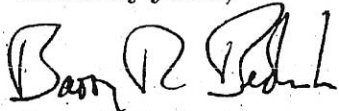
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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to interested parties. We will make copies available to others upon request.

This report was prepared by Stefanie Weldon, Senior Attorney, and Dayna K. Shah, Assistant General Counsel. Please call me at (202) 512-8203 if you or your staff have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Barry R. Bedrick". The signature is written in a cursive style with some loops and flourishes.

Barry R. Bedrick  
Associate General Counsel

Enclosure



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ENCLOSURE

ENCLOSURE

ENDA-97 and ENDA-99: Selected Provisions Compared

Provision	ENDA-97
Coverage	Law generally would apply to an employer with 15 or more employees (but not to a tax-exempt private membership club), to an employment agency, labor organization, joint labor-management committee, and certain other entities.
Sexual orientation	Homosexuality, bisexuality, or heterosexuality, whether the orientation is real or perceived. Would also bar discrimination based on the sexual orientation of anyone with whom the employee has or is believed to have associated.
Discrimination prohibited	Proscribes conduct which subjects individuals to a different standard or treatment or otherwise discriminates
Enforcement Procedures	Procedures the same as those followed for employment discrimination complaints under Title VII of the Civil Rights Act of 1964
Enforcement and Remedies	Expressly bars quotas and preferential treatment as remedies Provides for all other remedies available under applicable civil rights laws (which do not include civil penalties)
Affirmative Action	No specific provision
Retaliation and Coercion Prohibited	Prohibits retaliation against individuals because they oppose an act or practice prohibited by the bill, or testified or assisted in an investigation
Disparate Impact	Fact that employment practice has a disparate impact on the basis of sexual orientation does not establish a prima facie violation of the Act.

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ENCLOSURE

ENCLOSURE

Provision	ENDA-99
Coverage	Coverage similar. Definitions of employer, employment agency, and labor organization now more closely track definitions in Title VII of the Civil Rights Act of 1964.
Sexual orientation	Same
Discrimination prohibited	By taking language directly from existing civil rights laws, it clarified and expanded what is proscribed conduct for employer practices, employment agency practices, labor organizations, and training programs. Such proscribed conduct includes failure or refusal to hire; discrimination respecting compensation, terms, conditions, and privileges of employment; or limiting, segregating, or classifying in a way that deprives or adversely affects opportunities. It also includes failure or refusal to refer for employment; exclusion or expulsion from membership in a labor organization; and exclusion from apprenticeship, training, and on-the-job programs.
Enforcement Procedures	Same
Enforcement and Remedies	Same
Affirmative Action	Affirmative action for a violation of this Act may not be imposed.
Retaliation and Coercion Prohibited	Same
Disparate Impact	Same

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# DO GAY RIGHTS LAWS MATTER?: AN EMPIRICAL ASSESSMENT

WILLIAM B. RUBENSTEIN\*

## INTRODUCTION

Do gays rights laws really matter? How often are claims of sexual orientation discrimination actually filed? Is there a demonstrated need for such laws? The answers to these questions have important public policy ramifications. A bill pending in Congress—the Employment Non-Discrimination Act (“ENDA”)<sup>1</sup>—would amend federal civil rights law to bar sexual orientation discrimination in the workplace.

Opponents of the bill rely on two distinct, indeed contradictory, numbers-based arguments as support for their position.<sup>2</sup> The “flooders” argue that there are so *many* allegations of sexual orientation discrimination that ENDA will lead to a litigation explosion, swamping the Equal Employment Opportunity Commission (“EEOC”) and federal courts with a mass of novel claims and draining enforcement attention from more pressing

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\* Acting Professor, UCLA School of Law. This project would not have been possible without the assistance I received everywhere I turned at the UCLA School of Law. Law students helped enormously with the laborious work of gathering data. I am especially indebted to Jocelyn Sperling, who did an extraordinary job assisting in the collection, recording, and analysis of the data, and to Krishna Juvvadi, who provided superb assistance crunching the numbers. My thanks, as well, to Anthony Ly, Laura Godfrey, Jeremy Gladstone, Jennifer Durkin, and Ryan Lederman. UCLA’s Empirical Research Group, particularly Rick Sander and Joseph Doherty, helped immeasurably in framing the research and analysis. My colleagues Rick Abel, Sharon Dolovich, Laura Gomez, and Gillian Lester furnished very helpful comments on earlier drafts, as did many others at a faculty workshop in April, 2001. Finally, the UCLA Academic Senate and the UCLA School of Law Dean’s Fund provided financial support. Beyond UCLA, I am grateful for the many insightful comments that I received on earlier drafts from Lee Badgett, Chai Feldblum, Nan Hunter, David Kirp, Sam Marcossan, and Farrell Rubenstein. I am also very appreciative for the careful data checking undertaken by the editors of the *Southern California Law Review*, particularly Matthew Ferguson, Managing Editor.

1. Employment Non-Discrimination Act of 1999, H.R. 2355, 106th Cong. (1999); Employment Non-Discrimination Act of 1999, S. 1276, 106th Cong. (1999).

2. Opponents also rely on many non-numerical, more normative, arguments. I do not address these in this Article.



problems.<sup>3</sup> By contrast, the “droughters” argue that there are so *few* cases of sexual orientation discrimination that a federal law is unnecessary.<sup>4</sup> Neither the flooders nor droughters rely on empirical data to support these claims.

The General Accounting Office (“GAO”), pursuant to a request from Congress, conducted some limited empirical research relevant to these contentions. In 1997, the GAO gathered data concerning the utilization of *state* laws that prohibit sexual orientation discrimination.<sup>5</sup> The GAO report provided Congress with three sets of numbers: the *total* number of annual employment discrimination complaints filed in each state; the number of these complaints that alleged *sexual orientation* discrimination; and finally, the number of sexual orientation complaints as a percentage of the total number of employment discrimination cases filed within that state that year.<sup>6</sup>

The GAO found that a small percentage—never more than about 3%—of state employment discrimination complaints were claims of sexual orientation bias. It concluded that, “relatively few formal complaints of employment discrimination on the basis of sexual orientation have been filed, either in absolute numbers or as a percentage of all employment discrimination complaints in the state.”<sup>7</sup> Although it did not say so directly, the GAO report essentially settled the flood argument. The report concluded that “[w]e . . . found no indication that these laws have generated a significant amount of litigation.”<sup>8</sup>

The GAO’s study did not purport to address the drought argument. Nonetheless, the study could be read to credit it. The GAO found that the actual number of filed complaints in several states never exceeded ten per year and in most states never exceeded 100 per year.<sup>9</sup> In most states, this amounted to a mere few percent of the total number of discrimination

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3. See *infra* notes 23–24 and accompanying text.

4. See *infra* notes 25–26 and accompanying text.

5. Letter from Barry R. Bedrick, Associate General Counsel, to the Honorable James M. Jeffords, Chairman (Oct. 23, 1997) in U.S. GEN. ACCOUNTING OFFICE, SEXUAL-ORIENTATION BASED EMPLOYMENT DISCRIMINATION: STATES’ EXPERIENCE WITH STATUTORY PROHIBITIONS, (GAO/OGC-98-7R) (1997) [hereinafter 1997 GAO Report].

6. *Id. passim*. A subsequent 2000 report updated the 1997 report. Letter from Barry R. Bedrick, Associate General Counsel, to the Honorable James M. Jeffords, Chairman (Apr. 28, 2000) in U.S. GEN. ACCOUNTING OFFICE, SEXUAL-ORIENTATION BASED EMPLOYMENT DISCRIMINATION: STATES’ EXPERIENCE WITH STATUTORY PROHIBITIONS, (GAO/OGC-00-27R) (2000) [hereinafter 2000 GAO Report]. The update employed the same research methodology described in the text.

7. 1997 GAO Report, *supra* note 5, at 2.

8. *Id.* at 2.

9. *Id.* at 11–13.

complaints.<sup>10</sup> As noted, the GAO therefore concluded that there were “relatively few” sexual orientation complaints.<sup>11</sup> Moreover, gay advocates themselves have expressed surprise at what seems to be under-utilization of protections that they fought hard to secure and, accordingly, they have attempted to explain why the numbers are so low.<sup>12</sup>

Hence the GAO, opponents of ENDA, and even the pro-ENDA lobby all appear to presume that the usage of gay rights laws in the states has in fact been sparse. The purpose of this Article is to provide an empirical analysis of that presumption. The method I use has three steps. First, I place the actual number of filed sexual orientation complaints in the context of the total number of gay people in the workforce. If fifty workers file sexual orientation discrimination complaints, it is important to know whether those are fifty workers out of a total of 500 or 500,000 gay workers in the workforce. By expressing the number of gay complaints in terms of the presence of gay people in the workforce, I produce a measure of the prevalence of complaint-filing by gay workers, or a population-adjusted complaint rate (“PACR”). Second, I apply the same methodology to claims of race and sex discrimination in the same states for the same years. By expressing the actual number of claims filed by minorities and women as a percentage of their prevalence in the workforce, I generate population-adjusted complaint rates for these forms of discrimination as well. Finally, I compare the rate of complaint filing by gay workers with that of other protected groups. This places the number of sexual orientation complaints in some cross-category perspective.

My findings belie the heretofore unexamined assumption that gay rights claims are rarely filed. Using a low-end estimate of the number of gay people in the workforce, I find that in six of ten surveyed states, the incidence of sexual orientation filings falls somewhere between the incidence of sex and race discrimination filings. In two other states, the prevalence of sexual orientation filings exceeds that of both race and gender. In only two states does the incidence of sexual orientation filings fall below both race and gender filings. Even assuming a high portion of gay people in the workforce, the frequency with which gay workers file claims of sexual orientation discrimination is far closer to the rates at which women file gender

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10. The average annual rates were California (1.05%); Connecticut (1.36%); District of Columbia (2.52%); Hawaii (2.76%); Massachusetts (2.17%); Minnesota (3.10%); New Jersey (1.27%); Rhode Island (1.85%); Vermont (2.94%); and Wisconsin (1.1%). *See id.* at 11–13.

11. *Id.* at 2, 10.

12. *See infra* notes 31–32 and accompanying text.

discrimination claims and people of color file race discrimination claims than the raw numbers suggest.

I draw the following conclusions from the data:

- when considered in the context of the number of gay people in the workforce, gay rights laws are used with greater frequency than the raw numbers imply;
- the utilization of gay rights laws, per gay worker, is roughly equivalent to, if not slightly higher than, the utilization of sex discrimination laws by female workers; and,
- given the relatively small number of gay people in the workforce, even the relatively frequent filing of discrimination complaints by gay workers will not swamp government agencies.

This study thus provides empirical proof that, per capita, gay rights laws are regularly utilized by gay workers. There is no “drought.”

This type of empirical proof is not the only argument against the “drought” objection to ENDA. The drought argument may fail of its own logic. The fact that few claims are filed for a given type of prohibited discrimination could simply mean that the law is working well, fully deterring this form of bias. Alternatively, a drought could indicate that the form of bias is so deeply entrenched that workers fear filing complaints even when the prejudice is prohibited. Far from arguing against extending coverage to such a form of bias, this interpretation of a drought would suggest a more, not less, stringent legal regime. Further, some would argue that even one complaint of discrimination is too many, and that a mere drought does not imply the achievement of a fully just society. Finally, along the same lines, others could contend that a nondiscrimination norm is warranted even if relatively few complaints were to be filed because there would be little cost in maintaining such a norm but perhaps significant social symbolism.

Though I do not engage these arguments in this Article, any or all of them may be sound grounds for arguing against the drought objection. But given the empirical evidence I offer here, the drought objection to ENDA needs no other response because there is, in fact, no proof to support it.

## I. BACKGROUND

## A. SEXUAL ORIENTATION LAWS AND CONGRESS

Municipalities adopted ordinances barring sexual orientation discrimination for the first time during the 1970s. In 1983, Wisconsin became the first state to enact such a measure on a statewide basis. While no other state enacted a gay rights law until 1990, as of 2000, twelve states, the District of Columbia, and more than 100 municipalities have done so.<sup>13</sup>

For more than a quarter century, Congress has considered laws that would expand federal protections so as to ban sexual orientation discrimination.<sup>14</sup> The first such bill, introduced in 1975, sought to amend Title VII to add "sexual orientation" as a protected category.<sup>15</sup> Later bills would also have amended the public accommodations provisions of the Civil Rights Act of 1964 and the Fair Housing Act to prohibit sexual orientation discrimination in these settings as well.<sup>16</sup> In 1994, proponents of these laws shifted tactics. Massachusetts Representative Gerry Studds introduced a new law, entitled the Employment Non-Discrimination Act (or "ENDA"), as a substitute for the earlier measures that had never achieved significant support.<sup>17</sup>

ENDA represents a new approach for several reasons. First, it is solely geared towards prohibiting discrimination in the employment setting. Second, rather than accomplishing this goal by amending Title VII of the Civil Rights Act of 1964, ENDA is a freestanding law.<sup>18</sup> Third, ENDA contains various provisions meant to dampen opposition. For example, it

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13. See, *SEXUAL ORIENTATION AND THE LAW* 469 (William B. Rubenstein ed., 2d ed. 1997 & 1999 Supp.). The twelve states that have enacted laws prohibiting workplace discrimination on the basis of sexual orientation are California, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and Wisconsin. The Maine law was repealed by the state's voters before it ever went into effect. See *id.*, 1999 Supp. at 40 (citing A. Jay Higgins & Susan Kinzie, *Voters Repeal Gay Rights Law: Tally Splits Along Rural, Urban Line*, BANGOR DAILY NEWS, Feb. 11, 1998).

14. For a comprehensive overview of this twenty-five year history, see Chai R. Feldblum, *The Federal Gay Rights Bill: From Bella to ENDA*, in *CREATING CHANGE: SEXUALITY, PUBLIC POLICY, AND CIVIL RIGHTS* 149-87 (John D'Emilio et. al. eds., 2000).

15. See H.R. 166, 94th Cong. (1975).

16. See Civil Rights Amendment Act of 1991, S. 574, 102nd Cong. (1991); Civil Rights Amendment Act of 1991, H.R. 1430, 102nd Cong. (1991).

17. See Employment Non-Discrimination Act of 1994, H.R. 4636, 103rd Cong. (1994); Employment Non-Discrimination Act of 1994, S. 2238, 103rd Cong. (1994). See generally Feldblum, *supra* note 14, at 178-80.

