Submitted by
Dan Levy and
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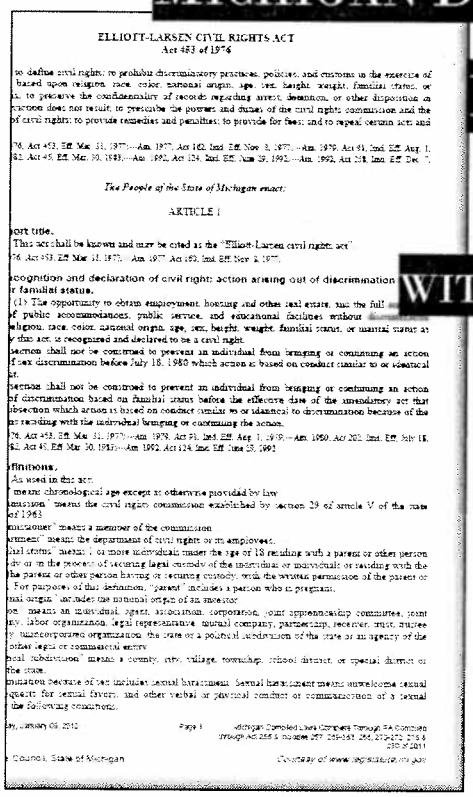
MICHIGAN DEPARTMENT OF CIVIL RIGHTS

REPORT ON LGBT INCLUSION UNDER MICHIGAN LAW

WITH RECOMMENDATIONS FOR ACTION



ELLIOTT-LARSEN CIVIL RIGHTS ACT
Act 453 of 1976

to define civil rights; to prohibit discriminatory practices, policies, and customs in the exercise of based upon religion, race, color, national origin, age, sex, height, weight, familial status, or is; to preserve the confidentiality of records regarding arrest, detention, or other disposition in action does not result; to prescribe the powers and duties of the civil rights commission and the of civil rights; to provide remedies and penalties; to provide for fees; and to repeal certain acts and

76, Act 453, Eff. Mar. 31, 1977;—Am. 1977, Act 162, Imd. Eff. Nov. 8, 1977;—Am. 1979, Act 91, Imd. Eff. Aug. 1, 82, Act 45, Eff. Mar. 30, 1983;—Am. 1992, Act 124, Imd. Eff. June 29, 1992;—Am. 1992, Act 218, Imd. Eff. Dec. 7,

The People of the State of Michigan enact:

ARTICLE I

ort title.
This act shall be known and may be cited as the "Elliott-Larsen civil rights act".
76, Act 453, Eff. Mar. 31, 1977;—Am. 1977, Act 162, Imd. Eff. Nov. 8, 1977.

cognition and declaration of civil right; action arising out of discrimination r familial status.
(1) The opportunity to obtain employment, housing and other real estate, and the full of public accommodations, public service, and educational facilities without religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as y this act, is recognized and declared to be a civil right.
section shall not be construed to prevent an individual from bringing or continuing an action f sex discrimination before July 18, 1980 which action is based on conduct similar to or identical it.
section shall not be construed to prevent an individual from bringing or continuing an action of discrimination based on familial status before the effective date of the amendatory act that bsection which action is based on conduct similar to or identical to discrimination because of the as residing with the individual bringing or continuing the action.
76, Act 453, Eff. Mar. 31, 1977;—Am. 1979, Act 91, Imd. Eff. Aug. 1, 1979;—Am. 1980, Act 202, Imd. Eff. July 18, 82, Act 45, Eff. Mar. 30, 1983;—Am. 1992, Act 124, Imd. Eff. June 29, 1992.

finitions.
As used in this act:
means chronological age except as otherwise provided by law.
mission" means the civil rights commission established by section 29 of article V of the state of 1963.
missioner" means a member of the commission.
rtment" means the department of civil rights or its employees.
ial status" means 1 or more individuals under the age of 18 residing with a parent or other person dy or in the process of securing legal custody of the individual or individuals or residing with the he parent or other person having or securing custody, with the written permission of the parent or . For purposes of this definition, "parent" includes a person who is pregnant.
nal origin" includes the national origin of an ancestor.
on" means an individual, agent, association, corporation, joint apprenticeship committee, joint ny, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee y, unincorporated organization, the state or a political subdivision of the state or an agency of the other legal or commercial entity.
ical subdivision" means a county, city, village, township, school district, or special district or the state.
mination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual quests for sexual favors, and other verbal or physical conduct or communication of a sexual the following conditions:

ay, January 09, 2012 Page 1 Michigan Compiled Laws Complete through PA Complete through Act 255 & includes 257, 259-263, 266, 272-273, 275 & 280 of 2011

Council, State of Michigan Courtesy of www.legislature.mi.gov

MDCR Report on LGBT Inclusion under Michigan Law
With Recommendations for Action

Executive Summary

Michigan enjoys a strong tradition of supporting civil rights. For many years, our great state was at the forefront of the civil rights movement. Long before the Elliott-Larsen Civil Rights Act (ELCRA) was enacted, Michigan protected its citizens from discrimination in public accommodations, government housing, and employment (Michigan Civil Rights Commission, 2004). In 1955, the legislature passed the Fair Employment Practices Act which guaranteed the opportunity to gain employment regardless of race, color, religion, or national origin (Cramton, 1964).

The Commission and Department have long held the belief that the lesbian, gay, bisexual, and transgender (LGBT) population should also be protected from discrimination. In 1983, the Commission issued a statement that ELCRA should be amended to prohibit discrimination based on sexual orientation. Moreover, Commissioners and Department staff have long promoted a workplace culture of LGBT acceptance and understanding. Over the past few years, there has been increased federal and statewide attention to laws and policies of specific concern to the LGBT population. Amidst this background, the Michigan Department of Civil Rights (MDCR) sought grant funding for a project to determine whether Michigan's current public policies, (including but not limited to the failure to include these protections in ELCRA), have economic implications separate and apart from their civil rights implications.

In 2012, MDCR received a grant from the Tides Foundation to create "A Report on LGBT Inclusion Under Michigan Law with Recommendations for Action." This report is the result of the one-year project supported by that grant. Over the course of 2012, the MDCR

conducted public forums, surveys, and archival research to examine whether the state's current laws and policies have an economic impact on individuals, businesses, or communities and whether changes would brighten or dim our economic outlook.

While ELCRA prohibits employment, public accommodations, public services, education, and housing discrimination based on race, religion, color, national origin, sex, age, marital status, height, weight, and arrest record, it does not currently prohibit discrimination based on sexual orientation or gender identity/expression. This means that employers can fire or refuse to hire people, landlords can deny housing, and business owners can refuse restaurant service based on an individual's actual or perceived sexual orientation or gender identity/expression and those individuals would have no means of legal redress.

This report provides both analytical and anecdotal evidence that decisions like whether to expand civil rights protections to include sexual orientation has very real social and economic implications for Michigan. Additionally, the report identifies a number of steps which can be taken by public policy makers in Michigan to address these implications.

This report is divided into five sections. The first section, "The Present State of LGBT Inclusion," focuses on the present state of LGBT inclusion both in Michigan and nationwide. This background provides the reader with an understanding of the social and political landscape and depicts the extent to which LGBT persons are currently protected from discrimination under Michigan and federal law. Currently, 21 states and the District of Columbia (approximately 44% of the U.S. population) have non-discrimination statutes that include protections based on a person's sexual orientation; in 16 of those states and the District of Columbia, these non-discrimination laws also include protections based on gender identity or expression (National Gay and Lesbian Task Force, 2012).

This section also includes the results of archival investigation of Michigan's local non-discrimination ordinances. The Department examined Michigan's history of inclusive non-discrimination ordinances, specifically focusing on where local ordinances have been passed, what those ordinances entail, the history of the ordinances, and whether the ordinances have resulted in enforcement actions. As of August 2012, 19 cities (and two townships) across Michigan have local ordinances prohibiting discrimination based on sexual orientation and/or gender identity. While these ordinances indicate a local desire to provide protections, enforcement ability is lacking. The patchwork of local protections is confusing and has a negligible impact on whether Michigan is perceived as inclusive.

The first section also examines the non-discrimination policies of Michigan's largest employers, in both the private and public sector. These policies were examined to determine the extent to which Michigan-based businesses and organizations include sexual orientation and gender identity/expression in their corporate employee non-discrimination policies. Across business sectors, employers are much more likely to offer anti-discrimination protections based on sexual orientation than gender identity/expression. It is particularly significant to note that institutions have adopted these inclusive internal policies because they saw doing so as 'good for business,' and did not experience any anti-business burden.

Section two provides an overview of the current state of LGBT discrimination. This section contains data from national sources as well as data that are specific to Michigan. Contained within this section are data collected by Michigan organizations such as the American Civil Liberties Union, Equality Michigan, and the fair housing centers across Michigan, as well as researchers at Michigan State University. This section shows that there is convergent evidence

of significant discrimination based on sexual orientation and gender identity/expression across a variety of sources and collection methodologies.

Data for this section also came from public forums conducted by the Department in the summer and fall of 2012. A total of five public forums were held to provide people with an opportunity to tell their personal stories and share their opinions. These forums were held in Jackson, Holland, Ann Arbor, Grand Rapids, and Detroit. To garner a better understanding of what people would gain or lose if protections were expanded, the Department solicited public and written testimony from Michigan citizens. Specifically, people were asked how the presence or absence of protections based on sexual orientation and gender identity/expression:

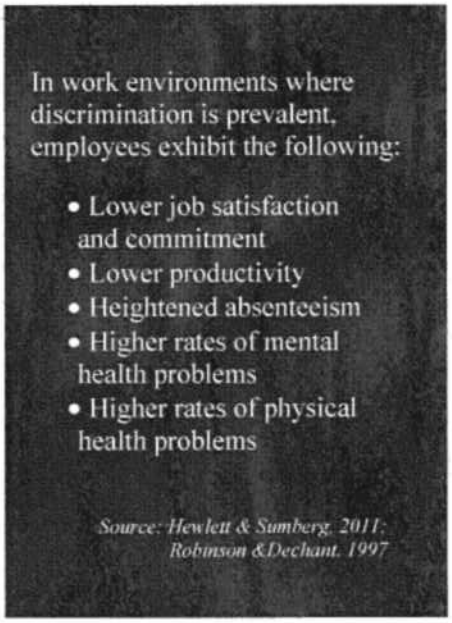
- Impacted their community/neighborhood/family/church/school?
- Impacted their life or that of a family member?
- Impacted their business operations/workforces/services?
- Affected people's perception of Michigan?

Many people also provided anonymous written testimony and indicated they did so due to fear of rebuke from employers or fear of facing further harassment or discrimination as a result of coming out publicly as LGBT by testifying. To protect the anonymity of people who submitted written testimonials, no identifying information is included in this report for testimonials provided by email.

A majority of the personal testimony the Department received reported employment discrimination. Police officers, university professors, schoolteachers, store managers, electrical engineers, symphony conductors, and food service staff recounted stories of being denied jobs, tenure, promotions, or of being fired because of their perceived or actual sexual orientation or gender identity/expression. People also delivered testimony that reported discrimination in

housing, public accommodations, and education, all areas investigated by the MDCR. These testimonials offered powerful first person narratives of experiences with discrimination and the effects of discriminatory experiences or the threat of discrimination.

The third section outlines the effects that not prohibiting discrimination based on sexual orientation and gender identity/expression is having on Michigan citizens, families, communities, and the economy. Many people who identified as heterosexual delivered testimony on behalf of their LGBT children, parents, siblings, and friends. These testimonials provided a reminder that it is not only those who are discriminated against who are impacted. Children are disadvantaged by discrimination faced by their parents and same-sex parents are fearful that without recourse for discrimination, they may not be able to care for their children if they lose their jobs. Parents testified to the heartache they experience worrying that their LGBT children would encounter bullying, harassment, and discrimination. Others lamented the division their families faced when their children out migrated to live somewhere they felt safer and more welcomed.



The Department's research reveals that the current state of discrimination in Michigan is having a negative impact on communities as well as individuals. Those who identify as LGBT reported that they cannot fully participate in civic life because they fear that they will be unable to attain employment, will be denied housing, or will be socially shunned. Moreover, the research showed that LGBT persons may choose to not report harassment, bullying, sexual assault, and other physical victimization for fear of further discriminatory or violent animus. The

"Bright, skilled workers no longer flock to a location just because a business puts down roots...The best and the brightest are most attracted to communities that are also safe and open to all families...The solution isn't to kick out our eager young workers who want Michigan to thrive. The solution is to welcome them." – Emily Dievendorf, testimony

testimonials received by the Department indicate that there are numerous ways that the lack of non-discrimination protections for sexual orientation and gender identity/expression impact businesses' profits and the economy. Employee productivity is particularly hard hit when an employer openly discriminates. Discriminatory environments for LGBT employees have also been shown to negatively impact the performance of heterosexual employees. On the other hand, businesses that support and promote inclusive business policies report a high level of employee satisfaction, lower turnover rates, and consumer confidence.

The Department's research showed that out-migration is perhaps the most substantial effect of the state's lack of LGBT inclusive policies. Approximately one-fifth of the testimony the Department heard alluded to people leaving the state for reasons related to discrimination. Professionals and college students, including students who identified as heterosexual, said that they planned to leave the state because they do not feel that Michigan values all of its citizens. Several people used the phrase "compelled to leave" and stated that they would not stay unless the state became a "community for all people."

The fourth section is a response to some of what was offered in testimonials provided at the public forums. This section is not a comprehensive response to those who oppose LGBT inclusive laws. Neither is this report intended to support or refute anyone's views about homosexuality. The purpose of this project, this report is to add analytical and anecdotal evidence to the public policy debate about whether Michigan should adopt more inclusive legislation by asking whether the decision has economic implications.

All available evidence shows that discrimination based on sexual orientation or gender identity/expression, (1) exists and is significant, (2) is protected in other states, but not in Michigan, which (3) has direct negative economic effects on Michigan. Thus, there is an economic effect to LGBT inclusion that needs to be part of the public policy discussion as Michigan's policy makers address related legislation. We hope the body of this report helps form the basis for that discussion.

Lastly, at the conclusion of this report, the reader will find recommendations for the future. Although much of what can be done necessarily falls to the legislature, there are a few steps that can be taken by the Commission and the Department that would improve the situation for LGBT persons in Michigan.

This executive summary provides only a brief synopsis of the project. We encourage readers to refer to the full report for greater detail.

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INTRODUCTION

Michigan enjoys a strong tradition of supporting civil rights. For many years, our great state was at the forefront of the civil rights movement. Long before the Elliott-Larsen Civil Rights Act (ELCRA) was enacted, Michigan protected its citizens from discrimination in public accommodations, government housing, and employment (Michigan Civil Rights Commission, 2004). In 1955, the legislature passed the Fair Employment Practices Act which guaranteed the opportunity to gain employment regardless of race, color, religion, or national origin (Cramton, 1964).

When the Michigan Constitution was amended in 1963, it included the addition of an equal rights and non-discrimination section in the Constitution's Declaration of Rights which established the Michigan Civil Rights Commission (MCRC) in the executive branch (Fine, 1966). The eight-member, nonpartisan Commission is appointed by the Governor, with the advice and consent of the senate, serving four years in staggered terms (Michigan Civil Rights Commission, 2004). The Michigan Department of Civil Rights (MDCR) was established by legislation in 1965 to provide the staff needed to execute the responsibilities and implement the policies of the MCRC (MDCR, 2012). The MDCR investigates and resolves discrimination complaints and works to prevent discrimination through educational programs that promote voluntary compliance with civil rights laws.

§ 2 Equal protection; discrimination.

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

History: Const. 1963, Art. I, §2, Eff. Jan. 1, 1964.

§ 29 Civil rights commission; members, term, duties, appropriation.

Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

History: Const. 1963, Art. V, §29, Eff. Jan. 1, 1964.
Administrative rules: R 37.1 et seq. and R 37.101 of the Michigan Administrative Code.

ELCRA was passed in 1976 and took effect on March 31, 1977 (Elliott-Larsen Civil Rights Act, 1976). The original Act prohibited employment, public accommodations, public service, education, and housing discrimination based on race, religion, color, or national origin. Later amendments added sex, age, marital status, height, weight, and arrest record. ELCRA currently does not prohibit discrimination based on sexual orientation or gender identity/expression. As such, in housing, employment, education, public accommodations, and public service, Michigan law leaves individuals susceptible to discrimination based on their actual or perceived sexual orientation or gender identity/expression. Michiganders can be fired from their jobs, refused employment, denied housing, and/or refused service based on their actual or perceived sexual orientation or gender identity/expression and they would have no means of legal redress.

The Commission and the Department have long held the belief that protections from discrimination based on an individual's sexual orientation and gender identity/expression should be added to ELCRA. In 1977, the MCRC published a "Sexual Orientation Report and Recommendations." This report examined and addressed myths about the lesbian, gay, bisexual, and transgender (LGBT) population. Accurate data regarding the LGBT population was largely unavailable at the time of the 1977 report. Much of this report was based on conjecture and

piecemeal research and concluded with a request for further research on the "homosexual" population and a call to decriminalize private sexual behavior between consenting adults. Perhaps the most significant conclusion reached in this report was the Commission's statement that the Department would not handle sexual orientation discrimination cases. The Commission cited a lack of jurisdiction until the State legislature specifically authorized such an addition to its powers under ELCRA.

In 1980, Representative David Evans (D-Macomb County) organized a statewide citizens' taskforce to discuss the issue of "sexual preference protection." There was also a pointed reference to the Commission's 1977 report and its recommendation. This taskforce ultimately issued a report to the Michigan House of Representatives' Committee on Civil Rights. The purpose of the report was to gather "background information... [on the] appropriateness of amending the Elliott-Larsen Civil Rights Act (PA 453 of 1979) to protect against discrimination on the basis of sexual preference." Consideration was also given to "laying groundwork for legislating the decriminalization of certain forms of homosexual behavior" (MOHR, 2).

In 1983, the Commission issued a statement that ELCRA should be amended to prohibit discrimination based on sexual orientation. Moreover, Commissioners and Department staff have long promoted a workplace culture of LGBT acceptance and inclusivity.

Over the past few years, there has been increased federal and statewide attention to laws and policies of specific concern to the LGBT population. Amidst this background, the Department sought grant funding for a project to determine whether Michigan's current public policies, (including but not limited to the failure to amend ELCRA), have economic implications separate and apart from their civil rights implications. In January, 2012, the MDCR received a $100,000 grant from the Tides Foundation to create "A Report on LGBT Inclusion under

Michigan Law with Recommendations for Action." This report is the product of the one-year project supported by that grant.

Over the course of 2012, the MDCR conducted public forums, surveys, and archival research to examine the impact of discrimination policies (and the lack thereof) on individuals, families and communities in Michigan. A number of people contributed to this report, primary among them are members of the LGBT community, LGBT allies, statewide LGBT service agencies, and local human rights commissions. Staff attended meetings with current civil rights partners as well as with leaders in the state's LGBT community to foster strategic partnerships with the Department. Additionally, the Department conducted several internal trainings for commissioners and staff to improve understanding of LGBT issues and concerns.

This report is divided into five sections. Section I, **The Present State of LGBT Inclusion**, provides background on the status of the inclusion of sexual orientation and gender identity/expression in civil rights and employment protections under federal and state law, Michigan local ordinances, and by Michigan-based businesses. This background is provided to contextualize the issues addressed and to depict the extent to which LGBT persons are currently protected from discrimination in Michigan. This section is meant to aid understanding of the social and political context within which public policy changes like whether to make ELCRA more inclusive by including sexual orientation should be considered. Included in this section are the results of archival investigation of Michigan's local non-discrimination ordinances. The report examines Michigan's history of inclusive non-discrimination ordinances, specifically focusing on where local ordinances have been passed, what those ordinances entail, the history of the ordinances, and whether the ordinances have resulted in enforcement actions.

