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POSITION
PAPER

Need for Non-Discrimination Laws Protecting LGBT People in Kentucky

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Non-discrimination laws that include sexual orientation and gender identity provide protections for people who identify as lesbian, gay, bisexual, and transgender (LGBT). Further, inclusive non-discrimination laws signal a commitment to equality and fairness in the treatment of all individuals. However, statewide non-discrimination laws in Kentucky do not include protections against discrimination based on sexual orientation or gender identity. This lack of protection creates risks for the unfair treatment of LGBT people in Kentucky.

Amending non-discrimination laws in Kentucky to include sexual orientation and gender identity would have an immediate positive impact on communities and is a change that is supported by the majority of Kentucky residents. For example, The Williams Institute at the UCLA School of Law (2015), using data from two large survey polls, estimated that more than 3 out of 4 Kentucky residents thought that LGBT people in the state experienced discrimination, and 83% of those polled supported extending protections against workplace discrimination to lesbian, gay, bisexual, and transgender people. Kentucky laws need to reflect the forward thinking progress on civil rights supported by Kentucky residents and the business community.

BACKGROUND: Federal Civil Rights laws do not explicitly include sexual orientation and gender identity. There are contradictory federal court rulings on whether the civil rights laws prohibit such discrimination. For example, Federal District and Appeals courts have issued different opinions about whether Title IX of the Education Amendments Act of 1972 or the Civil Rights Act of 1964 protections against discrimination based on sex apply to LGBT individuals. State laws can be used to create legal protections against discrimination and remedies for

LGBT individuals in the absence of and in addition to federal protections.

State non-discrimination laws that are inclusive of sexual orientation and gender identity create a private right (cause) of action that allows victims of discrimination to pursue legal remedies. Non-discrimination laws may cover many different areas, including employment, housing, and public accommodations. Executive orders, local ordinances, and university and private business policies may be inclusive of sexual orientation and gender identity; however, these policies do not create the same private right of action and thus have more limited enforcement options than state non-discrimination laws.

State non-discrimination laws that include sexual orientation and gender identity are associated with better health outcomes and better business outcomes in communities.^{1,2,3} For example, LGBT people in states with inclusive laws report less mental health distress, and better physical health and longevity.^{4,5,6} States with inclusive laws are more attractive to businesses, especially innovative companies that are human-capital intensive (e.g., high tech companies); for example, inclusive statewide laws are positively associated with an increased number of patents in a state after the passage of state anti-discrimination protections for LGBT people.⁷

Twenty states and the District of Columbia have employment, housing, and public accommodation non-discrimination laws that include sexual orientation and gender identity, and two additional states have laws that include only sexual orientation. Current and potential employees, residents, and visitors in the state of Kentucky are at risk for discrimination on the basis of sexual orientation and gender identity without explicit protections under Kentucky law.

The Kentucky Civil Rights Act (KRS 344) does not include protections based on sexual orientation and gender identity. Governor Steve Beshear issued an executive order during his administration prohibiting discrimination based sexual orientation and gender identity in the treatment of state employees; however, an executive order may be rescinded by a governor at any time and does not cover non-state workers or places of employment. Seven local jurisdictions have non-discrimination ordinances covering employment, housing, and public accommodations that include sexual orientation and gender identity: Covington, Danville, Frankfort, Lexington, Louisville, Morehead, and Vicco. Local non-discrimination ordinances have limited enforceability.

Analysis of the impact of laws that include sexual orientation and gender identity has shown no evidence of a substantial increase in complaints in states with inclusive laws⁸ and a fiscal impact study by the Kentucky Legislative Research Commission (in 2016) estimated limited or minimal impact of adding sexual orientation and gender identity to the Kentucky State Civil Rights Act.

Kentucky state civil rights laws should be amended to include sexual orientation and gender identity. Including sexual orientation and gender identity in state non-discrimination laws in Kentucky would create consistency in the rights assigned to individuals and create enforceable remedies statewide.

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Dr. Riggle received her B.A. from Purdue University and her A.M. and Ph.D. from the University of Illinois at Champaign-Urbana. Her articles have appeared in leading professional journals. She has also co-authored many books on sexual

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