18. Congressman Towns introduced an additional law in 2001 that would amend Title VII to add sexual orientation. See H.R. 217, 107th Cong. (1st Sess. 2001).



explicitly disclaims that its enactment will lead in any way to “affirmative action” and it explicitly exempts religious organizations from its reach.<sup>19</sup>

Congress held formal hearings on ENDA in 1994,<sup>20</sup> 1996,<sup>21</sup> and 1997.<sup>22</sup> Some witnesses testified against ENDA on the basis of the “flood” argument.<sup>23</sup> Senators opposed to ENDA echoed these flood arguments in subsequent floor debate. For example, Senator Hatch stated on the Senate floor that ENDA would create a “litigation bonanza” and that it would “lead to scores of thousands of new law suits.”<sup>24</sup> The “drought” argument also surfaced at the Congressional hearings. Representative Poshard, for example, asked an ENDA-friendly witness to respond to this statement:

One of the refrains that I constantly hear from the people is that this isn't needed. There is really nothing going on in the workplace to the extent that the gay community is articulating to the American public, and so on, so we don't need all of these laws carved out for special populations . . . .<sup>25</sup>

While Representative Poshard's question makes clear that the drought argument is a “constant refrain,” often it is articulated in a more nuanced fashion. Opponents of ENDA implicitly argue that not many complaints will be filed by explicitly stating that gay people are not discriminated against. Thus, Joseph Broadus, then a professor at George Mason University School of Law, testified in 1994 that:

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19. Employment Non-Discrimination Act of 1999, S. 1276, 106th Cong. 8 (1999) (prohibiting quotas and preferential treatment on the basis of sexual orientation); *id.* at 9 (exempting religious organizations from the Act unless the employee's duties pertain solely to activities of the organization that generate unrelated business taxable income).

20. On July 29, 1994, the Senate Committee on Labor and Human Resources held a hearing on S. 2238, the Employment Non-Discrimination Act of 1994. *The Employment Non-Discrimination Act of 1994: Hearing on S. 2238 Before the Sen. Comm. on Labor and Human Res.*, 103rd Cong. (1994) [hereinafter *Hearing on S. 2238*].

21. On July 17, 1996, the House Subcommittee on Government Programs of the Committee on Small Business, held a hearing on ENDA. *The Employment Non-Discrimination Act: Hearing on H.R. 1863 Before the Subcomm. on Gov't Programs of the H.R. Comm. on Small Bus.*, 104th Cong. (1996) [hereinafter *Hearing on H.R. 1863*].

22. On October 23, 1997, the Senate Committee on Labor and Human Resources held a hearing on S. 869. *See Employment Non-Discrimination Act of 1997, Hearing on S. 869 Before the S. Comm. of Labor and Human Res.*, 105th Cong. (1997) [hereinafter *Hearing on S. 869*].

23. *See, e.g., Hearing on S. 2238 supra* note 20, at 92 (statement of Robert H. Knight, Dir. of Cultural Affairs, Family Research Council) (stating that “[t]his bill . . . will entangle businesses of all types in expensive litigation”).

24. 142 Cong. Rec. S10129 (daily ed. Sept. 10, 1996) (statement of Sen. Hatch). *See also* 142 Cong. Rec. S10129 (daily ed. Sept. 10, 1996) (statement of Sen. Lott) (stating that ENDA is “just a guarantee of multiple lawsuits”).

25. *Hearing on H.R. 1863, supra* note 21, at 21 (question of Rep. Poshard, Member, Subcomm. of Government Programs).

[Gay people are] not . . . a group in need of special civil rights legislation in order to participate in the economy or to have an opportunity to hold a decent job. [They constitute] an elite. An elite whose insider status has permitted it to abuse the political process in search, not of equal opportunity, but of special privilege and public endorsement. . . . Passage of this bill will not make our economy run better by including previously excluded talent. The most reliable indicators suggest that talent is already full employed. . . . Unlike Title VII, and other civil rights laws the ENDA does not address and attempt to correct gross disparities of opportunity based on class membership. . . . The ENDA is not designed to include the excluded.<sup>26</sup>

Supporters of ENDA spent most of their time responding to the flood argument. Interestingly, though, in so doing, their testimony can be read to add some inadvertent support to the drought argument. For example, Michael Duffy, the Chair of Massachusetts' Commission Against Discrimination ("MCAD"), testified about his state's experience with its antidiscrimination law:

Judging from the numbers of cases that have been filed at the Commission, one can safely assume that gays and lesbians are not currently abusing the system. Only 2% of MCAD's current caseload involves the sexual orientation statute. If one considers that gays and lesbians represent 10% of the population, then this 2% figure is quite low.<sup>27</sup>

Similarly, Senator Carol Moseley-Braun stated that ENDA would not "result in much litigation" noting that in the District of Columbia, "Out of the 435 complaints [filed in 1995], only twenty were based on sexual orientation."<sup>28</sup>

Thus, the data ENDA supporters rely on to refute the flood argument appear to lend some credence to the drought argument. Raw numbers of reported discrimination filings in the states do seem, at first blush, surprisingly low. For example, returning to Michael Duffy's testimony: after pro-gay advocates fought for years to secure a gay rights law in Massachusetts,<sup>29</sup> only thirty-seven individuals in the entire state filed

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26. *Hearing on S. 2238, supra* note 20 (statement of Joseph Broadus, Professor, George Mason Univ. Sch. of Law), available at 1994 WL392911.

27. *Hearing on H.R. 1863, supra* note 21, at 92 (statement of Michael T. Duffy, Chair Comm'r of the Mass. Comm'n Against Discrimination).

28. 142 Cong. Rec. S10129 (daily ed. Sept. 10, 1996) (statement of Sen. Moseley-Braun).

29. For an interesting history of this law, see Peter M. Cicchino, Bruce R. Deming, & Katherine M. Nicholson, Comment, *Sex, Lies, and Civil Rights: A Critical History of the Massachusetts Gay Civil Rights Bill*, 26 HARV. C.R.-C.L. L. REV. 549 (1991). See also, Joyce Cain, *Massachusetts' 1989 Sexual*

discrimination claims in the law's first year. Even half a decade later, only about 100 claims per year are filed out of nearly 5,000 discrimination filings statewide. In Vermont and the District of Columbia, the number of sexual orientation complaints has never even reached double digits.<sup>30</sup>

Supporters of gay rights laws have developed several stories to make sense of these seemingly low numbers. First, they have explained that the sexual orientation laws are new and usage might increase as covered individuals become increasingly aware of their rights.<sup>31</sup> Second, gay rights proponents have argued that the seemingly low numbers might be explained by the fact that gay claimants face a unique hurdle in filing sexual orientation complaints: they must, if they have not, essentially "come out" to combat the bias they face.<sup>32</sup> While both of these stories might have explanatory value, they both start from the proposition that the data does reflect a low complaint filing rate among gay workers.

The only empirical attempt to examine the filing rates themselves—or the explanatory hypotheses—has been the GAO effort.

#### B. THE GAO STUDY

Charged by Senator James Jeffords of Vermont,<sup>33</sup> the General Accounting Office undertook its initial study of sexual orientation laws in 1997. The GAO examined the specific statutory regimes existing in the eleven states and the District of Columbia that prohibited sexual orientation discrimination. The agency also gathered "information concerning the

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*Orientation Nondiscrimination Statute*, 1 LAW & SEXUALITY 285 (1991); Lorena Dumas, *The Sexual Orientation Clause of the District of Columbia's Human Rights Act*, 1 LAW & SEXUALITY 267 (1991).

30. For data, see *infra* app.A.

31. See, e.g., *Hearing on H.R. 1863*, *supra* note 21, at 28 (statement of Michael T. Duffy, Chair Comm'r of the Mass. Comm'n Against Discrimination) (stating that level of actual discrimination is higher than reported number of claims because "homosexuals are afraid . . . or unaware of the current protection"). The GAO report provides little support for this argument. The agency reported that there was not "evidence of large numbers of complaints immediately after the implementation of the sexual orientation statutes" and that "our analyses of the data obtained from the states generally did not show any trends in the number of these complaints over time . . ." 1997 GAO Report, *supra* note 5, at 10. It is possible that the first decade is too short a time period over which to measure such trends, but only time will tell.

32. See, e.g., *Hearing on H.R. 1863*, *supra* note 21, at 88 (statement of Michael T. Duffy, Chair Comm'r of the Mass. Comm'n Against Discrimination) (testifying that "It is my observation that . . . even victims of [gay] discrimination are reluctant to come forward and file complaints . . . because for many gays and lesbians filing involves coming out . . . [and exposing] intimate details of their lives.>").

33. Senator Jeffords was the Chair of the Senate's Committee on Labor and Human Resources which had oversight of ENDA. That committee is now entitled the "Health, Education, Labor, and Pensions" (HELP) committee.

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## DO GAY RIGHTS LAWS MATTER?

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number of complaints filed with the states.”<sup>34</sup> The GAO collected its data by contacting the state agencies charged with enforcing the state laws in question. The data was collected from these officials between July and October 1997, and was not verified by the GAO in any manner.

The GAO reported its data in a table format, by year, setting the total employment discrimination complaints next to the sexual orientation employment discrimination complaints,<sup>35</sup> and then expressing the latter as a percentage of the former. For example, the GAO’s report on Connecticut looks as follows:

TABLE 1

## 1997 GAO REPORT—CONNECTICUT DATA

Fiscal Year	Total employment discrimination cases	Sexual orientation employment discrimination cases	Sexual orientation cases as a percentage of total employment discrimination cases
1993	2,035	20	1.0
1994	2,404	32	1.3
1995	2,668	23	0.9
1996	2,262	44	1.9
1997	2,355	41	1.7

The primary conclusion that the GAO drew about its data is evident from this Connecticut information: the agency stated that “*relatively* few complaints of [sexual orientation] discrimination have been made.”<sup>36</sup> The word “relatively” in that sentence appears to refer to the comparison of sexual orientation complaints to total complaints; relatively few of the total number of filed employment discrimination complaints alleged sexual

34. 1997 GAO Report, *supra* note 5, at 1.

35. Some of the GAO data was limited by the fact that state agencies did not differentiate employment complaints from housing or public accommodations complaints. These agencies could only estimate the subset of their total complaints to attribute to employment discrimination. *Id.* at 13 nn.c–d. This problem also affected my data. *See infra* notes 46–47 and accompanying text.

36. *Id.* at 10 (emphasis supplied). The agency also concluded that the “statistics do not show any trend in the number of complaints over time.” *Id.* at 10. *See also id.* at 13. In addition, the agency stated that “[t]he number of court cases brought under th[e]se laws has also been small.” *Id.* at 10. *See also id.* at 13–14.



orientation discrimination as the basis of their claim. Yet the agency also stated that “*relatively few complaints* of discrimination in employment on the basis of sexual orientation were filed annually, *whether measured in absolute numbers* or as a percentage of all employment discrimination complaints.”<sup>37</sup> This latter statement is more sweeping, suggesting that the agency found the raw numbers to be few in quantity “relative” to some other number, for instance, the number that might have been expected.

In a subsequent report dated April 28, 2000, the agency updated the information offered in the 1997 report. Again the agency concluded that: “While there has been some variation over time, both the number and the percentage of [sexual orientation employment discrimination] complaints as a portion of overall complaints of employment discrimination filed may still be characterized as relatively small.”<sup>38</sup> More specifically, the GAO noted that the data did not reflect “any obvious growth trend” nor did it find “evidence of large numbers of complaints filed immediately after a [new law] takes effect.”<sup>39</sup> The GAO’s complete data set through the 2000 report is set forth as Appendix A.

The GAO’s empirical data should end the flood argument. Although the agency does not say so directly, its data — and the manner in which the data are presented — demonstrate that the addition of sexual orientation to existing civil rights laws provides relatively little additional work for enforcement agencies. Indeed, analysis of the GAO data shows that the total number of filed complaints that state agencies receive fluctuates from year to year in quantities far exceeding the number of sexual orientation claims. In other words, the regular ebbs and flows of agency caseloads have a far more significant impact on their work than does the addition of sexual orientation to the statutory regime. Consider the GAO data from New Jersey.

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37. *Id.* at 10 (emphasis added).

38. 2000 GAO Report, *supra* note 6, at 5.

39. *Id.* at 6.

TABLE 2

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 YEARLY FLUCTUATION IN EMPLOYMENT  
 COMPLAINTS: NEW JERSEY
 

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Fiscal Year	Total Complaints	Change in Total from Previous Year	Total Sexual Orientation Claims
1992	2,712		17
1993	2,159	-553	20
1994	1,919	-240	25
1995	2,127	+208	30
1996	1,277	-850	20
1997	1,580	+303	35

The total number of filed complaints fluctuates by several hundred each year; indeed, the average annual change in total complaint filings is around 450. Throughout this same period the total number of sexual orientation claims in a given year never exceeds thirty-five. Responding to sexual orientation claims will never significantly affect the caseload of a human rights agency. The GAO data disprove the argument that sexual orientation complaints will swamp agencies and courts and divert resources from enforcement of other civil rights norms.

The GAO report does not purport to address the drought argument but, for reasons now apparent, its data could be seen to add credence to that argument. As described above,<sup>40</sup> if one simply examines the number of sexual orientation discrimination complaints that are filed, the numbers look very small. Yet something important is missing from that assessment—the number of gay people in the workforce is also very small. Perhaps the apparently small number of sexual orientation complaints actually reflects a relatively high filing rate by the few workers at issue. My goal was to analyze this hypothesis—to express the incidence of sexual orientation complaint-filing in terms of the number of gay people in the workforce and to compare that number with the incidence of similar types of bias that are presently covered by civil rights laws.

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40. See *supra* notes 27–32 and accompanying text.

## II. METHODOLOGY

To test the drought hypothesis, I aimed to express the actual number of complaints filed by a given group as a percentage of that group's presence in the workforce. This transforms the raw number of filed complaints for a group (its "complaint rate") into a PACR. To generate PACRs, I needed two types of numbers: the actual number of complaint filings by category (the numerator) and the number of members of that group in the state's workforce (the denominator). This section explains how I collected those numbers and calculated the PACRs.

### A. NUMERATOR: QUANTITY OF COMPLAINTS FILED

I concentrated the study in the ten states that have data concerning implementation of their sexual orientation discrimination laws and on the years during which these norms have been in effect.<sup>41</sup> For each state, I collected information directly from the state agency charged with tracking employment discrimination. Some states' data were publicly available in published reports. For other states, research assistants telephoned the relevant agency and obtained the information from agency officials.<sup>42</sup> Using this methodology, I assembled data containing the total number of employment discrimination complaints filed in each state, in each relevant year, as well as specific data on the number of those complaints filed on the basis of race, gender, and sexual orientation.

The raw data raise four distinct problems for the research: how to account for the fact that race and gender complaints (but *not* sexual orientation complaints) can be filed under federal law with the federal EEOC, as well as with the state agencies from which I collected my data; how to limit the count of discrimination claims to those involving only *employment* discrimination; how to count "reverse discrimination" claims; and how to count "intersectional" claims. I discuss each problem in turn below and conclude that none of them detracts from the Article's ultimate conclusions.

#### 1. EEOC Claims

The methodology of the study entails a comparison of the PACRs for different types (race, gender, sexual orientation) of discrimination. A

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41. Nevada and Vermont are two additional states with sexual orientation laws, (*see* SEXUAL ORIENTATION AND THE LAW, *supra* note 13) but no data were available from these states when this study commenced. Throughout the remainder of the Article, I refer to the District of Columbia as a "state."