Additionally, this section contains a review of existing non-discrimination policies adopted by Michigan's Fortune 500 companies, over 100 of the state's largest employers headquartered in Michigan, all of Michigan's four-year colleges and universities, all of Michigan's community colleges, and over 400 of the state's K-12 public school systems. These policies were examined to determine whether and to what extent Michigan-based businesses and organizations have independently decided to include sexual orientation and gender identity/expression in their corporate employee non-discrimination policies.

Section II, **The Present State of Sexual Orientation and Gender Identity/Expression Discrimination**, delineates multiple ways of assessing the prevalence of discrimination based on sexual orientation and gender identity/expression. This section contains data from national sources as well as data that are specific to Michigan. Included are data independently collected by Michigan organizations such as the American Civil Liberties Union, Equality Michigan, and the fair housing centers of Michigan, as well as by researchers at Michigan State University. This section seeks to determine the extent to which there may be convergent evidence of discrimination based on sexual orientation and gender identity/expression across a variety of sources. When different data across multiple sources and means of data collection converge to paint a similar picture, it increases the validity of the findings and the confidence in the conclusions that can be drawn.

Section III, **Assessing the Impact of Inclusion/Discrimination**, assesses the impact that discrimination based on sexual orientation and gender identity/expression has had on Michigan residents, families, communities, and the economy. Data for this section came primarily from the public forums conducted by the Department in the summer and fall of 2012. To garner a better understanding of how people are likely to be affected by public policy decisions like whether to

amend ELCRA, the Department gathered oral and written testimony from Michigan citizens. Specifically, people were asked how extending (or failing to extend) Michigan's civil rights protections to include sexual orientation and gender identity would:

- Impact their community/neighborhood/family/church/school
- Change their life or that of a family member
- Impact/change their business operations/workforces/services
- Affect their perception of others

A total of five public forums were held to provide people with an opportunity to tell their personal stories and share their opinions. These forums were held in Jackson on May 21, Holland on June 26, Ann Arbor on July 21, Grand Rapids on September 19, and Detroit on October 29. At these forums, people delivered testimony both in favor of and in opposition to amending ELCRA. Testimony was audio recorded and transcribed to facilitate analysis for this report.

To advertise these forums, media advisories and press releases were distributed to MDCR partners, human rights commissions, and local LGBT organizations. Additionally, press releases were provided on the MDCR website and sent to various geographically proximal media outlets. The Department is grateful to those organizational bodies that co-hosted the forums including: the Jackson Human Relations Commission, the Holland Human Relations Commission, the Ann Arbor Human Rights Commission, the Grand Rapids Human Rights Commission, and the Damon J. Keith Center for Civil Rights (Detroit). As the Department was interested in seeking a diversity of opinions, efforts were also made to reach out to groups such as the American Family Association, Concerned Women for America, and Alliance Defense Fund that have publicly opposed local and state legislation that would amend non-discrimination policies and ordinances.

At each of the forums, residents were invited to provide public comment. Additionally, an option was provided for people who could not attend the forums or who preferred to submit their stories anonymously, to submit written testimonials. Understandably, people are often concerned about sharing their stories or opinions publicly for fear of public rebuke. LGBT persons are additionally concerned about the reactions of employers and landlords, or fear being publicly "outed" and thereby subjected to further harassment or discrimination. The Department was also aware that media attention at the public forums may have made some people hesitant to provide public testimony. So that these people could have an opportunity to tell their stories, the Department provided the option of submitting testimony anonymously via email. Each of the press releases described this option and people were made aware of this option at each of the public forums. To protect the anonymity of people who submitted written testimonials, all testimonials provided by email and described in this report have had the names of people and organizations redacted.

In all, 21 people delivered oral testimony in Jackson, 42 in Holland, 9 in Ann Arbor, 5 in Grand Rapids, and 7 in Detroit. The majority of testimonials were offered via email with 96 written testimonials submitted by people from all over the state. While principally collected for this section of the report, the stories in these testimonials are woven throughout, as they offer powerful first person narratives of experiences that both illustrate the very real effects of permitting discrimination to occur, and substantiate the relevant data provided throughout this report.

Because so many of these testimonies included stories about people who have already left Michigan in order to live in places where they feel safer and more welcomed, the Department surveyed current Michigan graduate and professional students about their intentions to stay in the

state or leave upon graduation. This section includes the results of this survey and thereby describes one of the main economic impacts unearthed through this project: out-migration due to a lack of LGBT inclusive policies.

Section IV, **Addressing Common Misconceptions and Unnecessary Fears**, also focuses on testimony provided at the public forums. This section is a response to some of the prominent concerns and misperceptions of people who delivered testimony to oppose civil rights protections for LGBT persons. In particular, it was evident from these testimonials that there are a variety of misunderstandings about what expanding civil rights protections would actually accomplish. Because an inaccurate understanding of the options being considered can result in misplaced fears of change, Section IV is an attempt to redress these misapprehensions.

Lastly, in Section V, **Conclusions and Recommendations**, the reader will find ways the lessons learned in this report can be leveraged to benefit Michigan's future. This project provides both analytical and anecdotal support for the position that the decision (or failure) to extend civil rights protections to include sexual orientation has very real social and economic implications for Michigan and its citizens. This is independent of the question of whether it is or is not consistent with the legal and moral underpinnings of civil rights and civil rights legislation.

It is imperative that these implications, particularly the impact on the State's economic well-being, be recognized and addressed by those making our public policy decisions. It is our hope that this report will establish this need, and the basis for addressing it.

I. THE PRESENT STATE OF LGBT INCLUSION

LGBT inclusion should not, and cannot, be judged solely on the question of workplace anti-discrimination protections. Other LGBT relevant policies, like the existence of protection under a hate crime law, the ability for a same-sex couple to both be adoptive parents to a child, and the ability to have a same-sex partner covered on health and other insurance policies are all important issues. Still, due to constraints in the size of this project, the availability of relevant data, the uniquely profound significance of workplace protections, and the role employers have on an area's economic vitality, this report focused primarily on data related to employment protections. The data described in this section reveals that while some protections exist under federal, state, and local law, as well as pursuant to individual business practices, no existing protections apply equally to all people in Michigan.

Federal Protections

There are no explicit federal prohibitions against employment discrimination based on sexual orientation or gender identity/expression. However, the federal government has taken steps to provide the LGBT community with some protections. The highest profile example was in September 2011, when the "Don't Ask, Don't Tell" repeal took effect allowing military service members who identify as LGB to openly serve in the armed forces (AP, 2011). Less documented, but at least arguably more significant, changes have been made in the areas of employment and housing.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that prohibit discrimination based on protected class status (EEOC, 2012).

On April 20, 2012, the EEOC held that discrimination based on gender identity is sex-based discrimination and is therefore covered under Title VII of the Civil Rights Act of 1964 (*Macy v. Dept. of Justice,* 2012). Complaints of discrimination on the basis of transgender status by federal employees may proceed through the federal sector EEO complaint process at 29 C.F.R. Part 1614 (EEOC, 2012).

The EEOC further stated that the Macy ruling also applies to complaints of discrimination filed by transgender individuals against private sector employers with more than 15 employees as well as those against state and local government employers (EEOC, 2012). Moreover, the EEOC has held that because sex discrimination "includes adverse actions taken because of a person's failure to conform to sex or gender stereotypes" LGB individuals may be the victims of sex discrimination (*Rosa v. Dept. of Veterans Affairs*, 2009; *Veretto v. U.S. Postal Service*, 2011; *Castello v. U.S. Postal Service*, 2011).

In a memo dated July 30, 2012, the EEOC's Office of Federal Operations (OFO) "advised all federal EEO directors that lesbian, gay and bisexual employees and applicants who believe they have been discriminated against on the basis of sexual orientation should be counseled that they have a right to file a complaint under the 1614 process of Title VII as they may have experienced sex discrimination" (EEOC, 2012). Moreover, the EEOC has stated that LGB employees or applicants, who have experienced discrimination in the private employment sector, or in the local or state government sector, should also be counseled that they may file a charge of discrimination with their local EEOC office (EEOC, 2012).

Additional protections would be provided by the Employment Non-Discrimination Act (ENDA), which has been introduced and discussed during nearly every Congressional session since 1994. Similar legislation has been introduced since 1974. This legislation, if passed, would

specifically prohibit employment discrimination on the basis of sexual orientation and gender identity/expression. It would also prohibit retaliatory discrimination for filing a claim or engaging in a protected activity.

In January 2012, the Department of Housing and Urban Development announced an Equal Access to Housing Rule "that says clearly and unequivocally that LGBT individuals and couples have the right to live where they choose" (Donovan, 2012). The rule, which went into effect in March 2012, protects LGBT individuals' and families' right to housing in three ways. First, it prohibits owners and operators of both HUD-funded housing and housing whose financing is insured by HUD from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, a dwelling. Second, the rule explicitly states that LGBT families are eligible for HUD's public housing and Housing Choice Voucher programs. Third, an FHA lender may not take sexual orientation or gender identity/expression into consideration when determining the adequacy of a mortgagor's income (Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity, Final Rule, 2012).

As these policies show, important steps have been taken at the federal level toward prohibiting and remedying discrimination based on sexual orientation and gender identity/expression. However, these federal policies also show that LGBT persons are not protected from discrimination in all spheres of life.

Other States' Protections

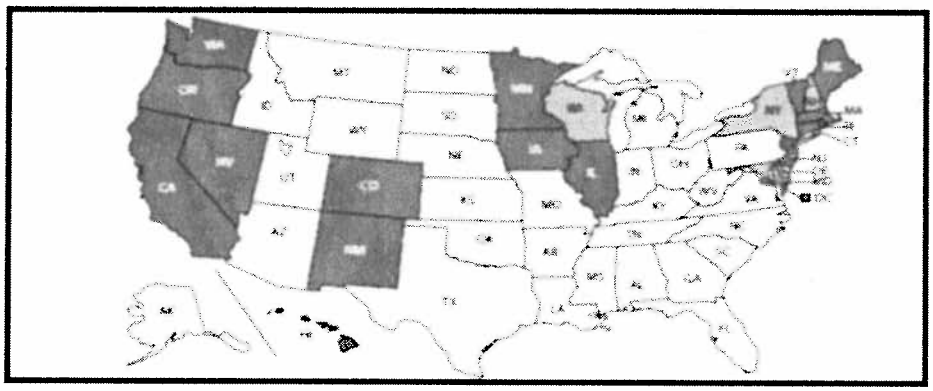
Recognizing the lack of federal prohibitions on discrimination based on sexual orientation and gender identity/expression, many states have enacted their own nondiscrimination laws in an effort to protect their LGBT residents. As of January 2012, 21 states and the District of Columbia (approximately 44% of the U.S. population) had adopted

nondiscrimination statutes that include sexual orientation, with 16 states and the District of Columbia (approx. 33%) expressly covering gender identity/expression (National Gay and Lesbian Task Force, 2012). However, while nearly half the states prohibit discrimination on the basis of actual or perceived sexual orientation (see figure 1), there is great variation between states in who is protected, how administrative complaints are handled, and the extent of enforcement remedies.

In Michigan and the 28 other states without inclusive nondiscrimination laws, it is legal to discriminate against people based on their actual or perceived sexual orientation. In 34 states, including Michigan, it remains legal to discriminate against people based on their gender identity/expression. In these states, it is perfectly legal for an employer who takes an adverse employment action (fails to hire, demotes, fires, etc) an employee solely because they have determined the employee is gay, even if they are wrong about the employee's sexual orientation.

In 1982, Wisconsin was the first state to pass a nondiscrimination statute that includes sexual orientation. More recently, in 2011, Delaware passed state legislation extending employment protections based on sexual orientation and three states (Hawaii, Nevada, and Connecticut) passed legislation prohibiting discrimination on the basis of gender identity/expression (Movement Advancement Project, 2011). According to the Movement Advancement Project, approximately half of all LGBT Americans now live in states with comprehensive nondiscrimination laws. In contrast, in 2000, it was estimated that only 28% of the LGBT population resided in states with comprehensive nondiscrimination laws. These data reveal an accelerating trend, with states enacting nondiscrimination laws inclusive of sexual orientation and/or gender identity/expression.

Figure 1: *State anti-discrimination laws*



Purple/dark shaded states ban discrimination based on sexual orientation and gender identity/expression (16 states and the District of Columbia); Minnesota (1993); Rhode Island (1995, 2001)1; New Mexico (2003); California (1992, 2003); District of Columbia (1977, 2005); Illinois (2005); Maine (2005); Hawaii (1991, 2005, 2006, 2011); New Jersey (1992, 2006); Washington (2006); Iowa (2007); Oregon (2007); Vermont (1992, 2007); Colorado (2007); Connecticut (1991, 2011); Nevada (1999, 2011); Massachusetts (1989, 2011)

Pink/light shaded states ban discrimination based on sexual orientation (5 states); Wisconsin (1982); New Hampshire (1997); Maryland (2001); New York (2002); Delaware (2009)

Michigan Protections

Michigan has no law prohibiting discrimination based on actual or perceived sexual orientation or gender identity/expression and its LGBT residents who suffer from discrimination in employment, housing, education, public service, or public accommodations have no legal recourse at the state level. In 1983, James K. Dressel (R-Ottawa County) introduced H.B. 5000 which would have amended ELCRA to include prohibitions of discriminatory practices based on sexual orientation (House Official Journal, 1983). Since Dressel's attempt, similar bills have been introduced in nearly every legislative session in both chambers.

Most recently, Senator Rebekah Warren (D-Ann Arbor) introduced Senate Bill 1063. (S.B. 1063, 2012). It, like previous versions, would have amended ELCRA to provide protections based on both sexual orientation and gender identity/expression. When announcing her intention to introduce the legislation, Warren said, "Not only is this protection a simple

matter of fairness, it is an important step in making our state a vital and vibrant location as we recruit the top talent and businesses from around the globe. For Michigan to compete in this global economy, we must send the message that we will not stand for discrimination of any kind in this state" (Senate Democrats, 2012). Warren's bill died at the end of the legislative session in December 2012 without ever receiving a hearing.

Local Ordinances and Protections

There are an increasing number of city and county ordinances and statutes that provide protections to groups excluded from state nondiscrimination law. Over 240 local jurisdictions across the country have implemented ordinances prohibiting discrimination on the basis of sexual orientation (Burns & Ross, 2011). At least 156 of these local jurisdictions expressly prohibit discrimination on the basis of gender identity/expression (National Gay and Lesbian Task Force, 2012).

"Michigan's municipalities now recognize that they need to be cultivating a creative and accepting community to attract and retain top talent, and in turn, be a place that welcomes and nurtures business....Unfortunately, municipalities and businesses are left to act on their own to move Michigan forward. In absence of the State of Michigan stepping up to finally do what is right, cities and the private sector are shouldering the burden". – E. Dievendorf, testimony from Jackson

As of December 2012, 19 Michigan cities (including three in 2012) and two townships have local ordinances prohibiting discrimination based on sexual orientation and/or gender identity (see table 1). East Lansing, in 1972, was the first city in the country to enact an ordinance that protected employees against discrimination on the basis of sexual orientation (Broverman, 2012; Casentino, 2012; Li, 2012). Ann Arbor's ordinance passed just a few months later and unlike East Lansing, extended protections in housing, employment, and public

accommodations. Forty years later, approximately 84% of Michigan residents are still not covered by a local nondiscrimination ordinance inclusive of sexual orientation and gender identity/expression. Some locales have had ordinances approved by the city council, only to have them revoked by ballot measure (e.g., Hamtramck, Holland). Others, like Jackson (Wheaton, 2012), Rochester Hills (Bull, 2012), and Royal Oak (Laiter, 2012) are engaged in an ongoing debate on the merits of nondiscrimination ordinances.

Table 1: *Michigan municipalities with anti-discrimination policies inclusive of sexual orientation and/or gender identity, August 2012*

City	Population	Enacted	Inclusion
Ann Arbor	113,934	1972	SO, GI, and HIV status in housing, employment, and public accommodations
Birmingham	20,103	1992	SO in housing
Dearborn Heights	57,774	2006	Resolution opposing discrimination
Detroit	713,777	1979/2008	SO, GI, and HIV status in housing, employment, and public accommodations
Douglas	1,214	1995	SO in housing, employment, and public accommodations
East Lansing	48,579	1972/1986	SO and GI in housing, employment, and public accommodations
Ferndale	19,900	2006	SO and GI in housing, employment, and public accommodations
Flint	102,434	1990/2012	SO, GI, and HIV status in housing and public accommodations
Grand Ledge	7,786	2000	Resolution opposing discrimination
Grand Rapids	188,040	1994	GI in housing, employment, and public accommodations
Huntington Woods	6,238	2001	SO and GI in housing, employment, and public accommodations
Kalamazoo	74,262	2009	SO and GI in housing, employment, and public accommodations
Lansing	114,287	2006	SO and GI in housing, employment, and public accommodations
Mt. Pleasant	26,016	2012	SO and GI in housing, employment, and public accommodations
Muskegon	38,401	2012	To be determined
Saginaw	51,508	1984	SO in housing
Saugatuck	1,065	2007	SO in housing, employment, and public accommodations
Traverse City	14,674	2010	SO and GI in housing, employment, and public accommodations
Ypsilanti	19,435	1997	SO and GI in housing, employment, and public accommodations
Total	1,6,19,437		
Michigan population	9,883,640		
% of population	16.39%		

Note. Population estimates are from the 2010 Census (U.S. Census Bureau, 2010) except for Douglas and Saugatuck population estimates which are from the 2000 Census (U.S. Census Bureau, 2000). SO stands for sexual orientation and GI stands for gender identity.

It is interesting to note that all of the cities in Michigan's Lower Peninsula where major universities are located have local nondiscrimination ordinances (Ann Arbor, East Lansing, Detroit, Kalamazoo, Mount Pleasant, and Ypsilanti). Similarly, Michigan's largest urban cities and business hubs have enacted such ordinances (Ann Arbor, Detroit, Flint, Grand Rapids, and

Lansing), as have many of our most frequented tourism destinations such as Detroit, Traverse City, and Saugatuck (see figure 2 for geographical layout of places with nondiscrimination ordinances).

Figure 2: *Cities in Michigan with local nondiscrimination ordinances as of August 2012*

Figure 2: *Cities in Michigan with local anti-discrimination ordinances as of August 2012*

Notably, local ordinances are limited and divergent in many regards. Local ordinances are not uniform as to whom they protect. The ordinances have varied definitions of sexual orientation and gender identity/expression (see tables 2 and 3). These definitions are important

because they provide the basis for the protection the ordinances provide. Where definitions are provided, all definitions stipulate protections based on "heterosexual," "bisexual," or "homosexual" orientation. All the definitions include protections based on actual or perceived orientation, thereby prohibiting discrimination against a person because they are believed to be gay, whether the belief is correct or not. This is not true in Birmingham, Douglas, Flint, Mount Pleasant, and Saginaw.

Nine of these ordinances explicitly say that discrimination is prohibited based on "conduct" or "practice" in addition to a person's sexual "orientation" or "preference." An effect of this inclusion is that people may be held accountable for discriminatory actions toward people who engage in same-sex behavior, but who do not identity as LGB. This addition reflects recognition that sexual orientation or identification does not always match people's sexual behavior (Laumann, Gagnon, Michael, & Michaels, 1994).

Definitions of gender identity/expression are similarly variable. In some ordinances, gender identity/expression is not defined, but simply listed as a subset of other categories such as sexual orientation or gender. In other instances, only a handful of ordinance definitions attempt to differentiate gender identity from gender expression.