42. *See infra* app.C.

potential hurdle is that the various forms of discrimination give rise to differing ranges of remedies, creating the possibility that comparing state-filed complaints of race or sex discrimination with state-filed complaints of sexual orientation discrimination may be like comparing apples and oranges. For example, a San Francisco employee who perceives herself to be a victim of race discrimination can file a complaint under federal law with the EEOC, a complaint under state law with the California state agency, or a complaint under local law with the San Francisco human rights agency. A San Francisco employee who perceives herself the victim of sexual orientation discrimination, however, is limited to filing with the local agency or with the state. To compare the PACRs of state complaints, therefore, risks overcounting the sexual orientation complaints since these complainants have only two remedial fora while race and gender complainants have three. In short, the EEOC forum may siphon race and gender complaints out of the state agency.

There are two primary reasons why this proved to be relatively unproblematic. Most importantly, the state data actually capture most of the race and gender filings that are lodged with the EEOC. The EEOC is set up, for federalism reasons, to work cooperatively with state agencies. As part of this cooperative federalism, the EEOC is required to notify state agencies of federal filings and to give state agencies the opportunity to handle these filings first.<sup>43</sup> Although the state agencies rarely accept that invitation, the state agencies do routinely *count* these EEOC filings among their reported statistics. Thus, the state data on race and gender filings are not diminished because of the availability of the EEOC forum. The state data capture nearly all race and gender cases filed with the state *or* federal government.<sup>44</sup> The state race and sex data are therefore generally comparable to the sexual orientation data.<sup>45</sup>

Second, it bears repeating that the point of the study is not to capture the total number of all remedial filings to determine whether sexual orientation discrimination is of the magnitude of these other forms of discrimination.

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43. 42 U.S.C. § 2000e-5(c)-(d) (1994).

44. The only claims not included in the state data are those that are solely within the province of the EEOC—namely, those involving federal employees or involving bases not covered by the state.

45. Indeed, if anything, the counting of federal complaints in the race and sex data probably augments those counts in ways that make my conclusions about the sexual orientation filings conservative. Some complainants may feel comfortable filing with the federal government but not with their state government; and some attorneys may file federal complaints but not state complaints. For those experiencing race and sex discrimination, this is an available route *and* the complaint will nonetheless be counted in the state data. For the federally-inclined gay complainant or attorney, however, no federal forum exists and so nothing gets counted in the state data.



Rather, the study responds to the argument that there are insufficient filings with a particular agency to warrant that agency's time and interest. Even if the state agency race and gender PACRs do not capture all of the race and gender filings arising from that state (because some went directly to the EEOC), these PACRs nonetheless implicitly support the argument that filings at the rates that *do* exist warrant the existence of a legal regime and administrative agency to respond to them. If the sexual orientation filing rates are similar, then a fortiori they, too, are worthy of governmental attention.

A less significant wrinkle than the potential (but unrealized) EEOC siphoning effect is created by the presence in most states of local human rights agencies. Like the federal EEOC, these local agencies might, too, siphon off filings from the state agencies. Again, this is not a terribly significant problem for the core purpose of the study, which is simply to look at the utilization of the state agencies as state agencies. But this is also not a significant problem for my data because most of the local agencies that would siphon off some state race and gender filings are equally capable of siphoning off sexual orientation filings. This is true because most local laws, unlike the federal law, prohibit sexual orientation discrimination; indeed, all of the local agencies that exist in the states that I surveyed treat race, gender, and sexual orientation as equally prohibited. Thus, if the state data are depressed by local filings, they are depressed for all three forms of discrimination that are compared. If anything, we might surmise that state sexual orientation data are *more* depressed by these local laws than state race or gender data for the simple reason that these local laws have existed longer than the state law. They are therefore more familiar to local gay workers, and local agencies probably have more trained response mechanisms for gay complainants than those created under the newly established state laws. Thus, it would probably be fair to conclude that the presence of this competing local forum renders my data conservative in their implications.

## 2. Employment Claims

A primary imperfection in the data arises from the fact that several states' counting mechanisms do not distinguish between complaints of employment discrimination, housing discrimination, and public accommodations discrimination.<sup>46</sup> My interest was in measuring only employment discrimination, as the proposed federal sexual orientation law would cover only employment discrimination. In those states where the data were not so specific, the state agency was asked to provide an approximate

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46. This is true of the data from Connecticut, Massachusetts, and New Jersey.

percentage of the total number claims that could be attributed to employment discrimination. I used the figure provided by the state official as my measure of employment discrimination.<sup>47</sup> These figures cannot be taken as precise measures of the quantity of filed employment discrimination complaints and are less reliable than the data from the states that utilize separate counting mechanisms for the various types of discrimination (employment, housing, etc.). In this sense, they caution against cross-state comparisons of the filing data. However, since my interest was in measuring the incidence of filing per population group, and in making intra-state comparisons among population groups, this form of imprecision is insignificant.<sup>48</sup>

### 3. Reverse Discrimination Overcounting

In each category—race, gender, and sexual orientation—complaints could be filed not only by people of color, women, and gay people, but by whites, men, and non-gay people as well. Thus, the total number of race discrimination filings in a given state in a given year encompasses claims filed by non-whites and whites; the total number of gender discrimination filings encompasses claims by women and men; and the total number of sexual orientation filings encompasses claims by gay people and non-gay people. None of the data collected from any of the ten states distinguish the type of filing within each category.

The difficulty this presents is one of methodology, not theory. I do not maintain that reverse discrimination claims are unworthy of legal attention. While that assertion is defensible, I need not engage that debate.<sup>49</sup> The

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47. For Connecticut and Massachusetts, 90% of the total claims were estimated to be employment related. The New Jersey authorities provided more specific annual percentages. See *infra* app.C. The GAO utilized the same methodology to address this problem. See 1997 GAO Report, *supra* note 5, at 13.

48. The California data suffered from a related, but more problematic, reporting problem. Until January 2000, California's sexual orientation antidiscrimination law was housed in a different statutory and enforcement regime from its race and gender antidiscrimination laws. The sexual orientation law was part of the Labor Code, see CAL. LAB. CODE § 1102.1 (repealed West Supp. 1992). The other laws were part of the Fair Employment and Housing Act. See CAL. GOV'T. CODE §§ 12920–12922. (West Supp. 2001). The enforcement mechanisms of the Labor Code are less well publicized and less encompassing than those of the FEHC. This created an additional barrier for those seeking to file complaints of anti-gay bias. Accordingly, the California sexual orientation data presented here are probably lower than they would have been had sexual orientation complainants been able to pursue the standard FEHC process available to race and gender complainants. The sexual orientation provisions were moved to the FEHC mechanism at the outset of 2000. See Act of Oct. 10, 1999, ch. 592, sec. 1.5, CAL. GOV'T. CODE, 1999 Stats., 3424, 3424–25 (1999).

49. The debate, as it appears in constitutional discourse, concerns whether antidiscrimination norms should embody a “colorblind” approach that protects both blacks and whites, or an “antisubordination” approach that protects only historically subjugated blacks. Compare, e.g., William Van Alstyne, *Rites of Passage: Race, the Supreme Court, and the Constitution*, 46 U. CHI. L. REV. 775 (1979) (arguing that

problem for this Article is more succinct: when I take the number of gender discrimination complaints (which includes claims by men) and divide by the number of *women* in the workforce, my estimate of the prevalence of sex discrimination claim-filing by women is not exact. More specifically, to describe this number as the amount of discrimination faced by women overstates the measure, as the numerator incorporates discrimination cases faced by men, as well as women.

I concluded that the reverse discrimination claims do not damage the data in ways that are significant to the purposes of the research. To assess whether the frequency of gay discrimination complaint-filing is similar to that of race and gender complaint-filing does not require the development of absolutely precise measurements of the levels of complaint-filing. Moreover, it is fair to assume that the amount of complaint-filing by white people, men, and straight people is small relative to complaint-filing by people of color, women, and gay people. Further, the extra amount in each of the numerators was probably relatively similar across the various types of discrimination, suggesting that the relationships between the various covered categories are not skewed.<sup>50</sup> Indeed, if anything, the race and gender figures are probably higher than they should be due to this effect, while the sexual orientation data are probably not significantly altered. I am aware of only one case in which a claim of sexual orientation discrimination has been filed by a non-gay person,<sup>51</sup> whereas white race discrimination claims and male gender discrimination claims are more easily identifiable.<sup>52</sup> If this is correct, the incidence of sexual orientation discrimination may be even closer to that of race and gender than the data suggest, which means that the claims I make

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constitution should encompass a color-blind approach), *with, e.g.*, Laurence H. Tribe, "In What Vision of the Constitution Must the Law Be Color-Blind?," 20 J. MARSHALL L. REV. 201, 204 (1986) (arguing that the Fourteenth Amendment is intended to protect blacks) and Neil Gotanda, *A Critique of "Our Constitution Is Color-Blind"*, 44 STAN. L. REV. 1 (1991) (arguing the same point).

50. Due to recent developments, the quantity of gender discrimination claims attributed to women is probably the most overstated number. This is so because it is reasonable to presume that men more often file gender discrimination cases than whites file race cases, or non-gay people file sexual orientation cases. This presumption is based in part on the U.S. Supreme Court's 1998 holding that same-sex sexual harassment is actionable under Title VII. See *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 82 (1998). *Oncale* has spurred a significant quantity of reported cases involving male victims of sexual harassment. See Rubenstein, *supra* note 13, 2000 Supp. at 41-43. This reported case law surely reflects an even greater quantity of filed discrimination complaints in state agencies. Much of this activity post-dates the years of this study, however, and the gender discrimination data is probably not greatly affected by it.

51. See *Hearing on S. 869, supra* note 22, at 71 (statement of Chai R. Feldblum, Assoc. Professor, Georgetown Univ. Law Ctr.) (discussing case filed by non-gay person).

52. See, e.g., *Martin v. Wilks*, 490 U.S. 755 (1989) (white firefighters reverse race discrimination case); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982) (male nurse reverse sex discrimination case). Most instances of formal discrimination against men have been abolished since the 1970s, but sex discrimination laws have increasingly been used by male victims of sexual harassment. See *supra* note 50.

about the data are probably conservative. Finally, to correct this negligible and consistent overcounting problem would require a refined methodology not worth the cost for this study's purposes.

#### 4. Intersectional Claims

The filed discrimination complaints within each state's data encompass situations in which a person believes she has been discriminated against on multiple grounds. Assume, for example, a Latina lesbian is fired from her job. She might perceive her firing to be the consequence of race, gender, or sexual orientation discrimination—or of a particular combination of some or all of these factors. She might well feel that it is impossible to pick a box in which to fit her claim, as the law appears to require. Moreover, the states have different practices with regard to how to count such a situation.<sup>53</sup>

The intersectional situation presents two distinct difficulties. Initially, there is an epistemological problem in considering how to characterize and categorize such a discrimination case. Counting it once, or counting it thrice, are two possibilities, but both exist within the governing civil rights paradigm. A different approach is to conceptualize the intersectional case as constituting its own category, its own particular form of bias, related to but uniquely distinct from the other categories described.<sup>54</sup> While I am

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53. The GAO report noted that:

Generally, a [sexual orientation] complainant can allege other bases—sex, race, or religion, for example—in a complaint that also alleges employment discrimination on the basis of sexual orientation. [The GAO method was that a] case is counted as a sexual orientation case whether or not other bases are also alleged in the same complaint.

1997 GAO Report, *supra* note 5, at 13.

54. As my colleague Kimberlè Crenshaw has stated:

I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.

Kimberlè Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989). See also Kimberlè Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

A growing body of literature, building on intersectional theory, considers the relationships between race, class, gender, and sexual orientation. See, e.g., Darren Lenard Hutchinson, *Out Yet Unseen: A Radical Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997); Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities & Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25 (1995). See also Francisco Valdes,



sympathetic to this argument, it was difficult to encompass it as a methodological matter in this study since only one of the agencies from which I collected data tracked information in ways which would enable the development of intersectional categories.<sup>55</sup> Thus, the more immediate problem was not the epistemological one, but the practical problem produced by the counting variations across state regimes.

My solution was simply to accept the state data at face value. As with the over-counting problem, to refine the data would have required significant additional investigation. This work would be inefficient in that it would be unlikely to yield significantly different results for the purposes of this study. This is true for two reasons. First, the goal of the study is to establish ranges, not point estimates, so double-counting a single case in one state and single counting a double case in another would have small effects on the general conclusions I draw. Second, the study does not purport to make comparisons across states. Hence, disparate counting methods across jurisdictions was of minimal importance. The intra-jurisdiction comparisons remain fully valid for the Article's purposes because each state uses a consistent methodology in counting different types of intersectional cases.

It bears emphasis that although the law requires complainants to categorize their claims into existing statutory categories, each of these categories encompasses significant diversity. Thus, complaints filed in the sexual orientation box include complaints of sexual orientation discrimination by whites and people of color, women and men. Complaints of race discrimination encompass race discrimination encountered by both non-gay and gay people of color, by both men and women of color. That limitations in the states' data force us to analyze filing-prevalence by covered

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*Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory, and Politics of "Sexual Orientation,"* 48 HASTINGS L.J. 1293 (1997).

55. This is the District of Columbia's agency. The District's intersectional counting separated claims into race, sex, and sexual orientation categories as the "regular bases;" the District also separately recorded "separate bases" of "race and other grounds," "sex and other grounds," "age and other grounds" and "other grounds." A claim filed by a black woman could be filed on multiple grounds. If it were, it would not be counted in the "race" or "sex" categories but rather would be counted as "race and other grounds." It was more difficult to assess how the District would categorize the Latina lesbian example provided in the text. The District does not have a "sexual orientation and other" ground; it seems as though this could be counted in "race and other" or in "sex and other" or in "other grounds" or in all three categories. Given these complications of the D.C. data, the data I use collapse "race" and "race and other grounds" into "race;" and collapse "sex" and "sex and other grounds" into "sex;" and count as "sexual orientation" claims only claims filed solely as sexual orientation claims. This undercounts sexual orientation claims in some instances at the expense of race and sex, but it makes the conclusions I draw about the incidence of gay discrimination somewhat more conservative than they need be.

category should not be read to obscure the overlapping nature of the categories themselves.

#### B. DENOMINATOR: QUANTITATIVE PRESENCE OF GROUP IN WORKFORCE

I sought to place the raw numbers of complaint filings in context by expressing them as a percentage of each group's presence in the state workforce. Thus, for example, the number of race discrimination complaints filed in California in 1993 is divided by the number of non-whites in the California workforce for that year. To determine the number of non-whites and women in each state's workforce, I utilized workforce population data from the 1990 U.S. census.<sup>56</sup>

The biggest methodological hurdle came in estimating the total number of gay people in the workforce to utilize as the denominator for the sexual orientation complaints. This is complicated because sexual orientation is not visually identifiable and because there are no census-type data concerning the number of gay men and lesbians in the workforce. Moreover, there is no one meaning for "sexual orientation"—sexual orientation can be established by reference to desires, behaviors, identities, or combinations of these, and all three can fluctuate over the course of an individual's life. Yet the method of this Article's analysis required some meaningful way around these epistemological and practical counting problems.