Table 3: *Definition of gender identity in local ordinances*

City	Definition
Ann Arbor	A person's actual or perceived gender, including a person's gender identity, self-image, appearance, expression, or behavior, whether or not that gender identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person's sex at birth as being either female or male.
Birmingham	n/a
Dearborn Heights	n/a
Detroit	"A gender-related identity, appearance, expression, or behavior of an individual, regardless of the designation of gender on one's birth certificate."
Douglas	n/a
East Lansing	"A person's actual or perceived gender, including a person's self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or behavior is different from that traditionally associated with the person's biological sex as assigned at birth."
Ferndale	"the real or perceived sex, gender identity, or gender expression" [defined as a subset of gender].
Flint	"A person's actual or perceived gender, including a person's gender identity, self-image, appearance, expression, or behavior, whether or not that gender identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person's sex at birth as being either female or male." [gender identity]. "External manifestation of one's gender identity, usually expressed through "masculine," or "feminine," or gender variant behavior, clothing, haircut, voice or body characteristics." [gender expression].
Grand Ledge	n/a
Grand Rapids	n/a
Huntington Woods	"Real or perceived, male or female heterosexuality, bisexuality, homosexuality, or gender identity. [defined as a subset of sexual orientation]
Kalamazoo	"A person's actual or perceived gender, including a person's self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or behavior is different from that traditionally associated with the person's biological sex as assigned at birth as being either female or male."
Lansing	"A person's gender-related self-perception, appearance, expression or behavior, regardless of that person's sex at birth."
Mt. Pleasant	"An individual's appearance, expression, identity, or behavior as being either male or female, whether or not that appearance, expression, identity and behavior is different from that which is traditionally association with the individuals' designated gender at birth.
Muskegon	To be determined
Saginaw	n/a
Saugatuck	"The real or perceived sex, gender identity, or gender expression." [defined as a subset of gender].
Traverse City	"The gender with which one identified regardless of that person's biological makeup."
Ypsilanti	["Heterosexuality, male or female homosexuality, bisexuality or gender identity" [defined as a subset of sexual orientation].

Note. n/a denotes that a definition was not provided or the ordinance did not cover gender identity.

Many of the ordinances are markedly limited in their coverage. Not all ordinances extend equally to sexual orientation and gender identity/expression. Birmingham, Douglas, Saginaw,

and Saugatuck only prohibit discrimination on the basis of sexual orientation. Nowhere in the Grand Rapids ordinance is "sexual orientation" explicitly mentioned. The ordinance instead prohibits discrimination on the basis of "gender orientation." Three cities – Ann Arbor, Flint, and Detroit – prohibit discrimination on the basis of HIV status.

The limits of coverage also vary considerably. Most ordinances cover discrimination in housing, employment, and public accommodations/services (to include education). Birmingham and Saginaw however only prohibit discrimination in housing. Flint does not cover discrimination in employment.

"This patchwork of local ordinances in Michigan cities acts more as a welcome mat than an enforcement tool." – J. Jones, testimony from Jackson

The ordinances also differ in whether they provide a means of enforcement. Grand Ledge and Dearborn Heights do not have actual non-discrimination ordinances, instead relying on resolutions stating that the city will not tolerate discrimination. The Dearborn Heights resolution stipulated the formation of a commission whose task it was to educate the community about diversity, but the commission was never granted the authority to field complaints and has since disbanded.

Most commonly, violations of local nondiscrimination ordinances may result in a civil infraction or misdemeanor and a fine (up to $500.00 in Ann Arbor, East Lansing, Ferndale, Flint, Huntington Woods, Kalamazoo, Saginaw, Traverse City, and Ypsilanti; up to $2500.00 in Mount Pleasant; $150.00 for a first violation in

"In most cases, volunteers investigate the cases and there are not (sic) staff to do that. And so, they're weak ordinances in terms of getting a remedy for a wrong." - M. Pollack, testimony from Jackson

Lansing; and $100.00 for a first offense in Saugatuck). In some places, only mediation, conciliation agreements, or other forms of dispute resolution are offered (e.g., Birmingham and Douglas). In Saugatuck, an accused party may deny the violation, in which case "no further action shall be taken for that complaint." Most ordinances also do not permit people to sue violators directly, with any enforcement instead typically handled by local human rights commissions or city attorneys.

As analysis of these ordinances indicates, LGBT persons and persons perceived to be LGBT have drastically different protections from one city to the next across the state. As others have argued, these divergent local statutes, ordinances, and codes create a maze of provisions that are often confusing and difficult to navigate (Cavico, Muffler, & Mujtaba, 2012). This is particularly true for businesses employing people at multiple locations or managing multiple properties.

Communities that have passed these ordinances generally pride themselves on being opening and welcoming communities. For example, in East Lansing where the first nondiscrimination ordinance in the country was passed, the city recently commemorated the 40th anniversary of the discrimination ban (Heywood, 2012). People commemorating the event described East Lansing as a civil rights leader and the passing of the nondiscrimination ordinance as a source of pride for the city (Hayhoe, 2012; Heywood, 2012; Millich, 2012).

Another indication of positive public perception of these local ordinances is evidenced by the fact that numerous cities that have local ordinances passed resolutions opposing H.B. 5039 when it was introduced during the 2011-2012 session. H.B. 5039 would have prohibited local communities from adopting ordinances or policies that provide protected class status for any group not included in the ELCRA (H.B. 5039). As such, this bill would have nullified protections on the basis of sexual orientation and gender identity/expression that are already provided in local ordinances. The East Lansing City Council was the first city to pass a resolution in opposition to H.B. 5039. The City Council cited, among other reasons, the State "has no legitimate interest in restricting the ability of local units of government to adopt nondiscrimination ordinances" (East Lansing City Council, 2012). Resolutions that followed were similar to the one drafted by East Lansing.

The following city bodies passed resolutions opposing H.B. 5039 (2011):

- Ann Arbor City Council
- East Lansing City Council
- Ferndale City Council
- Flint Governmental Operations Committee
- Kalamazoo City Commission
- Lansing City Council
- Traverse City Commission
- Ypsilanti City Council

The East Lansing resolution provided three main reasons for opposition to H.B. 5039. The first was a concern that the proposed bill "legislates institutional homophobia" (Davis, 2011) by depriving communities of the ability to prohibit discrimination on the basis of sexual orientation and gender identity/expression. Second, the resolution states that the bill conflicts with the Constitutional rights of local governments to craft ordinances that meet municipal needs and concerns (Marshall, 2011; Stevensen, 2012). As many of the ordinances were approved by ballot initiative and would be rendered void were the legislation to pass, the bill has been chastised as "contrary to democracy" (Proxmire, 2012). State representatives have voiced similar concerns (Davis, 2011; Proxmire, 2012).Third, the resolution implies that the proposed

legislation would deprive local municipalities of ordinances that people view as having particular benefits for their communities.

The responses by these communities show that they believe the ordinances send important messages that they are communities where all people are welcome. The resolutions further suggest a belief that the ordinances contribute to economic development and vitality. The mayor of Saginaw credits the city's inclusive housing ordinance with the revitalization of the city: "The effect of that for us was the final death blow to mortgage redlining, which was still a problem in Saginaw right up until the early 1980s. I think it also sent a pretty strong signal that we were a community that understood diversity - in all its forms - as an important element in breathing new life into a struggling city" (Proxmire, 2012). As these comments and resolutions indicate, the local ordinances are perceived as having benefits above and beyond their intent to prevent discrimination on the basis of sexual orientation and/or gender identity/expression.

CITY OF EAST LANSING

EAST LANSING CITY COUNCIL

RESOLUTION OPPOSING HOUSE BILL No. 5039

WHEREAS, the diversity of our community makes East Lansing a great place to live, work, and raise a family; and,

WHEREAS, the City of East Lansing recognizes that respect for diversity is a vital component of successful economic development and talent retention; and,

WHEREAS, Michigan's Elliot-Larsen Civil Rights Act does not currently prohibit discrimination based on sexual orientation or student status; and,

WHEREAS, the City of East Lansing became the first municipality in the United States to adopt an ordinance prohibiting employment discrimination based on sexual orientation on March 7, 1972; and,

WHEREAS, the City of East Lansing's current Human Relations Ordinance prohibits discrimination in housing, employment, and public accommodations based on sexual orientation and student status, in addition to the categories presently included in Michigan's Elliot-Larsen Civil Rights Act; and,

WHEREAS, Article VII, Section 22 of the Michigan Constitution guarantees each city and village the "power to adopt resolutions and ordinances relating to its municipal concerns"; and,

WHEREAS, the State has no legitimate interest in restricting the ability of local units of government to adopt anti-discrimination ordinances that reflect the values and unique circumstances of our communities; and,

WHEREAS, proposed House Bill 5039 would void the City of East Lansing's ordinance prohibiting discrimination based on sexual orientation and student status; and,

WHEREAS, the effect of House Bill 5039 will be to legalize discrimination against students and lesbian, gay, bisexual, and transgender residents in East Lansing.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of East Lansing opposes House Bill 5039 and urges the Michigan Legislature to defeat this legislation; and,

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to State Senator Gretchen Whitmer and State Representative Mark Meadows.

Victor W. Loomis, Jr., Mayor
Dated: October 18, 2011

Moved by Council member:

Supported by Council member:

ADOPTED: Yeas:
Nays:
Absent:

CLERKS CERTIFICATION: I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the East Lansing City Council at its regular meeting held on October 18, 2011, the original of which is part of the Council's minutes.

Marie E. McKenna, City Clerk
City of East Lansing

Corporate Policies

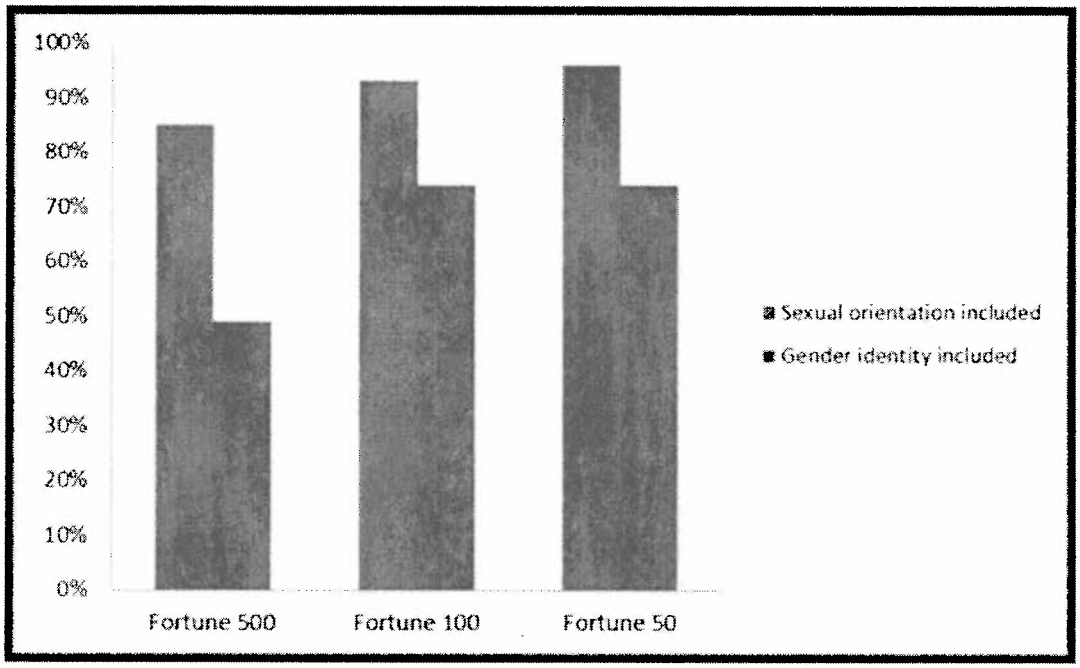
"...without local and statewide laws protecting me from discrimination on the basis of sexual orientation, I am at the mercy of employer's policies and if they don't have policies covering sexual orientation, I am at the mercy of their whims."- S. Pedersen, testimony from Jackson

At a time in which federal and state legislation does not consistently protect people from employment discrimination based on sexual orientation and gender identity/expression, businesses have taken it upon themselves to ensure workplace employment protections for their employees. Since 2002, the Human Rights Campaign (HRC) has chronicled corporate America's treatment of LGBT employees through their Corporate Equality Index. Over this 10 year period, the HRC has documented significant changes in corporate America's landscape regarding workplace protections for sexual orientation and gender identity/expression. The past decade has seen a business trend of increased commitment to policies inclusive of sexual orientation and gender identity/expression. For example, according to the HRC's 2012 index, 86% of Fortune 500 companies have equal employment opportunity (EEO) policies that include sexual orientation (up from 61% in 2002) and nearly half cover gender identity/expression (up from 3% in 2002) (Human Rights Campaign, 2012).

Research suggests that the more profitable a company, the more likely they are to have nondiscrimination policies inclusive of sexual orientation and gender identity/expression (see figure 3 below). Additionally, a 2010 poll of small businesses (defined as those with 3 to 100 employees) conducted by the Center for American Progress showed that 7 out of 10 have anti-discrimination policies that include sexual orientation and 6 out of 10 have policies that include gender identity/expression (Burns & Krehely, 2011).

Companies with inclusive anti-discrimination policies are also considered among the best companies to work for; for the first time in 2011, all of Fortune's Best Companies to Work For (including Plante Moran, Quicken Loans, and Stryker, based in Michigan) had comprehensive anti-discrimination policies inclusive of sexual orientation (O'Toole, 2012).

Figure 3: *Fortune 500 sexual orientation and gender identity anti-discrimination policies*



Michigan-based Fortune 500 companies are well represented among those with policies inclusive of sexual orientation and gender identity/expression. In 2011, 20 of 22 (91%) Michigan-headquartered Fortune 500 companies had anti-discrimination policies inclusive of sexual orientation, with 9 (41%) specifically inclusive of gender identity/expression (see table 4 below).

Four Michigan-based businesses (Dow Chemical, General Motors, Herman Miller, and Whirlpool) are members of the Business Coalition for Workplace Fairness, a group formed by the Human Rights Campaign to advocate for passage of the federal Employment Non-

Discrimination Act based on their belief that such a policy is good for the corporate bottom line (Business Coalition for Workplace Fairness, 2011). Dow Chemical and General Motors were among the first businesses to join the coalition and have testified to Congress in support of the Employment Non-Discrimination Act (Business Coalition for Workplace Fairness, 2007). Further evidence of a commitment to workplace equality among leading Michigan businesses, is evidenced by Dow Chemical being named one of the "25 most LGBT friendly corporations in the world" (Dow placed second) by the International Gay and Lesbian Chamber of Commerce (Gays, Lesbians, and Allies at Dow, 2011).

Table 4: *Michigan –based Fortune 500 companies and Anti-discrimination Policies, 2011*

Company Name	**2011 Fortune 500 Rank(Fortune, 2011)**	**Anti-discrimination Policy Inclusion**
General Motors	8	Gender identity and sexual orientation
Ford Motor	10	Gender identity and sexual orientation
Dow Chemical	45	Gender identity and sexual orientation
Chrysler Group	59	Gender identity and sexual orientation
Whirlpool	143	Gender identity and sexual orientation
Ally Financial	149	Sexual orientation only
TRW Automotive Holdings	171	N/A
Kellogg	199	Gender identity and sexual orientation
Lear	207	Sexual orientation only
Penske Automotive Group	228	Sexual orientation only
DTE Energy	283	Sexual orientation only
Masco	314	Sexual orientation only
Visteon	319	Gender identity and sexual orientation
Stryker	323	Sexual orientation only
Autoliv	329	Gender identity and sexual orientation
CMS Energy	360	Sexual orientation only
BorgWarner	403	Sexual orientation only
Auto-Owners Insurance	425	N/A
Con-way Inc.	454	Sexual orientation only
Kelly Services	455	Gender identity and sexual orientation
Meritor	463	Sexual orientation only
PulteGroup	486	Sexual orientation only

Leaders in Michigan's auto industry (Ford Motor Company, the Chrysler Group, and General Motors) offer full domestic partnership benefits to LGB employees. Such policies go well

beyond "non-discrimination" and represent a significant affirmative investment in inclusiveness. In 2000, "the Big Three" jointly announced that their decision was not only recognition of the trends among other Fortune 500 companies, it was also part of a conscious effort to recruit the most capable workforce (Boris, 2008).

Research does not suggest that institutional practices have shifted because America's corporate leadership and governing structures have suddenly become "gay rights" advocates, but merely because they have workplace protections that include sexual orientation and gender identity/expression as a good business practice. Even among small businesses with anti-discrimination policies that include sexual orientation and gender identity/expression, approximately 25% indicate that they implemented the policies based on a belief that doing so was good for business (Burns & Krehely, 2011).

GM, Rod Gillum, Vice President for Corporate Responsibility and Diversity

"General Motors is proud to be a part of this ever growing group of businesses that recognize that anti-discrimination policies and practices help attract and retain talented employees. [It]…is also our way of showing GLBT customers that we support the community and appreciate their business."

Ford, Rosalind Cox, Manager, Diversity and Work-life Planning

"Diversity is one of our founding principles, an important part of our business strategy today and key to our future success. In the end, our company is more successful and all our employees benefit."

Dow, Jerry Prichett, Global Director of Talent Management and Diversity and Inclusion

"We believe that embracing the diversity and differences our people bring to the workplace and cultivating an inclusive work environment creates competitive advantage for Dow. Without a doubt, by truly embracing diversity and inclusion, we are differentiating Dow as an employer of choice for the best and the brightest; a supplier of choice for customers around the world; and a partner of choice as we grow in new and emerging parts of the world (Sears & Mallory, 2011).

Sears and Mallory (2011) reviewed statements and supporting documents of Fortune 500 companies and federal contractors created contemporaneous with the decision to expand their anti-discrimination policies to include sexual orientation or gender identity/expression. They found that 92% of businesses were motivated by the belief that expanding anti-discrimination policies to specifically cover sexual orientation would be good for their bottom line.

Statements provided by Michigan's Fortune 500 employers with inclusive anti-discrimination policies (Sears & Mallory, 2011) further exemplify that such policies are reflective of their value of diversity, good business practice in terms of gaining a competitive advantage, and a way to attract and retain the best employees. Such statements show that business leaders believe that workplace policies inclusive of sexual orientation make sound business sense. Research has also shown that such policies facilitate business success. Burns (2012) conducted a literature review of research detailing how workplace discrimination undermines business success and found that a lack of workplace protections based on sexual orientation and gender identity/expression affected businesses' profits in numerous ways. Burns (2012) discovered that not having such policies negatively affects businesses' ability to recruit and retain a talented workforce, makes businesses incur substantial turnover-related costs, decreases job performance and productivity, limits access to the substantial LGBT consumer market, alienates consumers attuned to socially responsible business practices, and may result in costly

Employers anticipate the following economic benefits from expanding anti-discrimination policies:

- Competitive advantage in recruiting and retaining a skilled workforce;
- The ability to attract and serve a diverse customer base;
- Enhancement of employee productivity;
- Maintenance of positive employee morale and relations;
- Spurring ideas and innovation through workforce diversity;
- The enhancement of relationships with other businesses favorable of such policies.

legal ramifications (See "Impact on the Economy"). Moreover, the implementation of these anti-discrimination policies tended to be inexpensive and therefore cost effective.

Even among small businesses, a majority of owners with policies inclusive of sexual orientation and gender identity/expression said there were no costs or trivial costs associated with the policies implementation and maintenance (Burns & Krehely, 2011). Given the consequences associated with a lack of these workplace protections, Burns concluded that there is a substantial competitive advantedge associated with having policies inclusive of sexual orientation and gender identity/expression and that fostering an inclusive workplace is a business best practice.

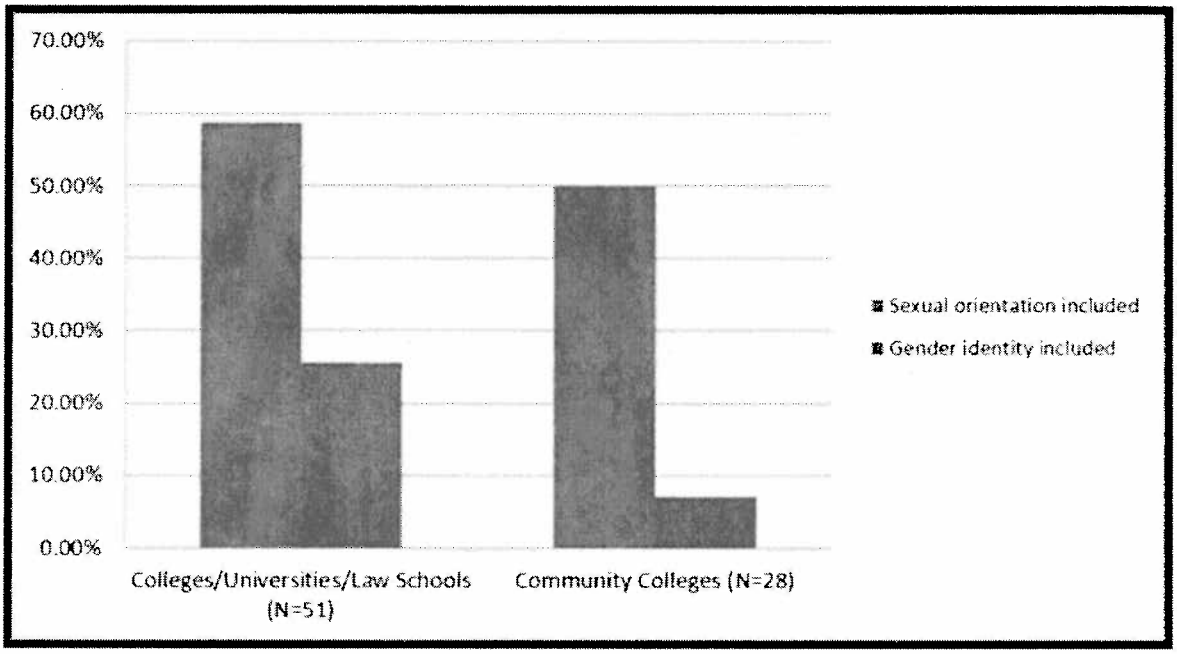
The Department also analyzed the anti-discrimination policies and equal employment opportunity statements of Michigan-based businesses to examine the extent to which sexual orientation and gender identity/expression are presently included. The Department reviewed the statements of many of the state's largest Michigan-based employers, schools, universities, and law firms. This analysis was not intended to depict a statistically representative picture of employment anti-discrimination policies of businesses, but to identify the presence or absence of general trends across various business sectors.

Protections provided by colleges and universities are of increased interest because they are often described as unwelcoming, hostile environments for LGBT employees (Rankin, Blumenfeld, Weber, & Frazer, 2010). Since the 1980s, over 50 surveys of the "campus climate" have documented pervasive discrimination and harassment faced by LGBT employees and students (Sears, Mallory, & Hunter, 2009). Among colleges and universities, nearly half of Michigan's community colleges and over half of Michigan's colleges/universities/law schools offer employment anti-discrimination protections based on sexual orientation, though fewer

provide anti-discrimination protections on the basis of gender identity/expression (see figure 4). Among four-year colleges, public schools are far more likely than private schools to provide anti-discrimination policies inclusive of sexual orientation and gender identity/expression.

The employment policies of public K-12 schools merit increased attention both because they employ such a large percentage of the population and because K-12 educators overwhemingly report that their workplaces are uncomfortable and hostile for LGBT employees (Smith, Wright, Reilly, & Esposito, 2006). In one nationwide online study K-12 educators reported the following: 86% heard homophobic comments, 58% heard homophobic commments from other educational professionals, 27% experienced harassment and 59% did not report it, 35% feared losing their jobs if outed to an administrator, and 53% feared losing their jobs if outed to students. There is also a long history of belief that LGBT individuals are unfit to teach or be around children (DeMitchell, Eckes, & Fossey, 2009). Among Michigan's K-12 school systems, few provided employment protections based on sexual orientation and gender identity/expression. Of the 442 school systems whose policies were examined, only 29 provided employment protections based on sexual orientation. The lack of sexual orientation and gender identity/expression inclusive anti-discrimination policies for K-12 educators suggests that some of the people most vulnerable to sexual orientation-based and gender identity-based discrimination are not protected.

Figure 4: *Michigan colleges and universities with anti-discrimination policies inclusive of sexual orientation and gender identity/expression*



We also analyzed the policies of many of Michigan's larger employers headquartered in the state (e.g., healthcare systems, manufacturers, banks). Over half (56.8%) provided anti-discrimination protections based on sexual orientation, although less than 1% did the same for gender identity/expression (.88%). This pattern of providing protection based on sexual orientation generally, but not specifically for gender identity/expression, is also evident at Michigan's largest law firms. Surveys of legal professionals suggest that harassment and discrimination based on sexual orientation and gender identity/expression is prevalent (American Bar Foundation, 2004; Minnesota State Bar Asociation, 2006). For example, in a survey of approximately 4,500 lawyers recently admitted to the bar, 37% of LGBT employees reported harassment and more than one-fourth (26%) experienced discriminatory actions such as being passed over for an assignment. Similarly, in a study conducted in Minnesota, approximately one-fifth (21%) of LGB lawyers reported that they had been denied employment, equal pay or

benefits, or a promotion within the last five years because of their sexual orientation (Minnesota State Bar Association, 2006). Of 24 law firms whose policies were analyzed, two-thirds provided protection based on sexual orientation, whereas only one-sixth did so for gender identity/expression.

As is evident, there is great divergence across sectors as to whether employers' anti-discrimination policies include sexual orienation and/or gender identity/expression. Generally, employment policies that include sexual orientation protections are more common than employment anti-discrimination policies that also include gender identity/expression protections. Importantly, the majority of colleges/universities, large businesses, Fortune 500 companies, and law firms analyzed did offer some form of workplace protections based on sexual orientation.

Public Opinion

Based on public opinion polls, a consistent and consistently growing majority of the American public supports workplace protections based on sexual orientation and gender identity/expression. According to a 2007 Gallup Poll, 89% of Americans support workplace protections based on sexual orientation and gender identity/expression (Gallup, 2007). In 2011, two nationally representative surveys conducted by the Greenburg Quinlan Rosner group suggested that approximately three-quarters of voters (77% and 73%, respectively) supported prohibiting workplace discrimination on the basis of sexual orientation and gender identity/expression. Support transcended party lines, demographic groups, and ideological lines (Center for American Progress, 2011; Human Rights Campaign, 2011). Furthermore, there is widespread public support for the Employment Non-Discrimination Act, a federal bill that would

prohibit employment discrimination on the basis of sexual orientation and gender identity/expression.

"We know that there is good public support for including LGBT rights in the Elliott-Larsen Civil Rights Act". - M. Pollack, testimony from Jackson

Support for non-discrimination employment protections based on sexual orientation is even found in groups that are often less supportive of LGBT rights; including senior citizens (69%), Christians (77%; 74% born-again Christian), residents of the Deep South (72%) and those with a high school degree or less (68%) (Human Rights Campaign, 2011). A national survey indicated that registered voters support protections based on gender identity/expression at nearly the same rate as sexual orientation (Center for American Progress, 2011). In a random sample of 3,000 adults over age 18, findings suggested that public support for laws that would protect individuals from employment-based discrimination enjoy comparatively more support (71%) than do other civil rights issues affecting LGBT persons, such as allowing same-sex couples to marry (47%), form civil unions (62%), or adopt children (53%) (Jones, Cox, & Cook, 2011). Younger people (79%) were more likely to voice support for employment protections based on sexual orientation and gender identity/expression than were people over age 65 (58%). An even larger percentage of people (89%) were apt to agree that job performance should be the only basis for judging an employee.

In December of 2010, a statewide public opinion poll in Michigan found similarly strong public support for adding anti-discrimination protections for LGBT individuals, with 65% percent of Michigan voters in support of a proposal to ban discrimination based on sexual orientation and gender identity/expression (Quinlan, & Bauman, 2011). As in the national polls, support crossed partisan and demographic boundaries. In a statewide survey of LGBT attitudes

and opinions conducted by researchers at Michigan State University, over 1,000 LGBT people and their allies were asked how important 14 different social issues (e.g., marriage rights, anti-bullying legislation, and second parent adoption rights) are to them personally. The most commonly supported social issue that people cited as extremely or very important was equal employment opportunities for LGBT people (96.9%) (Morrison & McCornack, 2012).

> *"...I see no benefit whatsoever in amending the civil rights act. Somehow the assumption is out there that Michigan as well as Holland, or the United States in general, is full of homosexual individuals. Like they are this discriminated group of people. I don't believe that is the case. It has been shown that the homosexual population is in the one to two percent range. They're a very small percentage of the population." – Testimony from Holland*

Data suggests that one reason there is not a greater public cry for passing inclusive anti-discrimination protections is that many voters erroneously believe that federal (87%) and state (78%) laws already provide this protection (Center for American Progress, 2011). In states without employment protections, fully three-fourths of voters falsely assume that it is illegal to fire someone on the basis of their sexual orientation or gender identity/expression. Similarly, in an informal survey of 144 people conducted in Mount Pleasant by people gathering information for a local ordinance, 78% were unaware that state law did not protect people from discrimination based on sexual orientation (Taormina, 2012). This discrepancy between voter perception and the reality of nondiscrimination laws needs to be addressed.

Estimates of the LGBT Population in Michigan

Understanding the size of the LGBT population is, as argued by policy experts at the Williams Institute, imperative for making informed policy decisions affecting the LGBT

community (Gates, 2011). Federal data sources such as the Decennial Census, however, do not include questions about sexual orientation and gender identity. Obtaining estimates of the size of the LGBT community in a given location is further made difficult because many large, population-based surveys do not consistently ask about sexual orientation and gender identity/expression. Even where they occasionally do so, definitions of sexual orientation differ from survey to survey. For example, some studies may ask whether individuals self-identify as LGB, whereas others ask whether the individual has ever engaged in same-sex behavior or are attracted to members of the same-sex. In general, research suggests that there are far fewer people who self-identify as Lesbian, Gay or Bisexual than who have engaged in same-sex behavior or who have same-sex desires (Laumann, Gagnon, Michael, & Michaels, 2000).

One common misperception holds that approximately 10% of the population identifies as LGB (Franke-Ruta, 2012) and many Americans vastly overestimate the size of the LGB population (Morales, 2011). To address this disparity, demographers at the Williams Institute devised a method of estimating the size of the LGB community within a given population by averaging results from five population-based surveys (Gates, 2011). Using this method, the Williams Institute concluded that approximately 3.5% of the United States population identifies as LGB. Local estimates of the LGB population size are then determined by applying the 3.5% ratio against estimates of the size of the total adult population. Michigan has a population of 7,539,572 people over age 18 (U.S. Census Bureau, 2010), and therefore 3.5% of that number or approximately 263,885 persons would be adults who identify as LGB.

Alternatively, this number can be adjusted based on an estimate of LGB population density (e. g., based on the distribution of same-sex couples within the same population) (Movement Advancement Project, 2012). After adjusting for LGB population density,

Michigan's adult LGB population is approximately 201,277 persons. Some studies suggest that .3% of the population identifies as transgender (Gates, 2011). Applying this formula to Michigan's adult population, approximately 22,619 adults identify as transgender. Based on this estimate of the transgender population and the aforementioned estimates of the LGB population, number of adults in Michigan who self-identify as LGBT would be estimated at 223,896 - 286,504. These numbers are comparable to Michigan's Asian population (U.S. Census Bureau, 2011). Because these estimates do not account for people not counted by the US Census (e.g., the homeless population, those unwilling to provide information) and because persons who identity as LGBT are likely to be overrepresented in these uncounted groups (particularly the homeless) these estimates likely underestimate the size of Michigan's LGBT population..

"I support this law because it impacts straight people too. I mean it is good for everyone. It doesn't say the law would just protect the gays. It says it protects based on sexual orientation."- Anonymous, written testimony

Based on data from the 2010 U.S. Census, there are 21,782 same-sex couples living in Michigan (Gates & Cooke, 2010). They are racially and ethnically diverse and reside throughout every region of the state (though are disproportionately represented in Washtenaw, Ingham, Allegan, Kalamazoo, and Kent counties) (Romero, Baumle, Badgett, & Gates, 2007). Once again though, this number almost certainly significantly underrepresents the number of LGB couples residing in Michigan as it only accounts for partnered, cohabitating adults who are willing to identify themselves as living in same-sex relationships.

There are certainly several methodological difficulties when it comes to obtaining credible estimates of the size of the LGBT population. However, it should be noted that expanding discrimination protections would benefit people regardless of their sexual orientation and gender identity/expression. By providing legal protections for sexual orientation, those people who identify as heterosexual or straight will also be afforded protections if they are subject to discrimination based on their actual or perceived sexual orientation. As this report will show, there have been instances where people who identify as heterosexual have experienced discrimination due to their actual or perceived sexual orientation. As such, any discussion about expanding nondiscrimination laws should not be limited only to the impact on those individuals who identify as LGBT.

II. THE PRESENT STATE OF SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION DISCRIMINATION

Convergent Evidence of Discrimination

This section examines evidence addressing the extent to which discrimination on the basis of sexual orientation and/or gender identity/expression takes place. It thereby directly addresses concerns expressed by some who doubted that discrimination based on a person's sexual orientation and gender identity/expression occurred at all, or at frequencies warranting the attention of public policy makers. Personal stories and examples of discriminatory experiences were dismissed as anecdotal and lacking in validity and other evidence was called for. Having examined all available data, we conclude that convergent evidence indicates a high prevalence of discrimination based on sexual orientation and/or gender identity/expression. The evidence examined comes from the following sources:

- National, population-based research studies
- Recent surveys and studies in Michigan
- Reports from Michigan community-based and advocacy organizations
- Data from State enforcement agencies
- Enforcement data from Michigan jurisdictions with nondiscrimination ordinances
- Cases of discrimination that precipitated local ordinances
- Stories of discrimination in the testimony the Department received

"I don't understand the need for naming homosexual and transgender persons in the anti-discrimination ordinance. These people are currently able to find housing and employment without any more difficulty than anyone else." – Anonymous, written testimony

"If the government knows that discrimination exists and chooses to do nothing, they are codifying discrimination into state law. They are looking the other way as people are suffering. I would argue that the very fact that we do not have this law on the books is evidence of its need. Why? The only reason that sexual orientation and gender identity are not covered is likely due to people's (and the government's) homophobia and heterosexism. These are the very conditions under which discrimination and other forms of bias are perpetuated". – Anonymous, written testimony

Before examining specific data it must be emphasized that sexual orientation and gender identity/expression have no relationship to workplace performance; that is, research unequivocally establishes that LGBT workers perform as well as their heterosexual counterparts (American Psychological Association, 2007; Hiatt & Hargrave, 1994; Sears, Hunter, & Mallory, 2009).

Research documenting discrimination based on sexual orientation and gender identity/expression

Results on a national level suggest that discrimination based on sexual orientation and gender identity/expression is frequent and widespread. Much of this research has been conducted in the area of employment-based discrimination. Analysis of multiple national, random sampling surveys since the mid-1990s regarding employment discrimination suggests that anywhere from 15-43% of LGB people have experienced employment discrimination (Badgett, Lau, Sears, & Ho, 2007). Specific forms of discrimination reported included being fired or denied employment (8%-17%), denied a promotion or given negative evaluations (10%-28%), verbal/physical abuse (7%-41%), and receiving unequal pay or benefits (10%-19%).

Research suggests that transgender individuals face employment discrimination at similar or higher rates than LGB employees. In 2011, a national survey of transgender individuals in all 50 states (N = 6,450) found that 90% reported experiences of workplace harassment, mistreatment, or discrimination (Grant, Mottet, Tanis, Harrison, Herman, & Keisling, 2011). Nearly half (47%) reported job outcomes such as not being hired, being denied promotion, or being fired because of their gender identity/expression. The survey also suggested that transgender individuals are at particular risk of housing discrimination, with 19% having been refused a home or apartment, and 11% having been evicted because of their gender identity/expression. Another recent survey of 646 transgender people reported that over two-thirds (70%) had experienced workplace harassment or discrimination as a result of their gender identity/expression (Transgender Law Center, 2009).

"In the face of protections granted based on inherent human characteristics such as race and sex, the absence of the same based on sexual orientation, gender identity, and gender expression sends a signal that people with these characteristics are not entitled to be treated equally under the law and gives license to those who would deny that equality." – C. Thornton, testimony from Ann Arbor

Analysis of employment wages and income disparities may also reflect the effects of discrimination. People with the same job should be paid the same wage after controlling for characteristics such as experience, education, and geographic location (Badgett, et al., 2007). However, a review of nine studies reporting wage gaps between heterosexual and gay/bisexual males showed that gay and bisexual men earn 10%-32% less than similarly qualified heterosexual men. In a report of three surveys in which the authors assessed poverty in the LGB

"I personally don't believe that homosexuals are suffering severe discrimination here." – Anonymous, written testimony

population, findings establish that poverty rates for LGB adults are similar to or higher than rates among heterosexual adults; poverty rates for people in same-sex relationships are similar to or higher than heterosexual married couples, and more LGB people receive government assistance from programs intended to support low-income individuals and families (Albelda, Badgett, Schneebaum, & Gates, 2009). When taking into consideration other variables associated with poverty such as education, the authors concluded that same-sex couples are significantly more likely to be poor than heterosexual couples. Furthermore, poverty rates among lesbian couples are particularly high relative to heterosexual married couples and the poverty rates among African American same-sex couples are significantly higher than African American heterosexual couples (Albelda et al., 2009).

Wage disparities also exist in Michigan; according to Census data from 2000, men in same-sex relationships in Michigan earned an average of $35,107 a year, whereas men in heterosexual marriages earned $53,887 (Romera, Baumle, Badgett, & Gates, 2007). Differential incomes were evident despite the higher levels of education among men in same-sex couples compared to married men. The median ($58,500 vs. $62,000) and mean ($70,126 vs. $75,605) household income of same-sex couples was also less than married couples. Same-sex couples were more likely than heterosexual couples to have one partner who was unemployed (30% for same-sex couples; 24% for heterosexual couples). Income disparities were particularly evident among parents with children. Same-sex parents reported a median household income 25% lower ($48,900 vs. $65,000) than that of married heterosexual couples raising children. Same-sex parents in Michigan thus have fewer financial resources with which to raise children. The above are all exacerbated by a variety of laws (e.g., tax laws, parenting laws, estate laws, domestic partnership laws) that extract a significant added economic toll on same-sex couples (Movement

Advancement Project, 2011). Together these data paint a picture contrary to the popular perception of universal affluence within the LGB population.

Transgender individuals have extremely high rates of unemployment and very low earnings (Badgett et al., 2007). One nationally representative survey found that transgender individuals, when compared to the general population, were more than four times more likely to have a household income under $10,000 a year, twice as likely to be unemployed, twice as likely to be homeless, and half as likely to own their own home (Grant et al., 2011). Michigan-specific data on the incomes of transgender individuals are unavailable. That LGBT individuals are often unemployed, underemployed, and underpaid suggests the possibility of unequal employment treatment by employers.

Research evidence also shows that heterosexual co-workers are aware that their LGBT co-workers experience employment-based discrimination on the basis of their sexual orientation or gender identity/expression. For example, in a survey conducted by the Kaiser Family Foundation (2001), 76% of participants reported that they thought LGBT applicants faced discrimination "often" or "sometimes" in applying for or keeping a job. In a study assessing the "campus climate" of colleges and universities across the campus, discrimination was predicted to be very likely or likely against gay men by 60% of participants, against lesbians by 38% of participants, and against transgender people by 71% of participants (Rakin, 2003). In a study of Minnesota law firms, 67% of heterosexual participants thought it would be more difficult to be hired if a prospective employer thought an applicant was LGBT. In the same sample, almost one-quarter of participants thought that LGBT attorneys were treated differently in the practice of law (Minnesota State Bar Association, 2006). As these examples show, heterosexual employees are

cognizant, and thereby verify others' perceptions of discrimination occurring on the basis of sexual orientation and gender identity/expression.