I utilized the following process to address this hurdle. In each state, I began with the 1990 U.S. Census estimate of the total civilian workforce. I then expressed the number of gay people in the workforce as three different possible portions of this total: 10%, 5%, and a combined number consisting of the sum of 2.4% of the male workforce and 1.3% of the female workforce. I selected three different figures to provide a range for the findings. Given the impossibility of arriving at a single estimate of the number of heterosexual or gay people in society, presenting three points across a fair range of the possibilities seemed the most sensible way to proceed.

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56. See U.S. Census Data, Database C90STF3A, at <http://venus.census.gov/cdrom/lookup/> (last visited Nov. 6, 2001). The workforce data was generated from the employment statistics available for each state. The *total workforce* was calculated by adding together the number of employed and unemployed males and females in the civilian labor force. The presence of *people of color* was generated in two ways, each yielding the same result. One method was to subtract the number of white men and women from the total civilian workforce, and then add to that result the number of those male and female Hispanics in the civilian work force (who were otherwise categorized as White). Alternatively, the race data could be generated by adding together all of the racial minority groups in the civilian workforce that the census identified, and then adding to that sum the number of Hispanics. As noted either method generated the same result. The presence of *women* in the workforce is the sum of the total number of employed and unemployed women in the civilian labor force.

These three figures were chosen for the following reasons. The 10% figure, often cited by gay advocates, evolves out of Alfred Kinsey's pioneering work of the mid-twentieth century.<sup>57</sup> What Kinsey actually found was that 10% of "males are more or less exclusively homosexual . . . for at least three years between the ages of sixteen and fifty-five."<sup>58</sup> Kinsey's study has long been a source of controversy.<sup>59</sup> The methodological questions

57. See ALFRED C. KINSEY, WARDELL B. POMEROY, & CLYDE E. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948) (hereinafter "KINSEY, MALE"); ALFRED C. KINSEY, WARDELL B. POMEROY, CLYDE E. MARTIN, & PAUL H. GEBHARD, *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* (1953).

58. KINSEY, MALE, *supra* note 57, at 651 (emphasis omitted). This figure was one of a list of statistics that Kinsey weaned from his data. It was presented by Kinsey as follows:

37 per cent of the total male population has at least some overt homosexual experience to the point of orgasm between adolescence and old age. . . . This accounts for nearly 2 males out of every 5 that one may meet. . . .

50 per cent of all males (approximately) have neither overt nor psychic experience in the homosexual [sic] after the onset of adolescence. . . .

25 per cent of the male population has more than incidental homosexual experience or reactions . . . for at least three years between ages the of 16 and 55. In terms of averages, one male out of approximately four has had or will have such distinct and continued homosexual experience . . .

10 per cent of the males are more or less exclusively homosexual . . . for at least three years between the ages of 16 and 55. This is one male in ten in the white male population. . . .

4 per cent of the white males are exclusively homosexual throughout their lives, after the onset of adolescence.

*Id.* at 650-51.

59. The core of the criticism is as follows:

[T]he major difference between Kinsey and recent research is that Kinsey did not use probability sampling. Kinsey's respondents were all purposefully recruited rather than sampled with known probabilities of inclusion. This means both that they were volunteers who may have differed in systematic ways from those who did not participate (e.g., by being more open and comfortable about their sex lives and perhaps more sexually active) and that there is no statistically sound way to generalize from his sample to a population. In fact, Kinsey roamed far and wide in selecting his subjects. He was not averse to using institutional settings, including prisons and reform schools, from which to recruit his subjects. Kinsey also purposely recruited subjects for his research from homosexual friendship and acquaintance networks in big cities. Kinsey combined fantasy, masturbation, and sexual activity with partners in some of his calculations (e.g., the 50 percent figure). Experiences were collected retrospectively over the whole lifetime and almost as a matter of course were reported to include activity since puberty or since age sixteen. These devices would all tend to bias Kinsey's results toward higher estimates of homosexuality (and other rare sexual practices) than those that he would have obtained using probability sampling. . . . There is one other fundamental difference between the Kinsey approach and contemporary surveys. Kinsey and a handful of highly trained colleagues conducted all the interviews. The structure of the Kinsey interview was a "sex history," and people were taken through their lifetime in segments. They were intensively questioned about a wide variety of forms of sexual activity, including fantasies. The focus seems to have been largely on numbers of orgasms achieved in various ways. Having no written and fixed questionnaire, the interviewers memorized the question order, and wording could be varied by the interviewer as he (or occasionally she) saw fit. These interviewers were not averse to challenging respondents who they believed were not admitting to stigmatized behaviors such as masturbation or homosexuality. The interview took respondents chronologically from their early childhood experiences to the time

about Kinsey's work all suggest that his numbers are too high. Most later studies, using more modern statistical techniques, have found a far lower incidence of homosexual behavior in the general population. Hence the Kinsey number stakes out one end of the range.

The combined 2.4/1.3% that I employ as the low end of the range is a number that emerges from a recent study undertaken at the University of Chicago. Most sexologists consider this 1994 Chicago study to be something of a "gold standard" in the field as it utilizes the most modern and most sound sampling techniques.<sup>60</sup> The Chicago study emphasized that there are three dimensions to sexuality—sexual behavior, sexual desire, and sexual identity. The researchers asked their subjects about each of these aspects of their sexuality and in turn generated data about the prevalence of same-sex behavior, desire, and identity. A primary contribution of the research is that it carefully identifies a subset of persons in whom these three aspects of (same-sex) sexuality are consistent—namely, individuals who have sexual desire for others of the same sex, primarily have sex with persons of the same sex, and identify themselves as gay or lesbian.<sup>61</sup> The Chicago study concluded that:

While there is a core group (*about 2.4 percent of the total men and about 1.3 percent of the total women*) in our survey who define themselves as homosexual or bisexual, have same-gender partners, and express homosexual desires, there are also sizable groups who do not consider themselves to be either homosexual or bisexual but have had adult homosexual experiences or express some degree of desire.<sup>62</sup>

The 2.4/1.3% low end of the range thus represents the "core group" of the Chicago participants who identify themselves as gay, as well as practicing and desiring same-sex sexuality.

The third figure that I used to estimate the number of gay people in the workforce was 5%, which was simply a number I selected as a mid-range between the two endpoints. The number does comport with some other important indicia, however. For example, the Chicago researchers state that

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of the interview. It asked a lot about fantasy. The emphasis on ideation and the encouragement of subjects to describe homosexual thoughts and fantasies may have increased reports of other homosexual behaviors as well. It is possible that some of these techniques may have increased the disclosure and reporting of stigmatized activities.

EDWARD O. LAUMANN, JOHN H. GAGNON, ROBERT T. MICHAEL, & STUART MICHAELS, *THE SOCIAL ORGANIZATION OF SEXUALITY: SEXUAL PRACTICES IN THE UNITED STATES* 289–90 (1994).

60. See, e.g., John Delamater, *Sex in America: A Definitive Survey*, 270 *SCIENCE*, Oct. 20, 1995, at 501 (stating that this survey's data "will provide a baseline against which the results of future studies will be compared").

61. LAUMANN ET AL., *supra* note 59, at 298–301.

62. *Id.* at 300–01 (emphasis supplied).



“about 5 percent of the men and women in our sample express some same-gender desire, but no other indicators of adult activity or self-identification.”<sup>63</sup> This mid-range thus captures a larger set than those who self-identify as gay, but not so large a set as all of those who have had some same-sex experiences that may, for example in adolescence, be more exceptional than indicative of their adult lives.

In the findings section, below, I suggest some reasons that the 2.4/1.3 number is the best number to use in examining the data.<sup>64</sup> My purpose here is simply to clarify the methodological decision of providing three gay workforce population estimates.

One other aspect of the difficulty of this estimate should be discussed. So far, the analysis has presumed that the population of people most at risk for sexual orientation discrimination are those who identify as gay. These people are more likely to be open in the workplace and hence more likely to be identified and subject to adverse employment decisions. The assumption of that analysis is that the more gay-identifiable one is, the more likely one is to face anti-gay bias. There is a group of people, however, who are often identified by others to be gay regardless of their own chosen identity. These are people who perform their gender in ways that challenge stereotypes: weak and effeminate men, strong and masculine women are both groups that people often presume to be gay. If such individuals were to face adverse job actions based on an employer's assumption of their homosexuality, they could file claims of discrimination under the “perceived as” protections of the state laws at issue, whether they self-identified as gay or not.<sup>65</sup> (To do so is not without risks, of course, because this will tend to identify the complainant as gay even if the complaint is filed under the “perceived as” heading.) Although this enlarges the group of people likely to face and somewhat likely to file sexual orientation discrimination claims, this group is not fully captured in my denominator since some in this group exhibit none of the three selected indicia of homosexuality (behavior, desire, or identity). Exclusion of gender-nonconforming subjects from my denominator tends to enlarge the prevalence factors I report. However, I believe the effect is negligible. It is small because it encompasses only those few people who file sexual orientation claims yet fall fully outside the definition of “gay” developed by the Chicago study.

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63. *Id.* at 301. See also KINSEY, MALE, *supra* note 57, at 651 (stating “4 per cent of the white males are exclusively homosexual throughout their lives, after the onset of adolescence” (emphasis omitted)).

64. See *infra* Part III.E.

65. The GAO report sets forth the various “perceived as” provisions in existing state laws. See 1997 GAO Report, *supra* note 5, at 3.

## C. POPULATION ADJUSTED COMPLAINT RATES (“PACRS”)

Using the data collected according to the methods described above, I generated population adjusted complaint rates on a state-by-state basis. I generated PACRs only for those years in which I had raw data concerning all three types of discrimination complaints. The years vary from state to state as the sexual orientation laws came into effect at different times in each state and as the comprehensiveness of the data for all types of filed complaints varied from state to state. The fact that the data cover different time periods in each of the state presentations cautions against making any state-to-state comparisons.<sup>66</sup>

Within in each state, I averaged the available data to generate annual complaint rates. I did this because I was interested in taking a snapshot of each state and because the data did not support longitudinal analysis.<sup>67</sup> Accordingly, I aggregated the number of filings for all of the years for which I had comprehensive data and divided that by the number of years to come up with average annual complaint rates.

I then divided these annual complaint rates by the workforce presence of each group to yield PACRs. As set forth below, the PACRs are the number of discrimination complaints for each 10,000 workers in that portion of the workforce. The PACR is the bottom line figure that is the key to the analysis that follows. The PACR represents the number of complaints filed per ten thousand workers (of that category) in the workforce.

If the drought hypothesis is correct, the PACRs for sexual orientation filings ought to be significantly smaller than the PACRs for other types of discrimination. This would provide the strongest support for the hypothesis that there is very little complaint filing by gay people and thus no empirically-verified need for ENDA.

## III. FINDINGS

The primary claim of the research is that the quantity of sexual orientation complaints filed in states that have gay rights laws, when adjusted for the per capita presence of gay people in the workforce, is in the same general range as the quantity of race and gender complaints. The data support this conclusion.

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66. There are several other reasons the data are of limited value in making such cross-state comparisons. *See supra* Part II.A.

67. The data generally spanned fewer than ten years within any state and did not appear to vary significantly within this time period. *See supra* note 31.

Assuming the smallest presence of gay people in the workforce:

- the PACR for sexual orientation discrimination is higher than the PACR for gender discrimination in eight of ten states surveyed;
- the PACR for sexual orientation discrimination is higher than that of race discrimination in two of the ten states;
- in those states where race and gender PACRs are higher than those for sexual orientation, the differences are usually not large.

Even assuming the highest conceivable percentage of gay people in the workforce:

- adjusting the raw data to account for the size of the gay workforce suggests rates of complaint filing much closer to those of race and gender than the small number of actually filed sexual orientation complaints might imply.

These findings are presented as follows. Part A compares data concerning sexual orientation discrimination to those of gender discrimination and Part B compares the sexual orientation data to those of race discrimination. Part C assumes the highest number of gay people in the workforce and thus the lowest levels of population-adjusted complaint filing. Under these assumptions, the PACRs for race and gender are higher than sexual orientation in every state. Nonetheless, Part C demonstrates that adjusting the raw data to account for the relatively small number of gay people in the workforce still helps place the sexual orientation figures in a clearer comparative context. Part D provides one final nationwide snapshot of the data. Part E then suggests some reasons that the presence of gay people in the workforce is probably quite small. If my argument in this section is convincing, it lends support to the claim that the level of complaint filing by gay workers is at the high end of the range I offer. In Part F, I conclude by discussing the limitations of the data and the of claims that can be made from them.

#### A. SEXUAL ORIENTATION CLAIMS ARE FILED MORE FREQUENTLY THAN GENDER CLAIMS IN EIGHT OF TEN STATES

In eight of ten surveyed states, gay workers file claims of sexual orientation discrimination more often than women file claims of gender bias. These states are Connecticut, District of Columbia, Hawaii, Massachusetts, Minnesota, New Jersey, Rhode Island, and Wisconsin. In two other states—California and New Hampshire—female workers file gender discrimination claims more often than gay workers file sexual orientation

discrimination claims, though in California the population adjusted filing rates are quite close.

The raw data mask the similar filing rates of these different types of discrimination. In Massachusetts, for example, MCAD receives an annual average of 822 complaints of gender discrimination and 111 complaints of sexual orientation discrimination. A quick glimpse at this data would imply that there are roughly eight times as many gender complaints as there are sexual orientation complaints. However, there are about 1.5 million women in the workforce. The number of gay workers is much smaller. At the lowest level of my range, there are about 61,000 gay workers in the workforce, while at the highest possible level, there are about 325,000.

When the raw data are placed in the context of the workforce population for each group, the errant sense that gender claims are filed eight times more often than sexual orientation claims disappears. The population-adjusted data demonstrate that about eighteen gay workers per ten thousand file complaints of discrimination, while about five female workers per ten thousand file gender discrimination complaints. What that means is that if one assumes the lowest number of gay people in the population, the filing rate for sexual orientation claims is not eight times less than gender claims, but in fact, more than three times greater.<sup>68</sup>

Table Three demonstrates how placing the average annual number of complaints in the context of the group's population creates PACRs which provide a better basis for analyzing how much discrimination filing actually occurs in each state. Moving down the first column of Table Three shows that placing the average annual gender discrimination complaints (822) in the context of the number of women in the workforce (1.5 million) generates a PACR of about five gender complaints for every ten thousand women in the workforce. The second column of Table Three assumes that gay people constitute a small portion of the workforce. Placing the average annual sexual orientation complaints (111) in the context of this small number of gay workers (61,000) generates a PACR of about eighteen sexual orientation complaints for every ten thousand gay workers. The third and fourth columns of Table Three then repeat the sexual orientation calculation but using mid-level (162,000) and high-level (325,000) estimates of the number of gay workers. If the number of gay workers is assumed to be a mid-range, 5% figure, then about seven gay workers for every ten thousand file

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68. Even assuming the highest possible number of gay people in the workforce, about three gay workers in ten thousand file discrimination complaints, compared to five female workers who file gender discrimination complaints. This 5:3 ratio is much smaller than the 8:1 ratio suggested by the raw data.

discrimination complaints (still larger than the five per ten thousand gender filings). Finally, if the number of gay workers is assumed to be quite high (10% of the workforce), then 3.4 gay workers per ten thousand file discrimination complaints.