Research in Michigan regarding discrimination based on sexual orientation and gender identity/expression

Recently, researchers from Michigan State University reported the results of their statewide survey on LGBT attitudes and experiences (Morrison & McCornack, 2012). The survey was intended to provide a comprehensive snapshot of the attitudes, values, and experiences of Michigan's LGBT community. In order to participate, people had to identify as LGBT or as allies, be 18 years of age or older, and live or work in the state of Michigan. Researchers surveyed over 1,000 people across the state who were diverse in terms of age, ethnicity, education, and socioeconomic status. The survey covered a variety of topics, including experiences with discrimination and harassment. Participants were asked if they had ever experienced discrimination and/or harassment based on a variety of categories. Over half the participants (54.8%) reported experiencing discrimination or harassment on the basis of sexual orientation; additionally, 19.3% experienced gender expression discrimination, and 15.9% reported discrimination based on gender identity. Participants also commonly reported discrimination based on race/ethnicity (16.2%) and economic class (16.4%). Slightly more than one-quarter (27.1%) of participants reported never experiencing discrimination or harassment of any kind. Because the study's definition of discrimination was inclusive of harassment and did not specify discrimination in a particular area (e.g., employment), the results are understandably higher than national samples where 15 to 43% of LGBT people report employment-based discrimination (Badgett et al., 2007). The results, however, provide evidence that discrimination and harassment against Michigan's LGBT citizens and their allies is widespread.

There is also explicit evidence of housing discrimination. In 2007 the fair housing centers of Michigan released a report entitled, "Sexual orientation and housing discrimination in Michigan." In it they described having performed 120 paired tests (e.g., controlled experiments) to compare the treatment of same-sex couples to that of heterosexual couples when each was seeking the same housing opportunities (Fair Housing Centers, 2007). Findings established that 27% of the same-sex couples experienced disparity in treatment in that they were offered higher rental rates, discouraged from renting, or subject to behavior bordering on sexual harassment. This report was influential in the decision by the U. S. Department of Housing and Urban Development's (HUD's) decision in early 2012 to ensure equal access to its housing programs without regard to sexual orientation or gender identity/expression (Kinder, 2012).

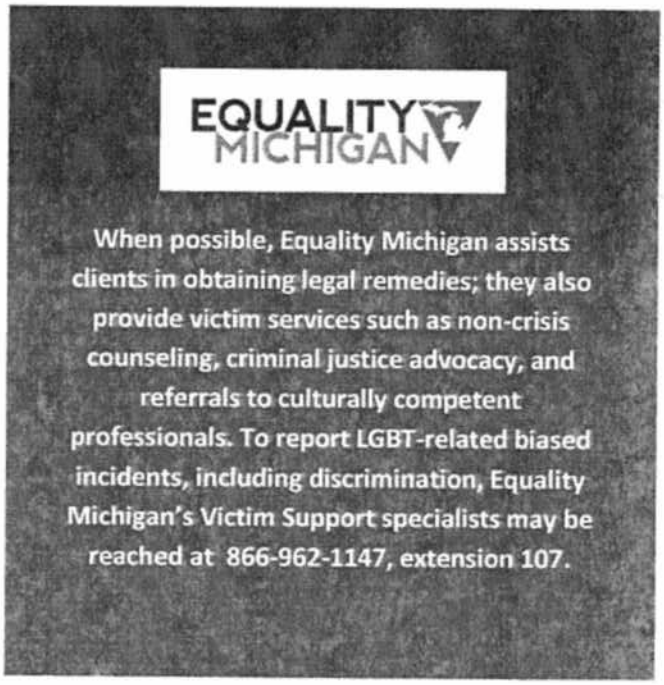
Documented cases of employment discrimination also provide evidence of employment discrimination faced by LGBT individuals. In preparation for testimony supporting the Employee Non-Discrimination Act, The Williams Institute analyzed evidence of employment discrimination based on sexual orientation and gender identity in all 50 states. In Michigan, they documented employment discrimination against LGBT state and local government employees, private employees, police officials and corrections officers, professors and teachers (Sears, 2009).

Reports of discrimination from Michigan advocacy organizations

While ELCRA precludes MDCR from investigating complaints made on the basis of sexual orientation or gender identity/expression, cases may sometimes be reported to local community-based organizations or advocacy organizations like the American Civil Liberties Union (ACLU). The ACLU LGBT Project of Michigan has tracked reports of discrimination based on sexual orientation or gender identity/expression since April 2009. In the past three

years, the ACLU received 40 complaints, 15 of which alleged discrimination on the basis of gender identity/expression and 25 of which were claims based on sexual orientation (personal communication, May 18, 2012). The majority of these complaints occurred in the area of employment. People alleged being fired, denied promotions, suspended, and reprimanded due to their sexual orientation or gender identity/expression. Hostile work environments were also reported. These allegations came from people who work in schools, people employed by businesses including major grocery, pharmacy, and restaurant chains, as well as auto, telecom, and manufacturing companies, small businesses, EMT services and security services. Notably, many of these allegations came from people working in places with anti-discrimination employee protections.

The second most frequent area of discrimination involved public services and accommodations. People reported being kicked out of restaurants, denied services at hair salons and hotels, denied the opportunity to participate in team sports and community events, and refused access to public restrooms. The third most frequent area of discrimination involved education. In these instances, Gay Straight Alliances were not permitted to advertise and a female-to-male transgender student elected as Homecoming King had his votes invalidated by school officials. Two reports occurred in the area of law enforcement. In one case a transgender



inmate was denied access to hormone therapy and in another case a transgender parolee had gender presentation requirements as a condition of parole.

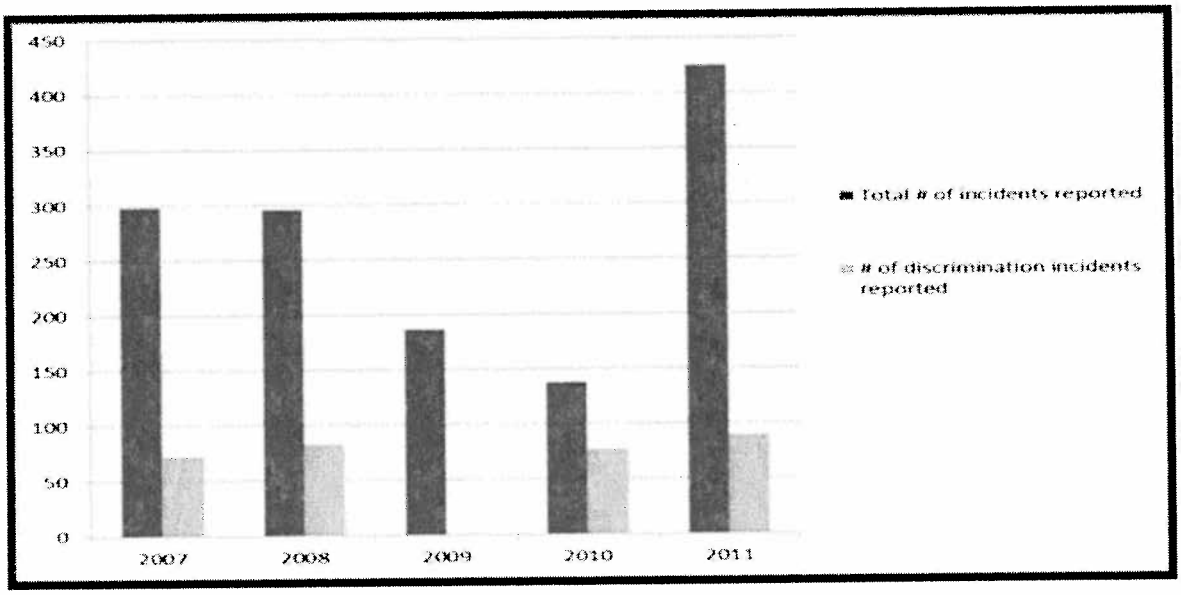
The fair housing centers of Michigan have also received complaints alleging housing-based discrimination on the basis of sexual orientation and gender identity. For example, the Fair Housing Center of Southeast Michigan has fielded seven sexual orientation and gender identity/expression complaints since October 2009 (personal communication, May 22, 2012).

Cases of discrimination are also reported annually by Equality Michigan to the National Coalition of Anti-Violence Programs (NCAVP). Equality Michigan is currently the sole reporting agency in the state of Michigan responsible for tracking and reporting incidents of discrimination, intimidation, hate crimes, domestic violence, sexual assault, and other forms of violence perpetrated against the LGBT community. Starting in 2007, discrimination claims were separately tracked in Michigan (NCAVP, 2008). Figure 5, below, depicts the number of LGBT bias incidents they tracked from 2007 until 2011 (NCAVP, 2008; NCAVP, 2009; NCAVP, 2010; NCAVP, 2011; NCAVP, 2012), as well as the number of discrimination reports in 2007, 2008, 2010, and 2011. Notably, in 2009, discrimination-based incidents were not reported separately. These data show sexual orientation discrimination is a common cause of reported bias-motivated incidents; each year, 72-89 discrimination incidents have been reported. These numbers have remained relatively consistent despite Equality Michigan's change in name (the result of a merger between Michigan Equality and the Triangle Foundation) and a change in hotline number (NCAVP, 2011). These discrimination claims have occurred in the areas of employment, housing, education, and public services. Demographic information is not consistently presented within these reports; however, in 2010, Equality Michigan reported an overrepresentation of

claims from Black/African American reporters (NCAVP, 2011). Strikingly, 11.6% of their claims were from people who identified as heterosexual but were perceived as LGBT.

These reports provide evidence of discrimination based on actual or perceived sexual orientation or gender identity/expression within every area covered by ELCRA and investigated by the MDCR.

Figure 5: *Incidents of LGBT biased crimes in Michigan reported to the National Coalition of Anti-violence Programs, 2007-2011*



Note. Discrimination incidents were not reported separately in 2009.

Discrimination complaints and State enforcement agencies

Evidence of sexual orientation discrimination in employment is also found through examination of complaints filed with state agencies in those states that offer such protection. Notably, the number of sexual orientation discrimination complaints to state agencies tends to increase after the first year following the passage of state law (United States General Accounting Office, 2002). More complaints are filed once people become aware of the change in policy. Research has shown that in states prohibiting employment discrimination based on sexual

orientation, sexual orientation-based complaints are filed at a rate similar to female workers' complaints of sex discrimination (Ramos, Badgett, & Sears, 2008). Analysis was conducted of the complaints filed in state enforcement agencies from 1999-2007. When adjusting for estimated population size within the state workforce, approximately five complaints were filed per 10,000 LGB workers – a rate similar to female workers' complaints of sex discrimination. Comparatively, people of color filed race-related complaints at a rate of seven per 10,000 workers. In a follow-up study in 2011, state employment discrimination complaints were analyzed to see if there was a difference in reporting rates between public (e.g., state and local government) and private sector employees (Sears & Mallory, 2011). Sexual orientation complaints in the private sector (4.1 per 10,000 employees) were filed at a slightly higher rate than public employees (3.0 per 10,000 employees). Additionally, as in the previous study, filing rates were similar to those of sex discrimination. These studies concluded that while sexual orientation nondiscrimination laws are used on a regular basis, the frequency of claims is insufficient to overwhelm state agencies with a flood of complaints. The United States General Accounting Office (2002) assessed the number of cases sexual orientation and gender identity/expression filed in 13 states through 2001 and concluded similarly that complaints of discrimination in employment on the basis of sexual orientation constituted a small percentage of all employment discrimination complaints (range: .5-9%).

Using Census data and workforce statistics, demographers have estimated that the Michigan LGB workforce is approximately 182,436 individuals (Sears, Mallory, & Hunter, 2008). Assuming a filing rate of five per 10,000 LGB employees (Ramos et al., 2008), it can be estimated that approximately 91 complaints per year ((182,436/10,000)*5) may come from LGB employees alleging employment-based discrimination on the basis of sexual orientation. In 2011, the MDCR recorded 2,169 complaints, the majority (1,455; 67%) of which were in the area of employment (Michigan Department of Civil Rights, 2011). Predicted complaints alleging sexual orientation employment discrimination would have increased the number of filed complaints by approximately 4% and employment-based complaints by approximately 6%. Data are not available to predict the number of complaints that may be filed on the basis of gender identity/expression, nor can the number of non-employment (e.g., education, housing, public services) complaints based on sexual orientation be predicted.

It is important to note that the number of complaints filed with state enforcement agencies is not an accurate depiction of the number of cases of discrimination based on sexual orientation and gender identity/expression. Rubenstein (2001) describes a number of reasons why the number of formal complaints should not be taken as a complete record of sexual orientation and gender identity/expression-based discrimination. Many people do not pursue claims because they:

- do not want to come out as LGBT
- settle cases before formal claims are submitted
- are dissuaded by a lack of favorable court opinions in similar cases
- view enforcement agencies as ill-equipped in term of resources and knowledge to consider complaints on the basis of sexual orientation and gender identity/expression

As an example of this underreporting, in a study conducted in California, only 15% of transgender persons who experienced discrimination filed a complaint (Transgender Law Center, 2009). With 85% of those surveyed not reporting, it is therefore safe to assume that cases of discrimination on the basis of sexual orientation and gender identity/expression may be severely under-reported and may account for higher than expected instances of employment.

Discrimination complaints and local enforcement agencies

Local administrative agencies responsible for fielding discrimination complaints were contacted in the communities with nondiscrimination ordinances inclusive of sexual orientation and/or gender identity/expression. These agencies were contacted to obtain information regarding the number of complaints filed on the basis of sexual orientation and gender identity/expression and whether these complaints resulted in enforcement actions. Across all communities with inclusive ordinances, only a handful of formal complaints have been made since the ordinances were enacted. Additionally, records reflect that when some people called local officials to make a complaint, they were told that the incident happened outside of the jurisdiction covered by the ordinance. Notably, one contributing factor to this outcome is that while people may live within the location covered by the ordinance, they may work in a neighboring community outside the jurisdiction of the inclusive ordinance.

Local enforcement agents were asked about the numbers of people submitting claims. By and large, local administrators suggested that discrimination claims are underreported. They offered the following reasons for why so few complaints have been made:

- a lack of resources and staff
- having no means of enforcement dissuades people from making complaints

- the local administrative agency charged with taking complaints was closed
- some people are unwilling to file claims because it requires them to openly identify their sexual orientation or gender identity/expression
- people are unaware of their right to file and are unaware of who to contact to do so

These reasons are akin to those described by Sears and Mallory (2011) as reasons for underreporting to state enforcement agencies. Other studies have similarly shown that local enforcement agencies may lack the knowledge, resources, willingness, and/or enforcement mechanisms to adequately address discrimination complaints (Sears, Hunter, & Mallory, 2009).

The Department's experiences during the process of obtaining information on local claims supports these reasons for underreporting and that some local agencies are ill-equipped to investigate complaints. In Ann Arbor, the department (Department of Human Rights) responsible for taking complaints was closed over six years ago; an automated voice recording at the Human Rights Commission informs callers to contact the MDCR to file a complaint. Referring complainants to the MDCR, however, does not benefit LGBT individuals who lack protections at the state level. Similar local agencies charged with taking complaints no longer do so because of staff or resource shortages. In some instances, these local agencies may reroute callers to other offices. For instance, Ypsilanti's ordinance stipulates that complaints are to be filed with the City Attorney. Yet, while attempting to obtain information regarding the ordinance, the Department was rerouted from the City Attorney's office to the City Clerk's office and finally to the City's Human Resources Department. This process could be sufficiently burdensome to discourage someone attempting to file a claim of discrimination.

At other offices, it took multiple attempts to get someone on the phone or to get a response to an email, another experience that may deter people from filing claims. Ferndale's

ordinance did not stipulate where a claim could be filed. The Department contacted numerous municipal agencies ostensibly responsible for fielding claims until the City Clerk was able to provide the necessary information. The enforcement agency in Detroit said that they were too busy to provide the number of complaints filed and then did not respond to requests thereafter. This lack of a response raises questions about whether staff may be too overburdened by other demands to adequately investigate claims.

This information should by no means suggest that even unused ordinances can dissuade discriminatory behavior. It does, however, suggest that local ordinances are too rarely used and may not be an effective means of providing people recourse when discrimination does occur. If people do not know who to call, do not feel it advantageous to call, cannot connect with appropriate staff, or are rerouted (automatically or by default) to MDCR, then it is highly likely that discrimination in these cities remains underreported and unaddressed.

Precipitating events and the local ordinances

Newspaper articles that describe the passage of local nondiscrimination ordinances were analyzed to assess whether there were discriminatory precipitating events in those cities that compelled people to argue for an nondiscrimination or human rights ordinance. While specific inciting events were not identified in relation to all the places where nondiscrimination ordinances have been passed or considered, the majority of the initiatives were brought about by people who felt they had faced discrimination. In the public hearings that took place in cities considering local ordinances, multiple stories were told recounting instances of harassment and discrimination. Of particular note:

- People in East Lansing, the first city in the country to enact a local civil rights ordinance (Broverman, 2012; Casetino, 2012; Li, 2012), took action after a man was fired from his job due to his sexual orientation (Li, 2012).

- Douglas passed its ordinance after a same-sex couple was refused overnight accommodations at the Rosemont Inn (Gainor, 1995).
- The Ypsilanti nondiscrimination ordinance was introduced after a group of gay and lesbian students were refused service at a retail store (Cuthbert, 2008).
- In Dearborn Heights, the local resolution was enacted in response to hate crimes that occurred in the area (Jun, 2005; Kosofsky, 2005).
- In Kalamazoo, an ordinance was proposed and passed after LGBT residents experienced housing discrimination (Apple, 2009; Davis, 2009). Others testified that they too had experienced discrimination (Russon, 2009).
- In Flint, leaders from AIDS service organizations and LGBT rights groups worked together to expand Flint's housing nondiscrimination ordinance to people based on gender identity/expression and HIV status after hearing reports from people they served of having experienced discrimination (Lambertz-Abbey, 2012).
- Many of the people involved in spearheading the most recent local nondiscrimination ordinance in Mount Pleasant reported having experienced discrimination in housing and/or sexual orientation-related harassment (Taormina, 2012). People gave public testimony about experiences with discrimination (Pomber, 2012). One city commissioner opined that people would have to "be living in a cave" not to have heard of discriminatory experiences in Mount Pleasant (Smith, 2012).
- In 2008, voters in Royal Oak considered a local nondiscrimination ordinance after concerns about police mistreatment of gay citizens (Editorial Board, 1997; Pierce, 2008). This measure was defeated.
- Hamtramck's nondiscrimination ordinance was originated by a gay city council member who had experienced discrimination. It was subsequently defeated by a ballot measure (Lawrence, 2008).

As these examples show, many of Michigan's local nondiscrimination ordinances were introduced by people who experienced discrimination personally or knew others who experienced such discrimination based on sexual orientation or gender identity/expression. Across communities, people described instances of discrimination in employment, housing, education, and public services.

Stories of discrimination in the testimony we received

The testimonials that the Department received were replete with first- and second-hand stories of discrimination in the areas of employment, housing, education, public service and public accommodations. These experiences of discrimination impacted a variety of people, including gays and lesbians, transgender persons, and heterosexuals. Fathers and mothers experienced discrimination, as did a six-year-old transgender student, teenagers, employees with 29 years of service to their employers, and people near the age of retirement. Notably, discrimination occurred in places protected by local ordinances including Detroit, Grand Rapids, Ann Arbor, Birmingham, Lansing, and East Lansing. In the sections that follow, some of these stories are shared, as are other indications that discrimination based on sexual orientation and gender identity/expression is a frequent occurrence within the areas covered by the ELCRA.

Due to the nature of their professions some people are particularly likely to hear others' stories of discrimination. In the testimony the Department received, clergy, therapists and counselors, documentary film makers, support group leaders, and fair housing specialists testified to the pervasiveness of discrimination amongst their congregants, clients, and patients:

> I've been in charge of a transgender support group for about 6 *(sic)* years. In that group, people have experienced all sorts of discrimination. Though conversations in the group are privileged, I can say that there have been dozens of people who have lost jobs, been evicted, or denied service at places like hair salons and restaurants because of their gender presentation or orientation. Or rather, lost jobs, been evicted, or denied services because of other people's ignorance and fear. Nearly everyone who attends has been mistreated in some way, but I would say well over half have divulged having been the victim of discrimination (Anonymous, written testimony).

> Professionally, I am a fair housing specialist with the Fair Housing Center of West Michigan. I spend a lot of time educating people on their rights under fair housing laws, and one of the hardest parts of my job is explaining to someone that they do not have protection under current state and often local laws. If ELCRA was amended, I would no longer have to say to people who contact me that it is

> completely legal for their neighbors to harass them or for them to be turned away from a housing opportunity (E. Spreitzer, testimony from Holland).

Professionals' testimonials were supported by personal narratives. A variety of experiences with education-based discrimination were reported and evinced that discrimination is not merely something that impacts adults. Youth are coming out as LGB at earlier ages. Research suggests that adolescents are first aware of their sexual orientation from eight to eleven years of age on average, and that the age of identifying as LGB is from 15 to 17 on average (Savin-Williams & Diamond, 2000). Many transgender individuals are aware that they are transgender prior to age ten (Brill & Pepper, 2008). As LGBT youth come out earlier, they are apt to experience various forms of bias, including discrimination, as these stories exemplify.

A handful of people described discriminatory experiences in education. For example, one young man described numerous experiences that included being unable to attend prom with his boyfriend and denied the right to form a gay straight alliance.

One story from Ann Arbor came from a grandfather who described his family's experience involving his six-year-old granddaughter whom he and his wife are raising. His granddaughter, diagnosed with gender dysphoria, told her grandparents at the age of five "that she was supposed to have been born a girl and that in her next life she would be a girl and that she was born with a boy's body but a girl's brain." Her grandparents, wanting to let her "express her true self," contacted her public school only to be told that the school would continue to treat their granddaughter like a boy, thus rejecting any family wishes or medical advice contrary to "biological sex." This reaction led to their decision to transfer their granddaughter to a school in Ann Arbor, despite the difficulties it posed to their family life:

> We finally found a school in Ann Arbor that would treat Alex as the girl she was and only a few administrators would know. To the rest of the staff and student

> body Alex was just another girl. The problem was that Ann Arbor was an hour and a half drive back and forth so my wife and I were spending three hours a day driving to Ann Arbor and back. Losing three hours a day was hard, but the mileage and wear and tear on the vehicles plus all of the gasoline that we were using at four dollars a gallon was more than we could bear. After one year at the new school we decided that we would, as a family, have to sell our beautiful home in our great neighborhood and move closer to Ann Arbor (B. Perry, testimony from Ann Arbor).

Less frequently described were instances of discrimination in public services or public accommodations. Examples included a same-sex couple that experienced multiple instances of discrimination while trying to plan their commitment ceremony; they were asked to leave a dress shop and told by a catering company that "they only do traditional weddings" (Anonymous, written testimony). Another same-sex couple provided written testimony reporting discrimination at a hotel. On a trip for their twentieth anniversary, they were not allowed to rent a room with a king size bed and were instead forced to rent a room with two double beds at a rate higher than available rooms with king size beds (Anonymous, written testimony).

Specific incidents of discrimination were also reported in the area of housing. Two heterosexual females on a budget who wanted to rent a one-bedroom apartment together in Holland were not allowed to do so when the landlord said, "we could not share a bedroom [because] he didn't go for that sort of thing" (anonymous, written testimony). Despite their references and credit qualifying them as renters, the landlord rented the apartment to a heterosexual couple "better suited to the apartment." This story serves as a good example of how people can experience discrimination based on their perceived sexual orientation, even when it is not their actual sexual orientation. A similar case in which two men were not allowed to rent an apartment in Ann Arbor was prosecuted by a Michigan fair housing center (Fair Housing Centers of Michigan, 2007). In the sex discrimination suit, the men reached a $20,000 settlement.

The majority of the personal stories about discrimination told at the Department's hearings involved employment-based discrimination. Twenty six people testified – police officers, university professors, school teachers, store managers, electrical engineers, symphony conductors, and hotel and food service staff – and recounted stories of being denied jobs, denied tenure or promotions, or being fired because of their sexual orientation and/or gender identity/expression. The next few stories depict relevant themes that were woven through these testimonials. A former manager of a "Michigan-based store" described how she was "let go because she refused to do her job" when she disregarded her boss' repeated orders to refuse to hire or fire people he "believed to be gay" (anonymous, written testimony). She was allowed to resign with a severance package if she promised not to discuss the conditions surrounding her resignation.

"While I worked at this company, three people who were openly homosexual were terminated. One person who supported me...was also terminated because she openly vocally supported me." – S. Snyder, testimony from Holland

First, this story illustrates that when discrimination occurs at a place of employment, multiple people are often impacted. In many of the testimonials, patterns of discrimination involving multiple employees within the same organization were reported. Second, this heterosexual woman's story shows another way that heterosexual people also can be victims of sexual orientation-based discrimination. In this case, the woman lost her job because she refused to actively discriminate against a gay employee. People who support their LGBT colleagues and/or who confront people regarding their discriminatory actions may suffer negative consequences as a result. Third, this story demonstrates how provisions surrounding the

termination of an employment relationship are often conditioned upon silence and thus make it more difficult to unearth stories of discrimination or document its frequency.

Another theme woven throughout these stories was that multiple incidents of sexual orientation discrimination against a single individual can compound the negative consequences. Numerous individuals who provided written testimony described multiple instances of discrimination, particularly employment-based discrimination. One person described being "blackballed by every lab in the city because [he] was gay" (anonymous, written testimony). Another man who provided a list of numerous discriminatory experiences said: "I have been excluded from things my whole life because of my sexuality. I know of other people with similar experiences. Discrimination follows us and does not only happen in one isolated circumstance. It permeates our lives. We get used to it and expect it" (anonymous, written testimony). Another woman described how she has filed over ten grievances at work since 2004, has repeatedly called her organization's harassment hotline, and has been told on numerous occasions that because she is a lesbian, she did not have a case. Her testimony ended by asking the Department: "Where do I go or what do I do to get real results?" (Anonymous, written testimony).

Another noteworthy theme was the creative and burdensome lengths people have been forced to use to seek redress for discrimination. Two people relied on federal laws and policies to seek justice. One woman who had been fired from a university for identifying as transgender testified in Jackson that she was able to file a sex-based discrimination complaint with the EEOC. This case ultimately resulted in a mediated settlement. (J. Nemecek, testimony from Jackson). In another case, a man who testified in Detroit successfully pursued a First Amendment claim against his employer when he was terminated from his community services coordinator position after publicly coming out (A. Garcia, testimony from Detroit). Peter

Hammer was the first openly gay man to go up for tenure at the University of Michigan law school. Although he was unable to file a civil rights claim, Hammer filed a contracts case in the Michigan Court of Claims. He described that the school "breached both its own commitments to the University not to discriminate on the basis of sexual orientation and moreover reneged on specific promises made during the negotiations process." Mr. Hammer's legal battle has been ongoing for the last ten years (P. Hammer, testimony from Detroit). As these cases show, although it is sometimes possible to seek legal redress for discrimination on the basis of sexual orientation and/or gender identity/expression, it is always difficult to do so.

"...when I talked to the reporter I said 'me too. I'm going to help these kids and by the way, I'm gay.' Well, the story broke and that Monday my desk was out in the hallway. I no longer had an office. My desk was in the hallway. I had a part-time job because I'm a single gay father and my son lives with me. So I had a part-time job after work to try to make ends meet and they knew that and had always accommodated that schedule. Now they shifted my schedule around completely and so they knew I could not make that part-time job. Part of my job was to speak to the press, but they told me you can no longer leave the building. But if you don't make these meetings in the community, you're going to get written up. That's how it works. Right? So I become the troublemaker because I am not meeting my job description. But they won't let me out of the building. That's how that works." – A. Garcia, testimony from Detroit

A final noteworthy theme can be found in the testimonials of some of those who spoke in opposition to nondiscrimination laws inclusive of sexual orientation and gender identity/expression. Included in these testimonials were statements that LGBT people are mentally ill, akin to Nazis, pedophiles, immoral, unfit parents, condemned by God, or even deserving of the death penalty. Contrary to the belief of those providing such testimony, these testimonials actually serve as further evidence of the animus directed towards LGBT people as hateful stereotypes that are often at the root of discrimination and prejudice. These stereotypes, often invoked in antigay discourse, often serve as a justification for antipathy towards LGBT persons (Herek, 2009). As such, these sentiments,

publically conveyed and at times even cheered, show that antigay prejudice is considered politically appropriate and publicly acceptable to many Michiganders, which in turn shows how some come to believe that it is also acceptable to openly and unabashedly discriminate against others based on perceptions of their sexual orientation.

"The first myth is that discrimination does not happen. The stories that are being told today illustrate vividly that discrimination does happen." - P. Hammer, testimony from Ann Arbor

III. ASSESSING THE IMPACT OF INCLUSION/DISCRIMINATION

As explained by Sears and Mallory (2011):

> Research has also documented not only the pervasiveness of sexual orientation and gender identity discrimination but also the negative impacts of discrimination against LGBT people. Because of discrimination, and fear of discrimination, many LGBT employees hide their identities, are paid less and have fewer employment opportunities that non-LGBT employees. Research has also documented that such discrimination, as the expression of stigma and prejudice, also exposes LGBT people to increased risk for poorer physical and mental health (p. 12).

This section details the various ways that discrimination, or the constant fear of discrimination, has impacted Michigan families, communities, and the economy. Some may observe that the information presented in this section implicitly argues that, as one person phrased it in his testimony, "The Elliott Larson Civil Rights Law needs to be updated to include sexual orientation, and gender identity or expression, in order to improve the economic and social climate for all of the citizens of this great state, so that businesses, families, and individuals can thrive" (S. Rassi, testimony from Ann Arbor). This implicit argument is not intentionally and selectively woven into the otherwise balanced reporting of available information, rather, it is believed to be the unavoidable result of a fair presentation of evidence on the effects of not making the change in policy.

Discrimination impacts families

Numerous LGBT individuals and same-sex couples raise children. National estimates suggest that approximately two million children are being raised by people who identify as LGBT (Movement Advancement Project, 2011). Census data from Michigan suggests that many same-sex couples are also raising children. Data compiled from the 2010 Census indicated that 21% of Michigan's same-sex couples (4,532 couples) are raising children under the age of 18

and these couples have, on average, two children (Gates & Cooke, 2010; Romero et al., 2007). Furthermore, this number is assuredly an underestimate of children raised by LGBT persons in the state, as it only accounts for children raised by couples willing to disclose their partnership status on government surveys.

Children of LGBT parents contend with numerous social and economic vulnerabilities due to a combination of societal stigma and ways in which current laws limit their economic security. For example, children raised in LGBT families are twice as likely as those raised by married heterosexual families to be living in poverty (Movement Advancement Project, 2011). Female same-sex couples and same-sex couples of color are particularly likely to be living in poverty. In Michigan, same-sex parents report a median household income that is 25% lower than that of married heterosexual parents (Romero et al., 2007). As these data indicate, same-sex parents have fewer financial resources to support their children than married heterosexual parents. Same-sex parents often face added financial burdens, in addition to having lower household incomes. Same-sex families face a higher tax burden, are denied financial protections when a parent dies, is or becomes disabled, are often denied health coverage by employers and must secure their own insurance coverage, and often must pay for expensive legal and financial planning in an attempt to secure legal protections for their families (Movement Advancement Project, 2011).

Employment discrimination can create additional challenges by further depriving LGBT families of wages and/or health insurance coverage. Employment non-discrimination protections thereby provide LGBT families with greater economic security. The testimonials received by the Department from families provide a reminder that it is not only those who are directly discriminated against who are impacted; children are also disadvantaged by discrimination faced

by their parents and same-sex parents are fearful that without recourse for discrimination, they may not be able to care for their children:

> Please take a look at my family. We are a "traditional" family in nearly every sense of the word. My wife and I have the same hopes and dreams for our daughter as any parent would have for his or her children. All parents want to shield their children from harm, pain, or suffering. We hope and pray that she will never have to feel the burn and pain of discrimination, and this amendment would bring us one step closer to making that dream a reality (E. Spreitzer, testimony from Holland).

> When a person is fired from a job because of their sexual orientation, it's not just the job that they are losing. They lose their income, their ability to feed their family, their health care coverage, a sense of self-worth and the dignity of having a job. When a gay father or lesbian mother lose their job because of their sexual orientation, what is taken from them is also taken from their children – the security of a home and an ability to provide for those basic needs (S. Milligan, testimony from Jackson).

The parents of LGBT persons also described how their families have been impacted by discrimination or the threat of discrimination. Parents with multiple children argued that all of their children, gay or heterosexual, should be afforded the same rights and protections (anonymous, written testimony; S. Koch, testimony from Jackson). Mothers testified to the heartache they experienced worrying that their LGBT child would encounter bullying, harassment, and discrimination. They are fearful for their child's future:

> As the mother of a lesbian daughter, I can tell you that my first reaction to my daughter when she came out to me was not shock or horror, but fear for her future. I was ready to accept her as a lesbian and to celebrate her self-awareness and identity, but I was petrified about how others in our society might react to her in the future. That fear has subsided somewhat over the past 18 years since she came out, because of continued progress in many states and in our nation as a whole, and in various places around the world where someone's accidents of birth are given protections and support (anonymous, written testimony).

Still others lamented how their families were divided when LGBT members fled from Michigan to live somewhere they felt safer or dreaded the day they or their loved ones would decide to leave (See "Impact on the Economy").

> Hopefully, I can find a way that I can fix my job situation and I can stay in Michigan. My granddaughters and my daughter live here in Michigan with her husband. I like being called 'nana.' I like having a family, family that is close by that I can go visit on holidays. I'd hate to think that I have to go out to California to find work and be safe. That's what I'm facing though. I'd like to stay in Michigan (J. Hill, testimony from Detroit).

In each of these testimonials, it is not only one person who is harmed by individual acts of discrimination. Partners, parents, and children all suffer as well, as do all who love or care for those directly affected.

Discrimination impacts communities

The testimonials also revealed ways in which discrimination, or the fear of discrimination, has negatively impacted the greater LGBT community. Simply, the constant threat of discrimination and harassment may cause people to conceal their sexual orientation and gender identity. This action has negative implications for individuals as well as for the LGBT community. The Department received numerous anonymous letters in support of LGBT inclusive public policy changes like amending ELCRA from people who preferred to keep their identities private. At the forums, people spoke on behalf of others who were afraid to publically testify for fear of the consequences:

> … she is not here tonight because she is afraid. She is currently looking for work and in a couple of months will be looking for someplace to live. And she is afraid that if she showed up tonight, she might run into somebody that she had just interviewed with (L. Hightower, testimony from Jackson).

> ...members of our church have had to be not only be quiet, but hide who they best understood themselves to be in order to maintain and gain employment. And therefore, could not come and testify for themselves. Could not speak for themselves and still be employed (J. Cummings, testimony from Jackson).

The existence of such a palpable fear of being 'outed' as LGBT unquestionably is one reason more people did not offer personal testimony at the forums. This fear means that LGBT people cannot fully participate in civic life.

The silence induced by the fear of being identified as LGBT has other consequences as well; LGBT persons face bullying, hate crimes, sexual assault, and physical victimization at alarming rates. For example, a systematic review of 75 research studies showed that sexual assault prevalence among lesbian and bisexual women ranged from 15.6% to 85.0% and from 11.8% to 54.0% for gay and bisexual men (Rothman, Exner, & Baughman, 2011). The transgender community also faces elevated rates of violent crimes (Stozer, 2009). Reports from the National Coalition of Anti-Violence Programs (NCAVP) point out that various forms of sexual orientation biased crimes such as hate crimes and bullying occur often in Michigan (NCAVP, 2008; NCAVP, 2009; NCAVP, 2010; NCAVP, 2011; NCAVP, 2012). Yet these and other such crimes may go unreported if victims fear further discriminatory or violent animus.

"There are lots of crimes like hate crimes and bullying that affect people because of their sexual orientation. We know these happen in the GLBT community but we don't hear all the cases. We probably only hear about a small percent of them. One reason people do not report these things is because of laws like the Elliot Larsen (sic) that do not protect them. People do not report crimes because they do not know what will happen to them if they do. They might lose their jobs or housing or things they need to cope. My mom would call this a vicious cycle because it is like they can't win no matter what they do. Reporting may make is (sic) worse because GLBT people take a risk by reporting these things. If they don't report they don't get the help they need or any justice. I think it is only when people feel safe that they will report these things and that making laws that protect them will help them feel safer. I know that I would not want to report a crime if I thought that I could get fired over it or kicked out of my apartment or treated bad by the police." (Anonymous, written testimony)

Not reporting such crimes means justice is delayed or never sought. It means that victims cannot obtain the resources they need in order to best cope with their ordeals. It also means that these crimes go severely underreported. Likewise, coming out may be a prerequisite for various other forms of help-seeking (e.g., going to a doctor, seeking a therapist). Sexual orientation victimization is linked to mental health problems and suicidality (Almeida, Johnson, Corliss, Molnar, & Azrael, 2009; D'Augelli, 2002; Hershberger, & D'Augelli, 1995; Mays & Cochran, 2001; Meyer, 2007). Mental health issues plague LGBT individuals because of the chronic social stresses and marginalization they contend with, not because of any defect of character (Meyer, 1995; Meyer, 2003; Meyer, 2007). An environment which makes it unsafe for people come out may pose an added barrier for people to obtaining needed services.

Having adult role models and mentors is associated with positive mental health outcomes and other outcomes such as academic achievement and reduced delinquency (Beam, Chen, & Greenberger, 2002; Masten, 2001; Masten & Coatsworth, 1998). Yet LGBT youth may be particularly in need of support from mentors and non-parental adults due to the likelihood of family rejection and social isolation (Gould, Greenberg, Velting, & Shaffer, 2003; Ray, 2006; Ryan, Huebner, Diaz, & Sanches, 2009). LGBT youth often lack supportive adult role models and mentors (Torres, Harper, Sanchez, & Fernandez, 2012). When adults are unwilling to out themselves, LGBT youth in need of guidance and support have fewer people to turn to for help and advice.

Antonio Garcia, currently the executive director of Affirmations, came out to his former employers when he wanted to start a support group for LGBT youth who were being bullied in school (A. Garcia, testimony from Detroit). He promptly lost his job. His experience shows that in Michigan, adults take a huge risk even by just advocating for or offering support to LGBT

youth. Such possibilities keep many people closeted, unable to fully participate in community life or reach out to struggling or victimized youth. When policies force people to remain in the closet, young people lose out on the benefits of having those adults to turn to. This is one reason why it often falls to heterosexual allies to provide the services and support LGBT youth desperately need. As one heterosexual man who ran a gay-straight alliance described, he has the "privilege of being a public advocate for my gay friends, brothers, sisters, sons, and daughters without fear of being fired from my job or evicted from my home" (anonymous, written testimony). This privilege is currently denied members of the LGBT community.

"Please consider this testimony for the sake of our young people. As a teacher in the public school system, it is disconcerting to hear over and over again that had a student known he had one teacher with whom he/she could talk with, that understood the struggles of coming out, he/she may be alive today. Because Michigan's GLBT teachers are not protected under the civil rights laws, they face potential job dismissal if they are open about their lifestyle; if they are open about who they love. Many students would welcome the opportunity to know there is at least one teacher in his/her building that could relate to the personal difficulties facing "coming out" youth." – Anonymous, written testimony

When people are afraid to come out, it also perpetuates an environment in which homophobia and heterosexism fester. Research shows that intergroup contact, whereby heterosexual people interact with LGBT people, lowers sexual orientation-based prejudice. The intergroup contact hypothesis was first described by Gordon Allport (1954) and later developed as a theory by Brown and Hewstone (2005). There is widespread substantiation for the basic premise that intergroup contact between disparate groups of people is associated with decreased prejudice and discrimination. In particular, research has shown that intergroup contact among sexual minorities and a heterosexual person reduced prejudice against – and improves attitudes toward – LGBT persons (Herek, 2003).