TABLE 3

ADJUSTING RAW GENDER AND SEXUAL ORIENTATION DATA  
FOR POPULATION DENSITY: MASSACHUSETTS

	Gender	Sex/O Low # Gays in Workforce	Sex/O Mid # Gays in Workforce	Sex/O High # Gays in Workforce
Average Annual Employment Complaints Filed	821.78	111	111	111
Presence of Group in Workforce	1,530,983	61,062	162,298	324,595
Population- Adjusted Complaint Rate PACR (complaints per 10,000 workers)	5.37	18.18	6.84	3.42

The data from the other nine states similarly show that if gay people constitute a small portion of the workforce, the number of discrimination complaints they file is generally greater than the number of gender discrimination complaints filed by female workers. Table Four compares the PACRs for sexual orientation (assuming the smallest percentage of gay people in the workforce) and gender discrimination in each of the study's ten states.



TABLE 4

COMPARISON OF POPULATION-ADJUSTED  
SEXUAL ORIENTATION AND GENDER COMPLAINT RATES  
(NUMBER OF COMPLAINTS PER 10,000 WORKERS)

	Gender	Sexual Orientation
Connecticut	8.05	9.56
District of Columbia	4.20	10.99
Hawaii	5.73	10.82
Massachusetts	5.37	18.18
Minnesota	3.17	6.23
New Jersey	2.81	3.16
Rhode Island	4.06	8.48
Wisconsin	10.02	12.74
California	12.47	5.37
New Hampshire	4.53	2.16

In each of the first eight states in Table Four, more gay workers file sexual orientation discrimination claims on an annual basis than female workers file gender discrimination claims. In the last two states, more women file gender discrimination claims.

In sum, gay workers utilize state sexual orientation discrimination laws at rates that are generally similar to the rates at which women workers utilize gender discrimination laws.

B. SEXUAL ORIENTATION CLAIMS ARE FILED AS FREQUENTLY AS RACE  
CLAIMS IN FIVE OF TEN STATES

In two of ten surveyed states, gay workers file claims of sexual orientation discrimination more often than people of color file race discrimination claims. These states are the District of Columbia and Hawaii. In the other eight states—California, Connecticut, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, and Wisconsin—race discrimination claims are filed more often than sexual orientation discrimination claims. In three of these states (California, Massachusetts, and Rhode Island) the numbers are quite close. Thus in about half of the states, gay workers take advantage of sexual orientation protections at rates similar to those at which people of color utilize race discrimination laws.

The raw data mask how relatively similar the filing rates of these different types of discrimination actually are. Again, take Massachusetts: MCAD receives an annual average of 783 complaints of race discrimination and 111 complaints of sexual orientation discrimination. A quick glimpse at this data would imply that there are roughly seven times as many race complaints as there are sexual orientation complaints. However, there are about 400,000 people of color in the workforce. The number of gay workers is much smaller. At the lowest level of my range, there are about 61,000 gay workers in the workforce, while at the highest possible level, there are about 325,000.

When the raw data are placed in the context of the workforce population for each group, the errant sense that race discrimination claims are filed seven times more often than sexual orientation claims disappears. The population-adjusted data demonstrate that eighteen gay workers per ten thousand file complaints of discrimination, while about twenty people of color per ten thousand file race discrimination complaints. What that means is that if one assumes the lowest number of gay people in the population, the filing rate for sexual orientation complaints is not one seventh that of race complaints, but about the same.

Table Five demonstrates how placing the average annual number of complaints in the context of the group's population creates PACRs which provide a better basis for analyzing how much discrimination filing actually occurs in each state. The first column of Table Five shows that placing the average annual race discrimination complaints (783) in the context of the number of people of color in the workforce (388,000) generates a PACR of about twenty race complaints for every ten thousand people of color in the workforce. The second column of Table Five assumes that gay people constitute a small portion of the workforce. Placing the average annual sexual orientation complaints (111) in the context of this small number of gay workers (61,000) generates a PACR of about eighteen sexual orientation complaints for every ten thousand gay workers. The third and fourth columns of Table Five then repeat the sexual orientation calculation but using mid-level (162,000) and high-level (325,000) estimates of the number of gay workers. If the number of gay workers is assumed to be a mid-range, 5% figure, then about 6.84 gay workers for every ten thousand file discrimination complaints. Finally, if the number of gay workers is assumed to be quite high (10% of the workforce), then 3.42 gay workers per ten thousand file discrimination complaints.

TABLE 5

ADJUSTING RAW RACE AND SEXUAL ORIENTATION DATA  
FOR POPULATION DENSITY: MASSACHUSETTS

	Race	Sex/O Low # Gays in Workforce	Sex/O Mid # Gays in Workforce	Sex/O High # Gays in Workforce
Average Annual Employment Complaints Filed	782.67	111	111	111
Presence of Group in Workforce	388,469	61,062	162,298	324,595
Population- Adjusted Complaint Rate PACR (complaints per 10,000 workers)	20.15	18.18	6.84	3.42

The data from the other nine states similarly show that if gay people constitute a small portion of the workforce, the number of discrimination complaints they file is generally closer to the number of race discrimination complaints filed by people of color than the raw data suggest. Table Six compares the PACRs for sexual orientation (assuming the smallest percentage of gay people in the workforce) and race discrimination in each of the study's ten states.

TABLE 6

COMPARISON OF POPULATION-ADJUSTED SEXUAL  
ORIENTATION AND RACE COMPLAINT RATES  
(NUMBER OF COMPLAINTS PER 10,000 WORKERS)

	Race	Sexual Orientation
District of Columbia	6.30	10.99
Hawaii	2.03	10.82
California	5.74	5.37
Connecticut	22.48	9.56
Massachusetts	20.15	18.18
Minnesota	20.29	6.23
New Hampshire	11.22	2.16
New Jersey	4.94	3.16
Rhode Island	10.74	8.48
Wisconsin	66.03	12.74

In each of the first two states in Table Six, more gay workers file sexual orientation discrimination claims on an annual basis than people of color file race discrimination claims. In the next eight states, more people of color file race discrimination claims. In several of those states, the difference is relatively high. For example, in New Hampshire and Wisconsin, the number of people of color who file race discrimination complaints is about five times greater than the number of gay workers who file sexual orientation complaints; in Minnesota, about three times greater; and in Connecticut, about two times greater. Yet in several other states where race claims are filed with more frequency than sexual orientation claims, the numbers are relatively similar. In California there are about 5.74 race claims per ten thousand workers of color and about 5.37 sexual orientation claims for every ten thousand gay workers. Similarly, in Rhode Island there are about 10.74 race claims and about 8.48 sexual orientation claims, and as already discussed (in Table Five) the numbers in Massachusetts are relatively similar.

In sum, in about half the states surveyed gay workers use sexual orientation discrimination laws at rates higher than or generally similar to the rates at which people of color utilize race discrimination laws. In the other five states, the race filings are significantly higher than the sexual orientation filings.

C. POPULATION-ADJUSTED COMPLAINT RATES PROVIDE AN IMPORTANT  
CONTEXT IN WHICH TO ANALYZE THE RAW COMPLAINT DATA

So far most of the claims that I have made have been based on utilizing the lowest offered percentage of gay people in the workforce. Using the lowest estimate of gay workers produces the highest complaint filing rate per gay worker. Thus, PACRs based on this low-end population estimate compare most favorably to race and gender PACRs. Conversely, if we assume that there are more gay workers in the workforce, the filing rate per gay worker will decrease. The data show that if 10% of the workforce is gay, gay workers file sexual orientation complaints at rates lower than that at which women file gender discrimination complaints and people of color file race discrimination complaints in all ten states.

Thus, the data generated by assuming 10% of the workforce is gay produce the weakest claims for this study, but these numbers nonetheless provide some helpful insight. The population-adjusted data are important because they provide an appropriate context for assessing the raw data. In every instance, the raw data standing alone will suggest that the number of complaints filed by gay workers pales in comparison to the number of complaints of race and gender discrimination. But even the lowest gay PACRs significantly decrease the differences suggested by the raw data.

Let me demonstrate how even the weakest data in the study can help put the raw data in perspective. Again take the example of Massachusetts. Start by looking at the raw data alone. On a yearly basis, about 800 people of color file race discrimination claims and about 800 women file gender discrimination claims. By contrast, only about 100 gay people file sexual orientation claims. The raw data suggest that race and gender claims are filed eight times as often as sexual orientation claims. Now put these data in the context of the relevant population size for each group. About twenty of every ten thousand people of color in the workforce file race discrimination complaints and about five of every ten thousand female workers file gender discrimination complaints. Already we can see that adjusting for population size changes the relationship between race and gender claims; what looks like a similar number of raw claims actually translates into four times more race discrimination claims than gender discrimination claims. When we assume that a small portion of the workforce is gay, about eighteen gay workers in ten thousand file discrimination complaints. Thus, adjusting for population density and assuming a small number of gay workers demonstrates that the number of sexual orientation claims actually outstrips the number of gender claims about 3:1 and is close to the number of race



discrimination filings. When we assume that 10% of the workforce is gay, however, then only about three gay workers in ten thousand file discrimination complaints. This demonstrates how an increase of gay people in the workforce decreases the filing rate per gay worker. But even at this lowest possible filing rate for gay workers—three for every ten thousand—our understanding of the raw data has changed. The raw data suggested race and gender claims were about eight times more prevalent than gay claims. But the population-adjusted data show race claims to be about seven times greater than sexual orientation claims and gender claims to be less than two times as great. While assuming a high percentage of gay people in the workforce means that the gay filing rate will be lower than both race and gender, the difference is significantly less dramatic than that of the raw data standing alone.

This point is brought home in Table Seven. For each state, it first shows the ratio of the raw number of filed race discrimination complaints to the raw number of sexual orientation complaints. It then shows the ratio of population-adjusted race discrimination complaints to sexual orientation discrimination complaints. Each row then repeats this information for gender discrimination. Looking across the first row containing data for California, the raw data suggest that there are twenty-nine times as many race discrimination complaints as sexual orientation complaints; the population-adjusted data, however, show that there are only 5.6 times as many race complaints as gay complaints—and this is assuming that 10% of the workforce is gay. Proceeding across the table, the raw data for California suggest that there are fifty-three times as many gender discrimination complaints as sexual orientation complaints, but the population-adjusted data show that there are, at most, only twelve times as many gender complaints.

TABLE 7

HOW POPULATION-ADJUSTED DATA BETTER EXPRESS  
THE RELATIONSHIP BETWEEN COMPLAINT FILING RATES

	Race:Sex/O (10% of workforce gay)		Gender:Sex/O (10% of workforce gay)	
	Raw	Population-Adjusted	Raw	Population-Adjusted
California	29.2 to 1	5.6 to 1	53.4 to 1	12.1 to 1
Connecticut	20.5 to 1	12.4 to 1	20.8 to 1	4.4 to 1
District of Columbia	21.9 to 1	3.1 to 1	10.7 to 1	2.1 to 1
Hawaii	7.4 to 1	1.0 to 1	13.4 to 1	2.8 to 1
Massachusetts	7.1 to 1	5.9 to 1	7.4 to 1	1.6 to 1
Minnesota	8.7 to 1	17.2 to 1	12.5 to 1	2.7 to 1
New Hampshire	7.6 to 1	27.4 to 1	51.6 to 1	11.0 to 1
New Jersey	23.6 to 1	8.2 to 1	21.6 to 1	4.7 to 1
Rhode Island	7.6 to 1	6.8 to 1	12.0 to 1	2.6 to 1
Wisconsin	19.7 to 1	27.4 to 1	19.2 to 1	4.2 to 1

D. GAY WORKERS UTILIZE SEXUAL ORIENTATION LAWS IN ALL TEN STATES COMBINED AT RATES QUITE SIMILAR TO THE UTILIZATION OF RACE AND GENDER DISCRIMINATION LAWS IN THOSE STATES

One final way of considering the data is to consider all of the data together in one composite snapshot. To accomplish this, I aggregated the average annual complaint rates for race discrimination from each state. I then added together the number of people of color in the workforce in each state. I then calculated a ten-state PACR by dividing the aggregate numbers of complaints by the total number of people of color in the workforces of all ten states. This method was repeated for each type of discrimination. What this shows is that gay workers throughout the ten states file sexual orientation discrimination complaints at a rate quite similar to the rate that people of color file race discrimination complaints and women file gender complaints.

TABLE 8

POPULATION ADJUSTED COMPLAINT RATE FOR ALL STATES  
(PER 10,000 WORKERS)

Race	Gender	Sex/O (2.4%/1.35%)	Sex/O (5%)	Sex/O (10%)
7.72	8.69	7.45	2.83	1.42

E. THE PRESENCE OF GAY PEOPLE IN THE WORKFORCE IS PROBABLY ON THE LOWER END OF THE RANGE PRESENTED

If it is assumed that gay people constitute less than 5% of the workforce, they file sexual orientation complaints at rates relatively similar to those at which women and people of color file gender and race discrimination claims. There are good reasons to believe that the presence of gay people in the workforce is, in fact, at this low end of the range.<sup>69</sup> First,

69. I am cognizant of the anomaly my methodology presents. To mark higher levels of discrimination filings, pro-gay advocates will tend to claim that a small portion of the workforce is gay. Conversely, opponents of ENDA might be provoked to claim that 10% (or more) of the workforce is gay so as to lower the prevalence of bias-filings about gay workers. Each of these positions contradicts the generally held belief of the contending forces. Gay advocates tend to use the Kinsey data as a shorthand measure of the gay population. Anti-gay writers tend to claim that gay people constitute a very small portion of the population; they have led a long crusade against the reliability of Kinsey, for this reason. For

the sexuality studies that indicate this prevalence of gay people in the population are considered the most reliable studies.<sup>70</sup> Second, this is confirmed by some other occasional data on the incidence of gay people in the population.<sup>71</sup> Third, it is fair to assume that a certain quantity of gay men, in particular, opt for jobs outside the portion of the workforce that is typically covered by non-discrimination laws, hence lowering the prevalence of gay people in the workforce that can file legally-cognizable claims of discrimination.<sup>72</sup> Finally, assuming a lower presence of gay people in the workforce accounts, to some extent, for the “closet” effect—that is, that gay people have to “come out” to file discrimination complaints. There are therefore good reasons to embrace this lower number of gay-identified people for this workforce analysis, while remaining aware of the fact that the incidence of same-sex sexual *behavior* is probably much higher than this 2.4/1.3% figure.

The strongest argument for using a higher percentage to calculate PACRs is this: Gay-identified people tend to congregate in certain geographical areas of the United States.<sup>73</sup> It would be fair to assume that gay rights laws are more likely to be enacted where gay people congregate. This is a reasonable set of hypotheses, but as applied to this data it is not that

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example, a Westlaw search <Kinsey and AU(Buchanan)> will uncover columns written by Patrick J. Buchanan in 1988, 1990, 1993, and 1994 attacking Kinsey and alleging that gay people constitute a minute portion of the population. See, e.g., Patrick Buchanan, *Frauds of the Century: Debunking the Work of Freud, Keynes, Kinsey, Marx, and Other Big 'Thinkers'*, PITTSBURGH POST-GAZETTE, Feb. 7, 1994, 1994 WL 8256737.

70. See *supra* notes 57–62 and accompanying text.

71. See, e.g., Bettina Boxall, *Statistics on Gays Called Unreliable Demographics*, L.A. TIMES, May 1, 1994, at A3, available at 1994 WL 2160794 (reporting that exit pollers at 1992 election found that 3% of population identified themselves as gay or lesbian).

72. Civil rights laws generally apply only to employers with more than fifteen or so employees, thus exempting small employers from their reach. Gay men tend to be overrepresented in small, independent places of employment. As anecdotal evidence of this, I offer the following. At the outset of the AIDS crisis, there was no widely available HIV screening test by which insurers could determine whether someone was infected with the virus that causes AIDS. Yet the virus was associated with gay men. Some insurers sought to limit their liability by decreasing their coverage of employers of gay men:

One health insurance company, for example, distributed an “AIDS Profile,” which required its agents to segregate applications from “single males without dependents that are engaged in occupations that do not require physical exertion.” The occupations named—“restaurant employees, antique dealers, interior decorators, consultants, florists, and people in the jewelry or fashion business”—were evidently those stereotyped as the professional interests of gay men.

Benjamin Schatz, *The AIDS Insurance Crisis: Underwriting or Overreaching?*, 100 HARV. L. REV. 1782, 1787 (1987). The jobs stereotypically associated with gay men—restaurant employees, antique dealers, interior decorators, consultants, florists, and people in the jewelry or fashion business—would often fall outside the coverage of state antidiscrimination laws.

73. See LAUMANN ET AL., *supra* note 59, at 307 (identifying New York, San Francisco, Los Angeles, and Chicago).

convincing. While gay-identified people tend to congregate in large urban areas, only a few of the jurisdictions in this study—California and the District of Columbia in particular—encompass large gay-saturated urban centers; there are strong gay communities in several of the other states (Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, and Wisconsin) but they are not known as meccas for gay-identified people, nor do they constitute the areas in which the Laumann study suggests that gay people will be over-represented. Moreover, even in California, the data are distributed on a statewide basis. While gay-identified people are overrepresented in San Francisco and in parts of Los Angeles, in a state of thirty-three million citizens, the effect of this is fairly negligible. I conclude that there is a good case for utilization of the lower range of gay population data in analyzing the data presented.

In sum, I find that gay people utilize non-discrimination laws at rates that will not swamp enforcement systems, but that are generally similar, per capita, to the rate of usage of gender discrimination protections, and in many places, of race discrimination protections as well.

#### F. LIMITATIONS

It is important to bear in mind what I am not claiming in this study. The data should not be read to represent the actual incidence of discrimination. They reflect only the filings of complaints with state human rights agencies. While the latter may be an indication of the former, they cannot fully substitute for actual incidences of discrimination. There are a multitude of reasons that people who face discrimination may or may not file complaints with state agencies. Some of these reasons vary across the types of discrimination discussed. For example, my colleague Rick Sander has recently demonstrated that blacks and Hispanics in Los Angeles County demonstrate different patterns in filing housing discrimination complaints.<sup>74</sup> Similarly, I have discussed reasons why gay people who face discrimination might be hesitant to file complaints as doing so puts them in a double bind—not only identifying them as complaint-filers, but perhaps identifying them publicly, for the first time, as gay.<sup>75</sup> What I have been able to assess with the data I collected from state agencies is simply the use of these agencies. More sophisticated, second generation studies will have to develop

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74. See Richard H. Sander, *The Comparative Dynamics of Latino and African-American Housing Discrimination* (Feb. 23, 2000) (unpublished manuscript, on file with author).

75. See *supra* note 32 and accompanying text.



methods for examining the actual rates of discrimination and for assessing what barriers keep people from utilizing existing anti-discrimination norms.

A corollary of this first limitation is that my data cannot be read to suggest that “minorities face more discrimination than women” or that gays face more or less discrimination than women. I am able to say within one state over certain periods of time that claims of race or gender or sexual orientation discrimination are filed more or less often with state agencies. But I can neither take that as a reflection of the actual levels of discrimination (my earlier point) nor use these data to compare groups to one another. Not only will the data not support a comparison such as “blacks face more discrimination than women,” but such a statement is conceptually flawed. Race discrimination claims are filed by men and women, gender discrimination claims by people of color and whites. Similarly, sexual orientation claims are filed by whites and nonwhites, women and men. The prevalence of such claims is best expressed as a factor of the number of gay people in the workforce, rather than as a relationship to other forms of, often overlapping, bias.

Some less significant, but nonetheless important limitations mentioned throughout the Article bear repeating: the data cannot be compared across states, nor do the data account for changes over time, as they represent averaged annual figures.

## VI. CONCLUSION

The quantity of sexual orientation complaint-filing has importance in current public policy debates about the necessity for gay rights protections. This Article demonstrates that the utilization of such laws by gay workers in those states that have enacted them has been in the same general range that race and sex-discrimination laws are used by people of color and women. Some advocates for gay rights protections do not base their arguments in support of these laws on empirical evidence such as this, nor is all opposition to ENDA premised upon empirically-ascertainable evidence. This Article does not directly address the range of more normative arguments for or against such protections. However, to the extent that the ENDA is opposed on the grounds that state gay rights laws are infrequently used, this Article refutes that basis of opposition. It demonstrates that state gay rights laws are used and that, per capita, there is no complaint-filing drought.

## APPENDIX A

GAO DATA  
STATES' EXPERIENCE WITH SEXUAL ORIENTATION  
EMPLOYMENT DISCRIMINATION COMPLAINTS

Fiscal year	Total employment discrimination complaints	Sexual orientation employment discrimination complaints	Sexual orientation complaints as a percentage of total employment discrimination complaints
<b>California (law effective 1993)</b>			
1993	13,362	159	1.2
1994	15,730	159	1.0
1995	16,206	161	1.0
1996	17,164	173	1.0
1997	18,752	151	0.8
1998	18,892	127	0.7
1999	18,644	154	0.8
<b>Connecticut (law effective 1991)</b>			
1993	2,035	20	1.0
1994	2,404	32	1.3
1995	2,668	23	0.9
1996	2,262	44	1.9
1997	2,355	41	1.7
1998	2,107	48	2.2
1999	2,100	28	1.3
<b>District of Columbia (law effective 1977)</b>			
1992	214	7	3.3
1993	304	9	3.0
1994	344	3	0.9
1995	337	8	2.4
1996	230	7	3.0
1997	277	6	2.1
1998	295		
<b>Hawaii (law effective 1991)</b>			
1992	555	12	2.2
1993	364	6	1.6
1994	367	13	3.5
1995	396	15	3.8

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1996	415	11	2.7
1997	483	10	2.0
1998	537	6	1.1
Massachusetts (law effective 1989)			
1990	3,232	43	1.3
1991	3,496	83	2.3
1992	3,225	73	2.2
1993	4,372	135	3.0
1994	4,592	142	3.0
1995	5,144	146	2.8
1996	4,990	155	3.1
1997	5,173	148	2.9
1998	4,558	169	3.7
1999	4,180	113	2.7
Minnesota (law effective 1993)			
1995	886	34	3.8
1996	980	24	2.4
1997	1,436	34	2.3
1998	1,299	26	2.0
1999	1,268	32	2.5
Nevada (law effective October 1, 1999)			
New Hampshire (law effective 1998)			
1998	220	2	0.9
1999	241	8	3.3
New Jersey (law effective 1992)			
1992	2,712	17	0.6
1993	2,159	20	0.9
1994	1,919	25	1.3
1995	2,127	30	1.4
1996	1,277	20	1.6
1997	1,580	35	2.0
1998	1,495	27	2.0
1999	1,202	21	2.0
Rhode Island (law effective 1995)			
1996	317	2	0.6
1997	449	14	3.1
1998	428	5	1.1
1999	337	5	1.4
Vermont (law effective 1991)			
1993	139	4	2.9

1994	136	5	3.7
1995	152	2	1.3
1996	129	2	1.6
1997	115	6	5.2
1998	200	6	3.0
1999	150	4	2.7
Wisconsin (law effective 1982)			
1996	3,653	43	1.2
1997	4,619	61	1.4
1998	4,073	64	1.6
1999	3,598	65	1.8

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## APPENDIX B

## PACR COMPUTATIONS—STATE BY STATE

CALIFORNIA  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1995-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	28,173	4,505.25	8,232	154.25
Presence of Group in Workforce	14,992,811	7,852,096	6,598,822	287,240 749,641 1,499,281
Number of Complaints per 10,000 Workers	18.79	5.74	12.47	5.37 2.06 1.03

CONNECTICUT  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1992-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	3660.43	661.86	670.43	32.29
Presence of Group in Workforce	1,788,693	294,392	832,431	33,772 89,435 178,869
Number of Complaints per 10,000 Workers	20.46	22.48	8.05	9.56 3.61 1.81



DISTRICT OF COLUMBIA  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1993-97 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	291.8	144.8	70.6	6.6
Presence of Group in Workforce	327,436	229,744	168,290	6,007 16,372 32,744
Number of Complaints per 10,000 Workers	8.91	6.30	4.20	10.99 4.03 2.02

HAWAII  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1992-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	441	82.14	149.14	11.14
Presence of Group in Workforce	548,347	404,112	260,137	10,299 27,417 54,835
Number of Complaints per 10,000 Workers	8.04	2.03	5.73	10.82 4.06 2.03

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MASSACHUSETTS  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1990-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	3,945.56	782.67	821.78	111
Presence of Group in Workforce	3,245,950	388,469	1,530,983	61,062 162,298 324,595
Number of Complaints per 10,000 Workers	12.16	20.15	5.37	18.18 6.84 3.42

MINNESOTA  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1994-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	1,347.6	235.8	340	27.2
Presence of Group in Workforce	2,311,336	116,243	1,071,549	43,685 115,567 231,134
Number of Complaints per 10,000 Workers	5.83	20.29	3.17	6.23 2.35 1.18

NEW HAMPSHIRE  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1998-99 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	217	19	129	2.5
Presence of Group in Workforce	612,345	16,931	284,929	11,562 30,617 61,235
Number of Complaints per 10,000 Workers	3.54	11.22	4.53	2.16 0.82 0.41

NEW JERSEY  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1994-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	2774.6	581.4	530.8	24.6
Presence of Group in Workforce	4,104,673	1,176,396	1,885,641	77,770 205,234 410,467
Number of Complaints per 10,000 Workers	6.76	4.94	2.81	3.16 1.20 0.60

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RHODE ISLAND  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1996-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	398.67	63.33	100.33	8.33
Presence of Group in Workforce	522,603	58,975	246,932	9,826 26,130 52,260
Number of Complaints per 10,000 Workers	7.63	10.74	4.06	8.48 3.19 1.59

WISCONSIN  
ANNUAL COMPLAINT RATE  
(AVERAGE OF 1996-98 DATA)

	Total	Race	Gender	Sex/O 2.4%/1.3% 5% 10%
Employment Complaints Filed	5,064	1,196	1,164.67	60.67
Presence of Group in Workforce	2,517,238	181,128	1,162,129	47,630 125,862 251,724
Number of Complaints per 10,000 Workers	20.12	66.03	10.02	12.74 4.82 2.41

## APPENDIX C

## RAW DATA—STATE BY STATE

## California

	1995	1996	1997	1998
Sex/O	160	171	152	134
Sex	7772	8360	8654	8142
Race/Color	3888	4630	4722	4781
National Origin/ Ancestry	2155	2331	2411	2353
Religion	423	506	512	493
Mental Disability	1133	1499	1748	1652
Physical Disability	2592	3171	3209	3603
Age	2957	3297	3358	3031
Marital Status	399	422	384	340
Family Care	282	476	496	586
Retaliation	2585	3226	4102	3786
Association (must include another basis)	255	315	343	265
Other	24	87	106	213
TOTAL	24625	28491	30197	29379

These data come from two sources. The data for sexual orientation claims are from the California Division of Labor Standards Enforcement ("DLSE"), which had authority over this form of discrimination until January 2000. All other data are from the California Department of Fair Employment and Housing ("DFEH").

The DLSE provided data on computer printouts listing cases one by one. The sexual orientation figures were compiled by sorting through the complete DLSE printouts and computing a sum of the sexual orientation filings. Each claim had a "date assigned," which apparently reflects the date that the complaint was assigned to an investigator. In compiling this data chart, each claim was assigned to the year of the "date assigned" designation.

The DFEH provided calendar year statistics. CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT & HOUSING, EMPLOYMENT CASES—COUNT OF BASES (Mar., 1999) (on file with author); Letter from Sandy Draper, Staff Services Analyst, California Department of Fair Employment & Housing (Mar. 3, 1999) (on file with author). The non-sexual orientation data presented here are the DFEH data. DFEH's statistics also included complaints filed on the basis of "sexual orientation." While the DFEH catalogued such complaints in its data set, it had no jurisdiction to remedy this form of discrimination during the years in question. Thus these complaints are not encompassed in the sexual orientation data presented.



## Connecticut

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
Sex/O	19	20	32	23	44	41	47
Sex	672	590	712	725	670	657	667
Race	613	590	617	725	635	710	743
Color	588	550	545	626	459	491	525
National Origin	217	215	228	311	269	187	248
Ancestry	202	203	212	281	178	188	120
Religious Creed	30	37	42	48	58	60	55
Physical Disability	352	402	497	562	473	491	455
Mental Disability	56	48	85	85	94	101	116
Age	465	452	562	602	534	482	482
Marital Status	26	25	30	39	42	25	40
Familial Status	21	14	13	17	14	21	39
Alienage	2		2				
Source of Income	16	17	19	13	10	13	18
Other/None	91	81	82	229	162	166	215
TOTAL	3370	3244	3678	4286	3642	3633	3770

These data come from the Connecticut Commission on Human Rights and Opportunities ("CHRO"). The data for 1998 and 1997 can be found in CONN. COMM'N ON HUM. RTS. AND OPPORTUNITIES, 1998 ANNUAL REPORT 2 (1998) (on file with author). The data for 1996 and 1995 can be found in CONN. COMM'N ON HUM. RTS. AND OPPORTUNITIES, 1996 ANNUAL REPORT 15 (1996) (on file with author). The data for 1994 and 1993 can be found in CONN. COMM'N ON HUM. RTS. AND OPPORTUNITIES, 1994 ANNUAL REPORT 7 (1994) (on file with author). The data for 1992 come from a telephone interview with James Jedrzewski, Human Rights and Opportunities Representative, Connecticut Commission on Human Rights and Opportunities.