Intergroup contact works by reducing anxiety regarding out-group members, increasing empathy with the out-group, and reducing prejudice directed towards the out-group (Pettigrew & Tropp, 2008). Though initially developed for racial and ethnic encounters, the strongest contact effects have been found for LGBT and heterosexual intergroup contact (Pettigrew & Tropp, 2006). When the environment does not provide conditions under which it is safe to come out, meaningful intergroup contact becomes less likely. Testimonials also suggested that the lack of nondiscrimination protection makes people afraid to stand up for LGBT rights and to educate children about homophobia and heterosexism:

> ...teachers are terrified of teaching their children to treat LGBT people with respect out of fear of losing their jobs. I'm a teacher educator who strives to get my students to understand that all students in public schools have a fundamental right to attend school free from harassment - and that includes teachers' responsibility (and moral obligation) to stop bullying/harassment, including that based on actual or perceived sexual orientation, gender identity or gender expression. The lack of protections in the state of MI perpetuate discrimination to all sectors of society, from youth, to employees, to adult citizens (anonymous, written testimony).

Policies that keep people closeted thus further serve to perpetuate prejudice and discrimination by limiting opportunities for meaningful contact with LGBT persons, making it unsafe to voice support for LGBT rights, and limiting efforts to reduce heterosexism and homophobia.

Testimonials suggested that LGBT persons were particularly likely to conceal their sexual identities at work. Research advises that regardless of whether they are discriminated against, staying closeted at work negatively affects LGBT employees. Estimates suggest that over half of LGBT employees hide their identities to most at work (Hewlett

"First of all, such a law would allow those I know who are not fortunate enough to be open as I am at work to feel as though they can come out or at least no longer have to lie outright about their sexual identity when asked about their personal lives." - Anonymous, written testimony

& Sumberg, 2011; Human Rights Campaign, 2009). A survey from 2008 reported that over one-third (36%) of gay men and lesbians do not disclose their sexual orientation at work (Out & Equal, 2008). Similarly, in 2001, a survey conducted by the Kaiser Family Foundation (2001) suggested that 37% of LGB employees were not out to their bosses. People often do not disclose their identities out of fear that it may hinder their career advancement or opportunities (Human Rights Campaign, 2009). This fear is justified, as people who are out at work are more apt to face discrimination and harassment, including job loss, than those who conceal their identities (Sears & Mallory, 2011). People remain closeted to bosses and coworkers because of anticipation of losing a job, harassment, or other adverse employment actions if their sexual orientation were to become known (Croteau, 1996; Lambda Legal, 2005; Minnesota State Bar Association, 2005).

LGBT persons are negatively impacted when they stay closeted as well as when they 'come out' and experience discrimination (Croteau, 1996; Ragins, 2008). Fears associated with coming out are associated with job attitudes (Ragins, Singh, & Cornwell, 2007); being out at work is associated with more job satisfaction and commitment, better mental and physical health, and greater productivity (Hewlett & Sumberg, 2011). Individuals who are closeted are more likely than those employees who are out to be depressed, avoid social work events, be distracted at work, feel exhausted, and search for another job. Out employees are likely to be more committed to their jobs and report greater job satisfaction (Day & Schoenrade, 2000). The fear of discrimination is also associated with less career advancement (Rains et al., 2007; Hewlett & Sumberg, 2011). As such, work environments where it is acceptable and safe to be out are better for employees, and therefore better for businesses (Burns, 2012).

Rather than purposefully conceal their identities, employees often seek employment in places where employers are upfront about supporting diversity in sexual orientation or where employers are at least legally prevented from discriminating. When LGBT people purposefully seek employment opportunities, it is known as "job tracking" (Lambda Legal, 2005). The testimonials provide evidence of this phenomenon (See, "Impact on the Economy"). People are leaving the state to find such opportunities and are seeking out jobs with employers that have policies and environments inclusive of and favorable toward LGBT employees. To people who oppose LGBT rights, this likely does not seem problematic, as its consequence is that it further segregates LGBT persons. But for LGBT persons, when the lack of prohibitions against discrimination suggests a need for closeting and job tracking, "the result is that fewer employment opportunities are effectively available to LGBT workers than to their heterosexual counterparts simply because of their sexual orientation and/or gender identity" (Sears et al., 2009, p. 29). Members of the LGBT community thus have decreased access to employment opportunities, even if they do not personally experience discrimination.

"The expansion of the Elliott-Larsen Civil Rights Act 453 of 1976 would serve Michigan wisely as it is rebounding from the greatest economic crisis since the Great Depression.

ELCRA expansions would provide incentives for inclusive corporations to do business in Michigan and attract talent. I know we can rejuvenate the Michigan economy, and make our state inclusive of all people." – Anonymous, written testimony

Discrimination impacts the economy

The full economic impact of discrimination based on sexual orientation and/or gender identity/expression is difficult if not impossible to quantify. The testimonials received by the Department indicate that there are numerous ways that the lack of specific nondiscrimination

protections for sexual orientation and/or gender identity impact businesses' profits and a community's general economic health.

Businesses with inclusive non-discrimination policies are better able to attract top talent. Analysis of corporate non-discrimination statements from Fortune 500 companies suggests that the main rationale that motivates companies to adopt such policies is that they help recruit and retain a talented workforce and thus gain a competitive advantage (Sears & Mallory, 2011). Burns (2012) suggests that there are three primary ways discrimination limits an employer's ability to attract a strong workforce: (1) having non-inclusive policies detracts from a desire to work for certain companies ("job tracking"), (2) hiring personnel may hire based on non-work related criteria, and (3) hostile work environments discourage current employees from recommending their employer to others. In an online survey of 2,501 adults, 89% of LGBT respondents and 72% of heterosexual respondents agreed that it is important to work for companies with inclusive non-discrimination policies (Whiteck-Combs Communications Inc., 2006). In a study of over 1,000 LGBT and allied Michigan citizens, 70% reported working for employers with non-discrimination policies including sexual orientation. These data suggest that businesses with inclusive non-discrimination policies are more attractive to a wider pool of applicants and more likely to attract

"The health of Michigan – of our social fabric and our economy—depends on ensuring that Michigan is a place that attracts and retains creative, productive people, and provides a healthy living environment for them once here." –A. Wilson, testimony from Ann Arbor

"The anti-gay laws we have hurt their [employers] ability to secure the services of the best candidate for the job."- Anonymous, written testimony

talent from diverse segments of the workforce. The testimonials suggest that people seek employers with these and other LGBT-friendly policies and that those who work for employers with these policies consider themselves "very fortunate." Moreover, people consider it a "deal breaker" when employers do not have inclusive policies.

Retaining employees is also important to a company's bottom line. As previously indicated, multiple people indicated that their former employers fired more than one person for reasons related to their sexual orientation or gender identity/expression. Each time employees are not retained, either because they are fired, encouraged to leave, or choose to leave because of an inhospitable work environment, it introduces turnover-related costs. Money, time, and resources must be spent on finding, hiring, and training new employees, rather than spent on business operations (Burns, 2012). When employees leave an organization, turnover-related expenses are estimated to be between $5000 and $10,000 for an hourly worker and $75,000 and $211,000 for people making $100,000 a year (Robinson & Dechant, 1997). Similar estimates put the expenses associated with replacing a departing employee at between 93% and 200% of the employee's annual salary (Hewlett & Sumberg, 2011).

"That she was fired did not just impact her and her family. It impacted me and the people who worked there who cared about her. It impacted the work environment and our image of the company". – Anonymous, written testimony

Testimonials offered to the Department show not only that people were forced to leave their jobs, but also that others willingly decided to leave discriminatory work environments – both making employers accrue turnover-related expenses. For example, in written testimony, at least three employees decided to leave a small company after a lesbian colleague was fired for attending a company picnic with her partner and their son. The three other employees indicated

that they left because "the atmosphere completely changed, no one trusted the management...and [they] didn't want to continue working with people who had treated [their] friend so callously and who could be so homophobic." This sentiment corresponds with research suggesting that gay and lesbian professionals and managers leave their employers for reasons related to workplace fairness at a rate twice as high as heterosexuals (Level Playing Field Institute, 2007). Inability to retain LGBT employees and their allies results in retention-related costs, particularly for businesses where multiple people leave at similar points in time.

"I stopped looking forward to going to work and a number of people started leaving the company. Before my own performance review, I was anxious for weeks, though I have never been the type to be stressed by such matters." – Anonymous, written testimony

Discriminatory business practices negatively impact employee productivity, effectiveness, and performance (Burns, 2012; Sears & Mallory, 2011). In work environments where employees fear discrimination, employees exhibit lower job satisfaction and commitment, lower productivity, heightened absenteeism, and higher rates of mental and physical health problems (Hewlett, & Sumberg, 2011; Robinson & Dechant, 1997). During testimony, people reported being anxious and stressed at work and that they did not look forward to going to work in discriminatory companies. In such environments, a company's profitability may suffer (Burns, 2012). Discriminatory environments for LGBT employees have also been shown to negatively impact the performance of heterosexuals (Everly, Shih, & Ho, 2012). One therapist's testimony drove home this point: "In an atmosphere where discrimination and bullying against one group is accepted, people from other groups are less successful in reaching their goals...awareness of the discrimination negatively affects a much broader portion of our populace" (S. Rassi, testimony,

Ann Arbor). This is symbolic of the ripple effect that grips communities that experience hate crimes.

Discrimination may also hurt businesses' profits by alienating LGBT consumers. In 2012, the LGBT consumer market was estimated to be $743 billion dollars (Whiteck-Combs Communications Inc., 2010). Research involving over 1,000 LGBT Michiganders and their allies determined that over two-thirds (67%) sometimes or routinely used their spending power to support LGBT-friendly businesses (Morrison & McCornack, 2012). Research also suggests that this number is comparable to national samples where a sizable proportion of lesbian and gay consumers were found to purchase products from LGBT-friendly businesses, even if it costs more than comparable products (Whiteck-Combs Communications Inc., 2010).

"As I look back I realize that every year as my partner and I decide where to spend our vacations ...we almost never choose Michigan. ..we almost always choose to go somewhere that is more accepting, more welcoming... We go to places where we can relax and be who we are without fear of being attacked or discriminated against because of who we are. ...our vacation dollars go somewhere else, and not to Michigan. We fill up at Ontario's gas stations, eat out at Californian restaurants, go to a Canadian hotel or campsite, and buy souvenir t-shirts and other stuff from an Ontario Provincial Park not a Michigan State Park. We're not wealthy, so our dollars alone probably don't make much difference. But we are not alone in making these decisions. If other members of the LGBT community make similar choices, then somewhere between 3% and 10% of Michigan's population may be spending their vacation dollars elsewhere. And we don't know how many people from other states are choosing to vacation elsewhere when they might have come here, had we been a more welcoming place."–A. Wilson, testimony from Ann Arbor

These studies suggest that LGBT consumers reward socially responsible businesses. There are also increasing attempts to urge LGBT consumers and their allies to consider the corporate practices of businesses in their purchasing decisions (Human Rights Campaign, 2012). The testimonials further suggest that discriminatory policies and behaviors do alienate consumers. A somewhat different example that produced a similar result was provided by the

daughter of a lesbian couple who described how her parents, discouraged by the discriminatory service they received planning a commitment ceremony in Michigan, eventually decided to purchase everything from Canada "as a sort of political statement."

The testimonials also demonstrate that where people choose to vacation, and thus where their tourism dollars go, is also influenced by similar concerns. In the past few years, Michigan has been marketing itself as a travel and tourism destination as part of an effort to revitalize the state's struggling tourism industry (Holcomb, 2008; Michigan Economic Development Corporation, 2012). In much the same way that business practices and policies may influence LGBT consumers, both specific state policies and the general perception of whether a state is 'gay friendly' can impact vacationers' destination choices. People vacationing for fun and relaxation may want to go somewhere "more accepting, more welcoming." Studies of lesbian and gay tourism show that places renowned for being LGBT-friendly (e.g., Chicago, New York, San Francisco) are those favored by LGBT travelers (Community Inc., 2010). In the testimonials, LGBT travelers not only reported choosing to vacation outside of Michigan, but also ending their Michigan-based vacations early when perceiving that they had suffered discrimination.

We have seen how LGBT-related policies can affect business, and it is clear that business success has a considerable effect on the tax dollars collected. When employment is lost or people are underemployed, the state loses the tax revenue it would have gained from lost or increased wages and spending power. As previously described, LGBT persons often have higher rates of attaining college and graduate degrees than the U.S. general population, yet their incomes are often low relative to people with comparable educational attainment. Numerous testimonials described experiences of being underemployed and having difficulty finding a job

after being fired from previous jobs for reasons related to sexual orientation or gender identity/expression. If LGBT residents had incomes similar to the general population and were employed at rates similar to the general population, the state would gain additional revenue.

"I'm writing to tell you my dad's story. About 6 (sic) years ago when I was in high school, he lost his job as a police officer when the police chief saw him at a local gay bar. My dad had no means of fighting for his job. He could not find another job and was living on unemployment benefits for as long as the state would allow."
–anonymous, written testimony

Workers who lose employment participate in public assistance programs often paid for by the state. When employees lose income and insurance coverage, they often must rely on state assistance programs to replace their income and insurance. LGBT persons in Michigan are particularly likely to turn to state assistance because they cannot rely on domestic partnership benefits that public employers in other states would provide to unmarried partners, but Michigan law prohibits (Allen, 2011). Family conflict over sexual orientation or gender identity/expression also means that LGBT persons are more often unable to obtain financial support from relatives in times of need (Ray, 2006). According to the 2000 Census, same-sex couples are significantly more likely than heterosexual married couples to receive public and emergency cash assistance (Albeda et al., 2009). According to the National Survey of Family Growth, lesbian and bisexual women are also more likely than heterosexual women to receive public assistance and food stamps (Albeda et al., 2009). Quantifying how much employment discrimination costs the state due to engagement in public assistance programs is difficult without reliable estimates of the number of LGBT people using various public assistance programs due to discriminatory job loss. Only one study has made an earnest effort to do so. Herman (2011) estimated that the state of Massachusetts spends approximately $3 million annually in Medicaid and Medicare expenditures

due to employment discrimination based on gender identity/expression. It also found that it costs Massachusetts millions of dollars each year in public assistance expenditures and lost tax revenues. Herman's (2011) estimates focused only on state expenditures incurred as a direct result of employment actions and did not account for less direct economic impacts like discharged employees' decreased spending power due to income loss which would also impact sales tax revenues and businesses' profits/taxes.

"I've lived in Michigan all my life, but recently made the decision to leave....The last straw happened a few weeks ago when I abruptly lost my job--a job that I have had for 5 (sic) years, where I have never received a poor review, and that I excelled at... Rather than look for new jobs locally, I decided to look elsewhere -primarily in Chicago, New York, and other places I thought would be more welcoming. You only live once, why live somewhere in constant fear, surrounded by narrow-minded people? We're looking to raise a family in the next few years. We don't feel safe in Michigan doing so. If we have to live in fear of losing our jobs and health coverage at the whim of homophobic people, then we can't justify raising a child here. Putting ourselves in that situation is one thing, putting a baby into it another. So, fortunately, I found a position in Wisconsin where I can't be fired for the bogus reason that I am in a relationship with another women. My partner, supportive as she is, has uprooted herself from her job and will be looking for something there as well. So, how has this impacted me? It has made me, and my partner, leave the state we've called home all our lives. It has made me sickened to call home, a place whose laws stem from the dark ages. It has made me have to leave my house, my family, my friends, and my community for the sake of survival."- Anonymous, written testimony

Just as people do not want to work in discriminatory environments, people do not want to live in places where they are treated unjustly. The most recurrent theme the Department heard when soliciting testimony related to the economic impact of discrimination involved somebody reluctantly moving out of state to a place where they feel more safe, appreciated, and accepted. This was the only theme to be consistently heard in all public forums and described in the written testimonials. Approximately twenty percent of the testimonials alluded to people leaving Michigan for reasons related to discrimination.

Professionals and college students, including heterosexual identified students, said that they planned to leave Michigan because they do not feel that it is welcoming of LGBT persons. They described how "the current laws" were compelling them to leave and stated that they would not stay unless Michigan became "a more loving and accepting community for all people."

Mothers described how their kids had moved or were planning to move, fearful that they would be unable to find a job:

> *...she [my daughter] is thinking of leaving. And I'm here for a very selfish reason. I have MS and I am finding that I am requiring the help of my daughter more and more as time goes on. And I think that passing protections like this will, quite frankly, help keep my family together. – Jackson testimony*

Children of parents who lost jobs due to discrimination described their parents leaving the state. As one woman wrote, "I blame [my father's] former boss and this state for driving him away." As these stories suggest, out-migration does not only impact the economy, it also impacts families when it divides them. Professionals told stories of people "moving out of Michigan" and described how unfortunate it was that their communities were losing more people. As exemplified by the quote in the margin, many of the people who have left or who are leaning towards leaving are professionals and college graduates, the very people this state talks about trying to find ways

> *John, a banker, left for Chicago. Paul and Peter, both doctors, moved to California. Ken, a lawyer, moved to Toronto. They left because they felt unwelcomed here as gay men. They saw the few rights they had in this state being taken from them and noticed that Michigan was moving backwards while other places were moving forwards (sic). Other places were becoming more welcoming to them and their families. I miss my friends. Their families miss them. And this state should miss them too. All were professionals with disposable incomes. All were contributing to this struggling economy. All were the kinds of people this state should be seeking to attract. As is, the state is repelling them. What incentive is for them to stay when the most basic of civil rights are denied to them? – Anonymous, written testimony*

to attract in so many other contexts. These are also people with the disposable incomes and resources to uproot their lives.

The recent population loss has had a serious impact on the Michigan economy. The Michigan Economic Development Corporation (2010) released a report in which they assessed the state's economic strengths and weaknesses relative to 17 other states that compete with Michigan for economic development. In 2010, Michigan ranked second to last overall according to 150 different indicators of economic strength. While there were a number of areas in which Michigan ranked below average, one area was in terms of the state's out-migration of college educated people. The report recommended that in order to increase Michigan's economic competitiveness, it was important to incorporate measures to mitigate the state's population loss and reverse this trend.

"The day may come when as with so many others, I must leave the darkness of Michigan for the light of another home. The census and less formal population studies show exodus has been the trend for our state with individuals, but also that businesses decline to move here." - C. Thornton, testimony from Ann Arbor

Urban policy-makers have long argued that place matters in attracting and retaining workers, businesses, and citizens. Accordingly, one school of thought is that successful urban development begins with the ability to attract a skilled, creative, diverse workforce and doing so requires the pursuit of cultural amenities and progressive social legislation that attracts people. The crux of this argument is that if places attract highly skilled and educated workers, then innovative, fast-growing companies will follow, whereas development will be stifled in places that fail to attract or retain skilled, educated workers. The other view holds that 'if you build it they will come' and contends that successful efforts begin with recruiting businesses and talent will follow the jobs. In reality, while this chicken and egg argument may be significant to

planners, the simple reality is that in the end you cannot have one without the other. No community can long attract talent without jobs, or jobs without talent.

To better understand the motivations of highly educated people when choosing where to live, the Department surveyed graduate and professional students from Michigan's top colleges and universities. The remainder of this section details the results of the survey data.

In all, 449 eligible students participated in this survey (see table 5), 12% of whom identified as LGB. Most were pursuing their Doctorate or Master's degree. Fifty-two percent of heterosexual and 41% of LGB participants were raised in Michigan. LGB participants were significantly more likely (55%) than heterosexual students (28%) to say that they had plans to leave the state after graduation. Only 8% of LGB students reported planning to stay in Michigan after graduation.