CHRO collects data for employment, housing, and public accommodations discrimination. The CHRO estimates that 90%-93% of the complaints are employment related. The statistics presented here are estimates of employment-related complaints; these numbers were calculated by taking 90% of the actual number of complaints filed.

CHRO has separate categories for "race" and "color" and the agency permits complaints to be filed in more than one category. The number of complaints of "race" discrimination is strikingly similar to the number filed alleging discrimination due to "color." In compiling PACRs for race discrimination in Appendix B, therefore, I utilized only the number of "race" complaints. I did so based on the assumption that most of the "color" complaints are accounted for in the "race" category and simply reflect dual filings of the same complaint.

## District of Columbia

	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Sex/O	9	3	8	7	6
Sex (includes Sex + Other Grounds)	70	78	88	59	58
Race/Color (includes Race + Other Grounds)	150	178	150	121	125
National Origin	19	25	9	7	6
Religion	3	4	0	1	3
Disability	24	23	27	14	7
Age (includes Age + Other Grounds)	10	21	24	5	14
Family and Medical Leave			4	4	
Family Responsibilities	3	1	2	2	1
Personal Appearance	5	7	2	3	1
Political Affiliation		0			1
Marital Status			2		
Place of Business	2				
Retaliation	2	1	4	1	8
Other Grounds/Other Combinations	7	3	17	6	14
TOTAL	304	344	337	230	244

These data come from the DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN RIGHTS AND LOCAL BUSINESS DEVELOPMENT. DIST. OF COLUMBIA DEP'T OF HUM. RTS AND LOCAL BUS. DEV., 1997 ANNUAL ACTIVITY REPORT 12-14 (1998) (on file with author); DIST. OF COLUMBIA DEP'T OF HUM. RTS AND LOCAL BUS. DEV., 1996 ANNUAL ACTIVITY REPORT 12-14 (1997) (on file with author); DIST. OF COLUMBIA DEP'T OF HUM. RTS AND LOCAL BUS. DEV., 1995 ANNUAL ACTIVITY REPORT 9-11 (1996) (on file with author); DIST. OF COLUMBIA DEP'T OF HUM. RTS AND LOCAL BUS. DEV., 1994 ANNUAL ACTIVITY REPORT 11-13 (1995) (on file with author); DIST. OF COLUMBIA DEP'T OF HUM. RTS AND LOCAL BUS. DEV., 1993 ANNUAL ACTIVITY REPORT (1994) (on file with author); Letter from Winona M. Lake, Associate Director, District of Columbia Department of Human Rights and Local Business Development (Apr. 22 1999) (on file with author). D.C. permits complaints to be filed on a single basis ("race") as well as on multiple bases ("race and gender"). In its data, the D.C. agency records separately single-basis complaints and multiple-bases complaints. The race and sex data presented here were calculated by adding race's regular base together with complaints categorized as "race and other grounds" and adding sex's regular base data together with "sex and other grounds."

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## Hawaii

	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
Sex/O	12	6	13	15	11	11	10
Sex	186	127	123	131	149	157	171
Race	144	53	60	70	60	98	77
Color	0	2	2	2	4	1	2
Ancestry/Natl. Origin		44	45	35	38	43	28
Religion		5	6	5	9	5	10
Disability	62	45	50	53	51	65	84
Age	50	39	34	36	42	89	47
Marital Status		11	5	4	5	4	5
Child Support		0	1	0	0	3	0
Arrest & Court	15	9	7	21	19	17	17
Natl. Guard		3	3	1	0	3	
Retaliation	36	20	18	23	27	61	32
TOTAL	505	364	367	396	415	557	483

These data come from the Hawaii Civil Rights Division of the Department of Labor and Industrial Relations. CIVIL RIGHTS DIVISION, HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, EMPLOYMENT STATISTICS BY YEAR, 1-8 (1998) (on file with author). In calculating the PACRs for "race" in Appendix B, complaints of "race" and "color" discrimination were added together.

## Massachusetts

YEAR (TOTAL FILINGS)	1990 (3232)	1991 (3496)	1992 (3225)	1993 (1993)	1994 (4592)	1995 (5144)	1996 (5339)	1997 (5173)	1998 (4558)
Sex/O	38	76	67	122	128	130	139	135	164
Sex (21%)	611	661	610	826	868	972	1009	978	861
Race (20%)	582	629	581	787	827	926	961	931	820
Ancestry (10%)	291	315	290	393	413	463	481	466	410
Religion (1%)	29	31	29	39	41	46	48	47	41
Disability (21%)	611	661	610	826	868	972	1009	978	861
Age (13%)	378	409	377	512	537	602	625	605	533
Children (1%)	29	31	29	39	41	46	48	47	41
Welfare (1%)	29	31	29	39	41	46	48	47	41
Retaliation (10%)	291	315	290	393	413	463	481	466	410
TOTAL	2889	3159	2912	3976	4177	4666	4849	4700	4182

These data come from the Massachusetts Commission Against Discrimination ("MCAD"). MASS. COMM'N AGAINST DISCRIMINATION, 1997 ANNUAL REPORT 21-24 (1998) (on file with author); Telephone Interview with John Ahearn, Assistant Director, Massachusetts Commission Against Discrimination (Feb. 17, 1999) (on file with author). MCAD supplied statistics identifying the total number of complaints filed each year from 1990 through 1998; these are noted in the year boxes above. MCAD's 1997 Report reported the percentage of complaints attributable to the various forms of discrimination (race, gender, etc.); these percentages are noted in the boxes identifying the forms of discrimination above. Multiplying the total number of complaints in a given year by these bias-type percentages generated the yearly number of total complaints for each type of bias. According to MCAD's report, 90% of the total claims were attributable to employment discrimination. Thus, after breaking the total number of claims into bias type, the resulting sum was multiplied by 90% to capture the number of *employment* claims attributable to that form of bias.

One important alteration was made in this methodology. The 1997 annual report attributed 1% of the total number of complaints to sexual orientation bias. However, MCAD supplied more precise data specifically identifying the percentage of the total claims attributable to sexual orientation bias for each of the years 1990-98. These are 1990 (1.3%); 1991 (2.4%); 1992 (2.3%); 1993 (3.1%); 1994 (3.1%); 1995 (2.8%); 1996 (2.9%); 1997 (2.9%); 1998 (4%). In generating the numbers in this table, I employed these more precise percentages in place of the general 1% figure in the 1997 annual report. This latter methodology yielded data that closely track the data generated by the GAO.

## Minnesota

	1/2 1994	1995	1996	1997	1998
Sex/O	23	27	26	34	26
Sex	304	370	307	377	342
Race	208	247	209	257	247
Color	2	3	1	3	2
National Origin	58	85	52	101	95
Religion	20	16	17	15	13
Creed				1	
Disability	302	330	279	332	311
Age	194	234	200	181	178
Marital Status	23	24	36	39	34
Public Assistance Status	1		3	3	3
Retaliation	96	161	144	93	49
TOTAL	1231	1497	1274	1436	1300

These data come from the Minnesota Department of Human Rights. Letter from Melissa Rosenbaum, Legal Analyst, Minnesota Department of Human Rights (Mar. 23, 1999) (on file with author). The 1994 statistics are marked as "7/1/94-12/31/94." However, the data for that half of 1994 so closely approximate the data for the other full years, I assumed that these numbers actually reflect filings throughout 1994; hence I treated 1994 as a full year in calculating the PACRs in Appendix B. In calculating the PACRs for "race" in Appendix B, complaints of "race" and "color" discrimination were added together.



## New Hampshire

	FY 1998	FY 1999
Sex/O	0	5
Sex	114	144
Race/Color	20	18
National Origin	2	5
Religion	2	2
Disability	34	27
Age	26	33
Marital Status	1	1
TOTAL	199	235

These data come from the New Hampshire Human Rights Commission. Telephone Interview with Cheryl Coombs, Administrative Specialist, New Hampshire Human Rights Commission.

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## New Jersey

	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
Sex/O	24	26	16	32	25
Sex (includes harassment)	634	588	459	521	452
Race	651	720	430	520	553
Color	4	12	5	11	1
National Origin	318	415	166	242	202
Ancestry	5	31	5	0	1
Creed	38	45	25	35	26
Physical Disability	314	421	175	208	242
Mental Disability	38	40	24	22	45
Drug Disability	16	11	4	5	3
Age	302	250	185	246	227
Family with child	0	5	3	5	8
Marital status	36	25	13	18	13
Family leave	18	15	19	14	17
Armed forces	7	1	4	2	4
Guide dog	2	0	0	2	0
Multiple	603	744	384	541	477
Retaliation	183	195	168	182	149
TOTAL	3193	3544	2085	2606	2445

These data come from the New Jersey Division on Civil Rights: Bureau of Prevention & Citizen's Rights. Letter from Deborah Edwards, Assistant Director, Division on Civil Rights, New Jersey Department of Law and Public Safety (May 5, 1999) (on file with author); Letter from Roberto Rodriguez, Administrative Analyst, Division on Civil Rights, New Jersey Department of Law and Public Safety (Mar. 12, 1999) (on file with author). New Jersey provided statistics that break down filings according to the types of discrimination listed above; separately, the agency breaks down filings according to whether they involved discrimination in employment, housing, or public accommodations. From the latter data, I calculated what percentage of each year's complaints were *employment* related: 1994 (91.6% of complaints were employment related); 1995 (81.5%); 1996 (94.2%); 1997 (92.3%); 1998 (91.6). The numbers in this table were generated by multiplying the total bias-type (race, gender, etc.) filing data by these employment percentages, thereby generating an estimate of the employment complaints by bias type. In calculating the PACRs for "race" in Appendix B, complaints of "race" and "color" discrimination were added together.

## Rhode Island

	FY 1995	FY 1996	FY 1997	FY 1998
Sex/O		1	14	10
Sex (including sexual harassment)	120	81	122	98
Race	88	38	73	79
Ancestry	25	15	23	26
Religion	3	5	3	11
Disability	92	86	123	126
Age	75	69	69	81
Retaliation	14	5	22	16
TOTAL	417	300	449	447

These data come from the Rhode Island Commission for Human Rights. Letter from Joanne L. Goulet, Senior Compliance Officer, Rhode Island Commission for Human Rights (May 6, 1999) (on file with author). The Commission records complaints of "sex discrimination" and "sexual harassment" separately. In generating this table, and the PACRs in Appendix B, these numbers were added together to provide a single measure of complaints of sex discrimination.

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## Wisconsin

	FY 1996	FY 1997	FY 1998
Sex/O	67	53	62
Sex	1163	1188	1143
Race/Color	1165	1278	1145
National Origin/Ancestry	138	131	153
Religion	52	80	55
Handicap/Disability	830	873	903
Age	574	631	594
Marital Status	65	55	55
Conviction Record	122	188	162
Arrest Record	105	114	119
Military Status	4	6	4
Honesty Testing	2	1	1
Use of Lawful Products	4	8	10
Genetic Testing	0	0	0
Fair Employment Retaliation	476	645	637
Labor Standards Retaliation	47	35	49
TOTAL	4814	5286	5092

These data come from the Wisconsin Department of Workforce Development, the Equal Rights Division. Letter from LeAnna Ware, Director of the Civil Rights Bureau, Wisconsin Equal Rights Division (Feb. 25, 1999) (on file with author). Although Wisconsin's prohibition on sexual orientation discrimination was enacted in 1982, the agency's computer system could only generate statistics starting in 1996.

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To: Committee on Federal and State Affairs, Mr. Pete Burngardt, Chairperson.

Re.: Senate Bill No. 169

From: Pedro Luis Irigonegaray, Counsel, Kansas Equality Coalition

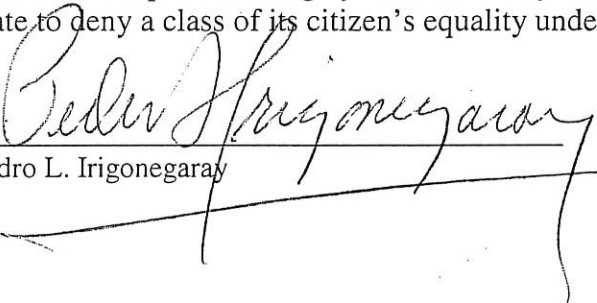
Ladies and Gentlemen:

Thank you for the opportunity to address you today in support of Senate Bill No. 169. I have been practicing law for just over thirty five (35) years, mostly in Topeka. However, my practice has taken me to a significant number of counties across our great state of Kansas.

For many years I have been an active participant in the efforts to bring about legally protected equality for our homosexual and transgendered citizens. On numerous occasions I have been the subject of horrific emails, obscene demonstrations, abusive plaques, and terribly offensive faxes from a local hate group and others that feel they have a right to hate those they perceive as different. For me, it has been worth it. I cannot remain indifferent in the presence of inequality. As long as any of us is treated unequal, we are all unequal. If we do not oppose bigotry, with our silence we endorse it.

As a practicing attorney known for his interests in civil rights, I have through the years been contacted by Kansas' homosexual citizens (gay men and lesbian women as well as transgendered persons). They have sought professional help for the unjustified sufferings they endured; for sufferings inflicted for no other reason than their sexual orientation, or gender identity issues. These individuals are no different than you or me; they have families, jobs, homes, and responsibilities. Sadly, today in Kansas these folks can be fired from their jobs, evicted from their rental property, and otherwise mistreated without them having any legal recourse. The saddest stories for me come from children that for no other reason than their sexual orientation or gender identity are often mistreated. They now have no legal protection. On numerous occasions I have been asked by these children; why does Kansas not care? I do not want to see their suffering any longer ignored. We can, we must care.

Kansas is a great state; as such, we should insure that all of our citizens are made to feel safe, equal, and respected. I urge you to favorably vote on Senate Bill No. 169. Kansas is too great a state to deny a class of its citizen's equality under the law.

  
Pedro L. Irigonegaray

Sen Fed & State  
Attachment 5  
2-12-09



Testimony of James Woods  
In Support of SB169  
Federal and State Affairs Committee  
February 12, 2009

Good morning, Mr. Chairman and the members of the committee. I would like to thank the members of the Committee for allowing me to testify.

Under the current Kansas Acts Against Discrimination, I cannot be denied employment, public access or accommodations based on my race. However, I can be fired, evicted, or denied public access based on my sexual orientation. I am a black gay male and I know all too well about the discrimination that is faced by many in Kansas.

When I graduated from college, I searched for employment in the field of business. After many interviews, I quickly found that I had to hide my sexual orientation in order to get an interview. There were times that I was questioned as to my sexual orientation during the interview, and I honestly answered the question. However, in the back of my mind, I knew that there was something fundamentally wrong with being asked about my sexual orientation. I began to wonder if employers felt that gay applicants were not as qualified as straight applicants. I knew myself that applicants should be judge solely on the merit of their education and experience of their previous employment. I also knew that my sexuality had no validity in making an assertion as to my qualifications. I received many turn down letters from employers who had inquired about my sexual orientation. I could only deduce that I was turned down from employment based on my sexual orientation.

When I finally did find employment, I was all too scared to let anyone, at my place of employment, know of my sexual orientation because of the difficult time that I had finding employment. I found myself in the uncomfortable position of living in fear of my employer finding out about my sexual orientation. Unfortunately, I was not able to keep truth of my sexuality from my fellow employees, as I was witnessed by another coworker with my partner at that time. I was questioned by my fellow employee if I was gay, and I found myself in a situation as to whether I should tell a lie or tell the truth. I could not accept lying and I told my fellow employee the truth. What ensued later was my worst fear. I overheard my fellow employee tell my supervisor that I was gay. My supervisor stated that she would not stand for any employee who was gay working in the company. My supervisor had informed me that there would be a meeting with the branch manager, and I was informed that I was no longer needed to serve the company in the capacity in which I was hired. I was truly stunned by what had happened. I had not violated any of the company's policies. I performed my duties at a level that was considered above what was expected of an employee. I knew that the reason that I was terminated was based on my sexual orientation. I honestly felt like I was living back in the time where it was okay to fire someone based on their race.

Honestly, I don't see the difference between what happened then and what is happening now. If employers are allowed to deny or fire an employee based on something that cannot be changed in a person, then we have admitted that we are turning a blind eye and taking a giant step taken back into the time where discrimination was okay.

There are those out there who would say that sexual orientation or gender identity is something that cannot be identified by sight. I would hope that those who believe this reconsider this notion based on my personal experience. I, in no way, throw my sexual orientation in the faces of those whom I come in contact with, but I never deny who I am. However, I have been denied because of who I am and that is what I consider to be discrimination. My hope is that sexual orientation and gender identity will be added to the Kansas Acts Against Discrimination so that this giant step that has been taken backwards can be erased. Providing protection in not only just employment but in public access and accommodations will ensure that the lives of all Kansas will be experienced equally.

Thank you for your time.

Jason Chaika  
Written Testimony in Support of SB169  
Senate Committee on Federal and State Affairs

February 12, 2009

Dear Mr. Chairman:

I am strongly in support of SB 169. I have experienced discrimination in the private sector when attempting to secure a rental property with my partner in life. We were flatly told that they would not rent to us when we called to inquire about a house for rent. This occurred only after I stated that my life partner and I would like to view the property.

Another incident happened when my life partner was fired from his job shortly after I visited him at his workplace and introduced myself as his life partner. Up to that point my partner had had flawless performance reviews. He was given no reason for his sudden and unexpected dismissal.

I inquired with the Topeka Human Relations Commission and was informed that they could not investigate nor would they even take a report or record our complaints. They explained that it was perfectly legal to discriminate on the basis of sexual orientation.

For too long the gay community has been caught in a catch 22. We are often told by our local government that discrimination is not a significant problem for gay people yet we are not given recourse to investigate the problem. We are even given the excuse that it would cost too much to investigate gay discrimination. It is ironic, considering that the same people tell us that it isn't a significant problem. So how then can it cost too much to investigate a so called insignificant problem? No matter, what is the cost of justice?

Also too frequently, elected officials *pass the buck to the next level of government. The city passes to the state and the state passes to the federal.* Then the federal government passes the buck back down to the local and state. Please stop the buck passing once and for all. Discrimination is always wrong no matter what form it takes.

Please pass SB 169 out of committee and to the Senate floor for a full and open debate.

Sincerely,

Jason Chaika  
318 SW Saline ST.  
Topeka, KS 66606

Sen Fed & State  
Attachment 7  
2-12-09



Senator Brungardt and Members of the Senate Federal and State Affairs Committee:

I am Judy Smith, State Director of Concerned Women for America of Kansas, a public policy women's organization with more than 9,000 members in Kansas. I am testifying in opposition to **S 169**.

CWA of Kansas is opposed to adding sexual orientation and gender identity to discrimination statutes. Discrimination and civil rights laws have traditionally been based upon immutable characteristics such as gender, age, ethnicity, race, handicaps...all things that are clearly visible and unchangeable. In addition there must be demonstrable economic effect based on those immutable characteristics in order for it to qualify as discrimination, and the affected group must demonstrate a history of discrimination and political powerlessness. Facts show that homosexual behavior and cross-dressing fit into none of these requisite categories. Instead, the data shows that this behavior is changeable, that the homosexual community is largely more affluent than the general population and that activists promoting this behavior are hardly politically powerless. In fact, the homosexual lobby is one of the most powerful and affluent in the nation. An Internet survey of nearly 6,000 homosexuals and lesbians conducted jointly by the gay and lesbian market research firm Opus-Comm Group, Syracuse University, and the media/entertainment company GSociety, Inc., reports: "The median combined household income of gay couples is \$65,000, nearly 60 percent higher than the 1999 U.S. median income of \$40,800. More than a fifth of the respondents reported a total combined income of \$100,000 or more. "Gay Purchasing Power a Significant Force, Major Study Reveals" News Release: Opus Comm Group, Inc. (October 17, 2001).

In the case of sexual orientation and gender identity, the proposed addition to discrimination statutes is based on a *behavior*. This is a dangerous precedent that would affect public policy regarding marriage, families and the culture in general. A chosen behavior should not be the basis for changing law.

In addition, adding "gender identity" as an expression of self image or identity not associated with one's gender forces Kansas' employers and Kansas citizens to pretend, by force of law, that a man is a woman or vice versa based on that person's self-perception or behavior.

This bill places sexual orientation and self-perceived gender identity not as a protected class, but as a privileged group. Sexual orientation and other manifestations of gender identity do not fit into what constitutes a true minority and should not be added to laws dealing with discrimination.

Judy Smith, State Director

Concerned Women for America of Kansas

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TOPEKA

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REGULATIONS

MEMBER OF KANSAS SENTENCING COMMISSION

CHAIR:

NATIONAL CONFERENCE OF STATE  
LEGISLATORS COMMITTEE ON LAW AND  
CRIMINAL JUSTICE

February 12, 2009  
Before the Senate Federal and State Affairs Committee  
Testimony on  
SB 169

Chairman Brumgardt, Vice-Chair Reitz, and Ranking Minority Faust-Goudeau. I appreciate the opportunity to present testimony on this bill.

This bill basically amends the entire Kansas Act Against Discrimination.

The Kansas act protects against discrimination by reason of race, religion, color, sex, disability, national origin or ancestry. This bill adds two new categories to the classes protected: sexual orientation or gender identity. Page 4, lines 9-15 states "sexual orientation" means "male or female heterosexuality, homosexuality or bisexuality by indication, practice, or expression."

"Gender identity" means "having or expressing a self image or identity not traditionally associated with one's gender". The bill allows employees to set a reasonable dress or grooming standards at work subject to the provision of federal, state, or local laws.

Two years ago I spoke to this Senate Committee about a similar bill. I told you about an individual in Hutchinson named Steve, who cross dresses in a skirt and fishnet hose, and rides his bike all over town. I raised the problem of an employer being forced to keep Steve as an employee if he were to interview in slacks and a shirt and be hired and then show up at work in a skirt. The authors of this bill have somewhat taken care of that problem in this bill, although in towns the size of Hutchinson or smaller, everyone would see the employer off hours dressed as a woman. I could also see this section causing lots of litigation to interpret this standard.

The most troubling part of this bill is that it opens up the classes of protected individuals so widely that it would destroy our Kansas Act Against Discrimination. The definition of "sexual orientation" includes everyone in Kansas as everyone is heterosexual, homosexual, or bisexual. If everyone is in a protected class, we fail to protect those discriminated against due to race or other classes. An employer could refuse to hire a Latino or another minority, and then point out that they have hired someone else from a protected class, such as a heterosexual.

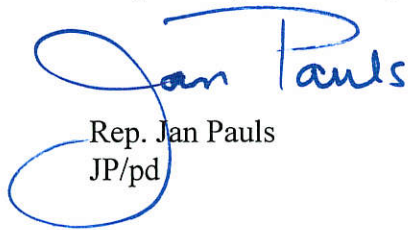


The civil rights committee will also have to prepare new material regarding these two new classes under KSA 44-1004. The commission has to work with the State Department of Education to produce a comprehensive educational program designed for the public schools to eliminate prejudice. Also new publications must be done on these classes.

The change in our law would have far reaching ramifications. For example, New Mexico law protects homosexuals. A Christian photographer there refused on religious grounds to photograph a same sex marriage. Their Human Rights Commission fined him \$6,600. This case is on appeal.

I'm willing to stand for questions, now or later on this bill.

Respectfully Submitted,



Rep. Jan Pauls  
JP/pd



LOU ANN THOMS, Chair  
TOPEKA  
TERRY CROWDER  
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ADMINISTRATOR  
BETH MONTGOMERY  
OFFICE MANAGER

**WRITTEN TESTIMONY OF THE KANSAS HUMAN RIGHTS COMMISSION  
REGARDING  
S.B. 169  
FEBRUARY 12, 2009**

Staff Attending Hearing: William V. Minner, Executive Director  
Brandon L. Myers, Chief Legal Counsel  
Ruth Glover, Assistant Director

S.B. 169 proposes to amend the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq., hereinafter referred to as "KAAD") to add provisions prohibiting discrimination on the basis of "sexual orientation" or "gender identity" with regard to employment, housing and public accommodations.

"Sexual orientation" is defined in section 2 of the bill as "male or female heterosexuality, homosexuality, or bisexuality by inclination, practice or expression". "Gender identity" is defined, in part, as "having or expressing a self image or identity not traditionally associated with one's gender". The definition for "gender identity" also states "this term shall not prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited to other provisions by federal, state, or local law."

The Kansas Human Rights Commission (KHRC) is responsible for administering and enforcing the provisions of the KAAD. KHRC is committed to its mission of preventing and eliminating discrimination and segregation in the State of Kansas and opposes discrimination which prevents individuals from obtaining employment for which they qualify, or that prevents persons from obtaining housing and the services of public accommodations which they can afford.

The Kansas Act Against Discrimination, KSA 44-1001 et seq, is proposed to be expanded to prohibit discrimination based upon sexual orientation or gender identity, in addition to the current prohibitions on discrimination based on race, religion, color, sex, disability, ancestry, national origin, the use of genetic information in the area of employment only, familial status in the area of housing only, and retaliation. The Kansas Age Discrimination in Employment Act sets forth age as an impermissible consideration for adverse employment decisions.

Federal employment laws, specifically Title VII of the Civil Rights Act of 1964 and the federal Fair Housing Act, do not prohibit discrimination based on sexual orientation or gender identity. Federal civil rights laws do not protect against discrimination based upon sexual orientation or gender identity in regard to public accommodations.

Federal Executive Order 13087, which was signed on May 28, 1998, prohibits discrimination in federal civilian employment based on sexual orientation, as well as the more traditional bases of race, color, religion, sex, national origin, handicap, and age.

Executive Order 07-24, issued by Governor Sebelius in August 2007, commits the State of Kansas to employment practices which will prevent discrimination and harassment on account of sexual orientation and gender identity, as well as several other bases

The City of Lawrence, Kansas, currently prohibits discrimination based upon sexual orientation. We are not aware of any other Kansas municipalities that provide such protection. The City of Topeka considered prohibiting discrimination based upon sexual orientation as part of their local ordinance in recent years, but opted to limit the prohibition to internal City hiring practices.

Other local governmental entities and businesses may have ordinances or policies prohibiting sexual orientation or gender identity discrimination in their own employment practices.

The neighboring states of Missouri, Nebraska, and Oklahoma do not have statutory provisions prohibiting discrimination based on sexual orientation or gender identity. Since 2007, Colorado has prohibited discrimination based on sexual orientation and gender identity in all employment. Discrimination based on sexual orientation and gender identity has been prohibited in Iowa since July 1, 2007.

Although we were unable to survey all states due to time constraints, we were able to identify nineteen states (California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia that have some type of statutory prohibition of discrimination based upon sexual orientation and/or gender identification in the areas of employment, public accommodation, and/or housing.

Eleven other states (Alaska, Arizona, Delaware, Indiana, Kentucky, Michigan, Montana, Ohio, Pennsylvania, Virginia, and Wisconsin) prohibit discrimination based on sexual orientation and/or gender identity in their own employment practices.

The KAAD constitutes a statement of the public policy of Kansas which disfavors discriminatory conduct. If the Legislature and Governor choose to expand the public policy of the State of Kansas as proposed by S.B. 169, the Commission stands ready to enforce the provisions of the bill, subject to the proviso that there is an expansion of budget and personnel resources provided to KHRC to handle anticipated increases in the number of complaints filed with KHRC, as more fully set out in the Fiscal Note accompanying S.B. 169. Although KHRC did not seek the introduction of the bill, KHRC would not oppose its adoption in light of the above.

As an unbiased, fact-finding, investigative body, the KHRC has taken a neutral stance on the proposed legislation. It is vital that "Probable Cause" or "No Probable Cause" determinations made in regards to complaints filed with this agency be accepted with credibility. Therefore, we have not taken a stance on this bill in order to avoid presumptions that we may favor one side or the other if this legislation is adopted.

With fairly minimum expansion of resources, KHRC believes it could implement the provisions of S.B. 169 without significant concerns that the new provisions would return the agency to the days of an extensive backlog of cases. However, it is impossible to predict with absolute certainty, the number of complaints that might be filed based upon these new provisions in the law, so that would have to be monitored and addressed through the budget process as appropriate in the future. As with any expansion to the KAAD, we can be fairly certain that complaints testing the legislation will be filed and will need to be processed, placing demands on agency resources and personnel.

We surveyed several states about the number of complaints they received alleging discrimination based upon sexual orientation and/or gender identity. Based on the number of complaints they received for their population and adjusting for the population of Kansas, we expect to receive approximately 50 additional complaints per year and 320 additional public contacts should the proposed legislation be enacted.

The projected receipt of 50 sexual orientation complaints and 320 public contacts represents an increase of almost 5.5 percent over the Fiscal Year 2008 level of 918 complaints received and the 5,814 public contacts made. Given that Special Investigators currently have annual quotas of 36-72 completed complaints, based on various criteria, the additional workload cannot be absorbed within current funding and personnel levels. We anticipate that two additional FTE at a cost of \$110,467 in State General Fund will be needed to investigate and process complaints in Fiscal Year 2010 to implement the provisions of S.B. 169.

We will be glad to answer any questions that you might have.