Heterosexual and LGB participants also cited different factors as having the greatest impact on their decisions regarding whether to stay in or leave the state (see table 7). Participants were asked to rank how important (1=very unimportant to 5 = very important) each of 12 factors were to their decision. Heterosexual and LGB participants agreed that the availability of jobs and job security were their most important considerations. The next most important factor cited by LGB students was state laws, followed by (in order of importance) cost of living, recreational opportunities, the political climate, demographic diversity, safety, weather, schools, proximity to family and friends, and property values. Heterosexual students were influenced by (in order of importance) proximity to friends and family, availability of

"Michigan wants to better itself, but it seems to be making counterproductive laws, laws which do not encourage LGBT people to stay around." –Anonymous, written testimony

recreational opportunities, the cost of living, safety, school reputation, property values, weather, demographic diversity, political climate, and of least importance, state laws.

Table 5: *Graduate and Professional Student Survey Demographics*

Variable	Percentage (All)	Percentage (Heterosexual)	Percentage (LGB)
Education	(N=449)	(N=384)	(N=49)
Masters	28%	28%	29%
PhD	67%	67.5%	63%
J.D./L.L.M	4%	4%	2%
Ed.D	2%	2%	6%
M.D/D.O.,D.D.S,R.N., D.M	1%	.5%	4%
Other	3%	4%	2%
Political Party	(N=436)	(N=378)	(N=49)
Democrat	53%	52%	63%
Independent	27%	27%	22%
Republican	12%	12%	6%
Other	9%	8%	8%
Gender	(N=444)	(N=384)	(N=49)
Female	55%	55.5%	51%
Male	44%	44%	47%
Transgender	.5%	.5%	2%
Other	.5%	-	
Relationship Status	(N=442)	(N=383)	(N=48)
In a committed relationship	58%	58%	60%
Not in a committed relationship	42%	42%	40%
Parenthood Status	(N=443)	(N=383)	(N=49)*
Has children	24%	24%	16%
Plans to have children	61%	63%	51%
Does not plan to have children	15%	13%	33%
State Status	(N=444)	(N=384)	(N=49)
Raised in Michigan	50%	52%	41%
Not Raised in Michigan	50%	48%	59%
Plans after Graduation	(N=443)	(N=383)	(N=49) *
Stay in Michigan	25%	27%	8%
Maybe stay in Michigan	44%	45%	37%
Will not stay in Michigan	32%	28%	55%

Note. * indicates a significant difference between heterosexual and LGB participants.

Table 6: *Graduate and Professional Students' Plans to Stay in the State after Graduation*

Variable	Percentage Staying	Percentage Not Staying	X^2, p
Political Party			
Democrat	26.52%	36.96%	15.19, .019
Independent	16.52%	29.57%	
Republican	31.37%	21.57%	
Other	25.64%	23.08%	
Gender			
Female	28.81%	31.28%	25.82, .000
Male	19.39%	31.63%	
Transgender	50%	50%	
Other	0%	50%	
Relationship Status			
In a committed relationship	28.6%	18.8%	9.26, .01
Not in a committed relationship	26.7%	38.71%	
Parenthood Status			
Has children	39.05%	20%	21.43, .00
Plans to have children	21.48%	32.59%	
Does not plan to have children	14.93%	44.78%	
State Status			
Raised in Michigan	36.32%	17.49%	15.19, .019
Not Raised in Michigan	12.73%	45.91%	

Note. Many answered that they 'may' stay in the state after graduation; they are not accounted for in the table, but are accounted for in the analysis. When 'p' is less than .05, it indicates a significant difference between people planning to stay in the state after graduation and people planning to leave the state after graduation.

LGB participants' decisions are more strongly influenced by demographic diversity, the political climate, and state laws; heterosexual participants' decisions are more strongly influenced by property values and the proximity to their friends/family. Because the factors where change is necessary to attract/retain LGBT students play so small a role in the decision making of others, there is no relative downside to making a dedicated effort to attract/retain both.

Table 7: *Factors impacting participants' decisions regarding whether to stay in or leave Michigan*

	Heterosexual Mean(SD)	LGB Mean(SD)	t value
Recreational activities	3.81(1.17)	3.73(1.30)	-.40
Weather	3.42(1.14)	3.33(1.23)	-.48
Cost of living	3.79(1.19)	3.84(.95)	.33
Demographic diversity	3.18(1.12)	3.67(1.19)	2.64*
Political climate	3.08(1.12)	3.69(1.20)	3.42*
Job opportunities	4.51(1.09)	4.36(1.09)	-.90
Job security	4.36(1.10)	4.16(1.14)	-1.11
Property values	3.45(1.08)	2.96(1.05)	-2.76*
Proximity to family/friends	3.84(1.24)	3.20(1.22)	-3.31*
Safety	3.79(1.17)	3.56(1.10)	-1.27
School systems	3.67(1.28)	3.33(1.45)	-1.65
State laws	3.00 (1.02)	3.93(1.23)	5.67*

Note. * indicates a significant difference between heterosexual and LGB participants.

Given the importance of the political climate and state laws to LGB participants, it would be expected that they would anticipate moving to places perceived as having favorable LGB supportive laws. The Department asked LGB participants planning to leave where they anticipate seeking a job. The following places were most often noted as intended locations: California, Illinois, Washington DC, Massachusetts, New York, New Hampshire, Vermont, and Canada.

"Among other things, how are we supposed to attract (or keep) the bright, young, well-educated workers we need in this state if we have antiquated laws? They'll just flee to California to work." – Anonymous, written testimony

"We are losing talented people to competitors in our region because we're not protecting them." – A. Garcia, testimony from Detroit

"We must offer young people the kinds of communities in which they want to live and work-vibrant, tolerant, and diverse communities, if we want them to stay here." – J. Henshaw, testimony from Grand Rapids

Because many different laws could impact peoples' decisions, participants were asked to elaborate on the specific state laws and policies that affect their decisions. Heterosexual participants who consider leaving the state mentioned laws specific to their chosen professions, insurance laws, right to work laws, unemployment laws, medicinal marijuana laws, tax laws, school of choice laws, concealed weapons laws, abortion laws, and policies regarding funding for higher education. This contrasts with the laws most often identified by LGBT students as influencing their decisions to move elsewhere, which included those related to LGBT civil rights: a desire to live in places that support civil unions or gay marriage, offer domestic partnership benefits, allow second-parent adoption, provide anti-discrimination protections, and have LGBT inclusive anti-bullying and hate crimes laws and protections.

"Michigan is in an economic slump to say the least. It is experiencing massive unemployment. Lots of people are leaving the state and I really can't blame them. We need to do everything that we can to attract people here. I believe that this law is one change that can do that. It would be like a welcome mat to the state and say that we accept and care about people irregardless (sic) of their sexuality and gender. So I think it would have a positive impact on the economy by making Michigan seem a more welcoming place to live and work." – Anonymous, written testimony

We heard that:

> Basic lack of protection and equal rights for the LGBT community is the primary issue.
>
> Laws that discriminate against gay people are not acceptable, and we have had many of those over the last few years.
>
> I will not remain in Michigan if their anti-gay legislation remains intact. I want to live somewhere that realizes that I am a human being that deserves basic human rights. At this time, Michigan is not such a place. I'll move as soon as I can get done with school.

Although less often cited as reasons to consider leaving the state, similar sentiments also color the way people who identified as heterosexual view Michigan:

> I'm not gay, but the Michigan ban on benefits for same-sex couples is a big turn off. I'm planning on avoiding states with bigotry written in their state laws.

> Michigan's lack of laws promoting equal rights for gay and lesbians and the near passage of an anti-bullying law allowing bullying based on sexual orientation are appalling and though it does not affect me personally, it does influence my desire to live here.

They were also shared by people who had lived their entire lives in the State:

> Michigan's laws treat LGBT persons unjustly. I've lived my entire life in this state and do want to stay here because of all my family and friends. However, I know that staying here will not be good for my state of mind and sense of personal security.

For some, the lack of LGBT supportive state laws trumped even professional opportunities:

> Anywhere I decide to call home will need to provide protections from discrimination and civil unions, at a minimum. I won't even consider staying here after graduation, no matter how good the job offer.

While many people simply wanted to live and work in places that provided these laws, others felt that Michigan did not deserve their skills, expertise, and money:

> I will not live anywhere that does not offer workplace protections for people on the basis of sexual orientation and gender identity. I will not live anywhere I would live in fear of being fired and not have a means of recourse. I have gone to school for as long as I have to open doors for myself and have more opportunities. Staying in Michigan limits those opportunities I've worked for. This state does not deserve me.

People who were uncertain about whether to stay in the State or move elsewhere were also influenced by LGBT-specific laws:

> I would be more inclined to remain in the state of *(sic)* Michigan's laws reflected my values that same sex couples deserve the same rights as heterosexual couples.
>
> Though I identify as straight, laws that prohibit gay marriage and civil rights make me less likely to stay in state.
>
> The state constitutional amendment banning any recognition of marriage or marriage-like union for LGTB individuals is utterly abhorrent to me; all else being equal, I would strongly prefer to live in a state that has not actively codified such bigotry into their state constitution. ...discrimination is problematic both for what it says about the values of the population in the state, and the curtailing of future opportunities.

Additionally, some students with plans to stay in the State indicated that in the future, their decision may change due to Michigan's LGBT-specific laws:

> GLBTQ rights for job protection, housing equality, marriage, and families are all non-existent here so I could easily leave the state to get to a better place to support a family.

These data, like the testimonials, show that LGBT-specific policies impact where Michigan residents live, work, spend their money, raise their families, and call home. People, LGBT and heterosexual alike, are leaving not just to chase professional opportunities elsewhere, but also to flee the denial of personal opportunities here. Michigan is not seen as a safe, welcoming state in which all may reside. Testimonials suggest, and the survey confirms, that positive public policy changes, including prohibiting discrimination based on sexual orientation and gender identity/expression would be a step toward creating a more welcoming state and equitable social environment.

"The proposed amendment would send a strong message that Michigan does not tolerate discrimination of any kind. It would go a long way toward achieving the kind of social change that is necessary for a truly equal and non-discriminatory social climate to exist." - Anonymous, written testimony

IV. ADDRESSING COMMON MISCONCEPTIONS AND UNFOUNDED FEARS

All public policy questions have (at least) two sides. Some issues, such as those that involve cultural and political issues, generate more disagreement than others. The purpose of this report and the project that led to it is not to address moral or religious issues related to homosexuality. Similarly this report does not intend, nor endeavor, to change minds. The Department recognizes and respects the rights of individuals to hold their own opinions, especially when moral, religious, or spiritual beliefs are involved.

The Department also did not set out to determine whether it would or would not support amending ELCRA to prohibit discriminating against others based on their sexual orientation, or gender identity/expression. Both the Department and the Civil Rights Commission, to whom this report is to be submitted, have long been on record as supporting such an amendment as well as other public policy changes that would ensure LGBT individuals are treated fairly and equally in the public sphere.

Michigan is currently fighting its way back to the rock solid economic strength it once held. Our public policy makers from across all perspectives have indicated that their first priority is economic recovery. The purpose of this report was to assess whether, in addition to the argument about equality, there were also economic factors that policy makers should weigh during any future debates on the adoption or repeal of LGBT-inclusive legislation and policies. The Department both reviewed previous data and sought further information on whether there was empirical merit to the theory that there is a direct correlation between a state's economy and the inclusiveness of its laws and protections.

This report is therefore not an attempt to make or rebut every possible aspect and facet of the issues that might be grouped under a heading of "LGBT rights." This report focuses on employment, housing, education, public service and public accommodation nondiscrimination laws because they most directly relate to economic vitality and are also where the greatest data is available. However, there are other policies that also directly relate to whether Michigan is seen as a welcoming environment. Policies like same parent adoption, partner health benefits, and even marriage, all have economic consequences to one extent or another. This report does not address each of these issues, nor does the Department feel the answer is uniform across categories. We do however assert that the economic implications of these policies are real, predictable, and should be a part of informed discussion. It is in the interest of informed discussion that the information in this section of the report is presented. As we held public hearings, we repeatedly observed that in addition to appropriate concerns and reasonable disagreement, some of the public opinion, while sincere and considered, was based in part upon verifiably false information, baseless fears, and false equivalencies.

The following are exposed not to disparage the good intentions of those who raised them, but because we respect that all those who spoke to the Department sincerely did so with good intent. The Department respects each point that was raised by those who delivered testimony and understands that the fears that were expressed were very real (even when they were based on misinformation). This section addresses these perspectives.

Ultimately, the Department seeks to encourage a comprehensive conversation on the issue of protections for the LGBT population and can only do so when all voices feel that they have equal opportunity to express their opinions. We do not wish to silence those who will continue to disagree with us, indeed their arguments will be made stronger when made without

relying on bad information. What is most important is that Michigan moves forward with these debates based upon the best, most complete and accurate information available.

Many of these misconceptions have already been addressed in this report. The argument that "too few" people are negatively impacted by discrimination based on sexual orientation or gender identity/expression is disproven by both the qualitative and quantitative data presented in this report (See "Convergent evidence of discrimination"). Others expressed an opinion that any efforts to amend ELCRA were solely for political reasons, since doing so would not actually "change" anything because the LGBT population is already protected by numerous existing laws currently in place. For a more detailed examination of the current state and federal laws that exist, readers should review "The Present State of LGBT Inclusion."

Unlike previous sections, the Department chose not to identify individual speakers because this section is meant to clarify not to rebuke anyone for their sincerely held beliefs. Thus the opinion that the LGBT population's disproportionate wealth makes them ineligible for protections because they are not "economically disadvantaged" (testimony from Holland) must be rejected, not because the Department feels that discrimination laws should apply regardless of one's economic status. Separate but equal is a well-rejected principle. Moreover research has shown that the LGBT community tends to have lower earnings and a lower socioeconomic status (See "Research documenting discrimination based on sexual orientation and gender identity/expression").

Criminality

> "In this religiously and politically conservative area, there are many who believe that homosexuality should be a capital crime.....even though the death penalty does not currently apply in Michigan." – Anonymous, written testimony

Several people said they feared a law prohibiting discrimination based on sexual orientation would violate 'current' state laws regarding sodomy (MCL 750.158) and cohabitation (MCL 750.335). As one person testified: "One of Michigan's...laws that they have on the books is Act 328 of 1931. Section 750.158 makes it a crime against nature or sodomy, and it goes on to continue what the penalty is for that. So when we study something like this, and we're trying to even put something like this into effect, it is going against a law that we already have on the books against such things" (testimony from Holland).

However, in 2003, the U.S. Supreme Court ruled that consenting adults are free to engage in private intimate conduct in the exercise of their liberty under the Due Process of the Fourteenth Amendment (*Lawrence v. Texas*, 2003). This ruling effectively invalidated all state sodomy and cohabitation statutes (including Michigan's) as unconstitutional.

Several individuals raised concerns that if Michigan includes non-discrimination protections based on an individual's sexual orientation or gender identity/expression then ELCRA would be used as a criminal or civil defense against accusations of pedophilia, rape, or child molestation. Every time this concern was raised, in both written or oral testimony, the speaker described an example in which a male-born person who was wearing women's clothing would enter a women's restroom where women and children were alone and vulnerable. In the hypothetical, the male-born person sexually molests or rapes the child or acts voyeuristically. Upon being caught, the assailant would use ELCRA as a legal defense on the grounds that the

state was prosecuting him based on his gender identity/expression or sexual orientation. These "bathroom panic" concerns are unfounded for a variety of reasons.

First, these concerns ignore the reality that transgender and transsexual persons already share public bathrooms with the rest of the population. Second, there is no evidence that this has ever happened even in those places that have transgender-inclusive nondiscrimination laws. Most important, ELCRA is not, has not been, and could not be, raised as a legal defense to a crime. ELCRA provides legal remedies for those who have been discriminated against in housing, employment, education, or access to public accommodations. It does not provide protections for those who are being criminally prosecuted for any reason. The claim that prohibiting discrimination will increase crimes is patently false.

Religious freedom concerns

During several of the hearings, individuals raised concerns that expanding legal protections to include sexual orientation and gender identity/expression would undermine religious freedoms, hurt churches specifically, and would violate the First Amendment. Many people spoke about how it would affect their ability to worship freely. One man testified that he feared Christians would "face jail time" before they were "forced to [give] in to something" that violated their moral beliefs (testimony from Holland). The Department also received testimony that faith-based organizations would no longer be able to provide services to or for the state because they would be forced to follow a law that would undermine their sincerely held beliefs (testimony from Grand Rapids).

First, the Department supports, and when appropriate, defends religious freedoms. We would defend the rights of anyone to tell us how they think an issue we are considering would conflict with their religious beliefs, and we thank those who did so. Testimonies described,

sometimes passionately, that an nondiscrimination law that offered protections based on sexual orientation or gender identity/expression offended their personal religious beliefs, faith traditions and mores. This is an appropriate concern for a public policy debate, and one the Department is sensitive to. However, at no point in the testimony did anyone articulate how their right to worship or practice as they wished would be negatively affected by a law that prohibited discrimination against others based on their sexual orientation. Proposed legislation has exempted religious institutions from the sexual orientation and gender identity/expression provisions. It does not interfere with the worship or practice of individuals. This preservation of freedoms may be part of the reason that every member of the clergy who provided testimony did so in favor of expanding protections.

The First Amendment prohibits laws "respecting an establishment of religion" and of law "prohibiting the free exercise thereof" (U.S. Const. Amend. I). The Supreme Court has held that a law does not violate the First Amendment if:

> First, the statute must have a secular legislative purpose; second its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster 'an excessive government entanglement with religion' *Lemon v. Kurtzman* (1971).

Prohibiting discrimination in housing, employment, public accommodations and education is unquestionably a legitimate "secular legislative purpose." It is equally clear that it does not "advance" religion, and because religious institutions are exempt, that it does not create "excessive government entanglement with religion." The question therefore is only whether it "inhibits" religion. Notably, the question is not whether it offends, is contrary to, insults, or even disparages religion, and thus courts look at whether and how a law limits or gets in the way of a person's ability to practice their religion.

If ELCRA were amended to include protections for individuals based on sexual orientation and gender identity/expression, individuals would still be free to worship (or not worship) as they see fit, to believe and profess their religious beliefs, and to send their children to religious or secular schools. Faith leaders would still be free to exercise the rights and rites of their profession, and no prayer or liturgy would be altered.

An example is helpful here. Bakeries have a main purpose of making and selling baked goods, and a baker who opens one to the public must follow state law which prohibits firing or denying service to someone based on any of the protected classes covered by ELCRA. The baker thus cannot refuse to hire someone based upon that person's religion, even if that religion is contrary (or even offensive to) her own. The bakery may be closed on Saturday to observe the Sabbath and may follow kosher rules, but when it is open to the general public, it must be open to all the public, and the baker may not refuse service to someone of a different faith. Serving a customer does not endorse the customer's religious practices and the baker remains free to condemn those practices when not serving customers.

Similarly, amending ELCRA does not mean the baker must change her view on sexual orientation. It does not inhibit the baker's right to practice her religion in any way. It does not prevent her from expressing her opinion about matters related to her religion, or about other people's sexual orientation. It does not require that she endorse, or approve of, every customer or employee's sexual orientation or gender identity/expression, only that she cannot deny employment or service because of their orientation, or gender identity/expression.

Including sexual orientation and gender identity/expression in Michigan's non-discrimination laws would not violate the First Amendment. This is why similar provisions have

not been struck down as unconstitutional in any of the states or local jurisdictions that have already taken this step.

The religious opinions of all Michiganders must be shown respect and should continue to be a part of this public policy discussion as it moves forward. However, the claim that protecting people from discrimination based on their sexual orientation violates the First Amendment is false and has no place in the debate.

Burdens on business

Several people stated that they were concerned that amending ELCRA would create undue burdens on businesses. One woman, who works in human resources, feared that adding protections for individuals based on sexual orientation and gender identity would be "another burden on the system" of hiring, firing, and otherwise disciplining employees (testimony from Holland). This sentiment was echoed by those who feared that an employer would be sued for unlawful discrimination whenever they fired or otherwise disciplined any employee who happened to identify as LGBT.

Prohibiting discrimination in hiring, firing or disciplining employees does not place any direct burden on business. The prohibition places a burden on business only when the business is later required to show its decision was based on merit and not discrimination. This is true of any protected class, and in each instance businesses can be subjected to some false or even malicious claims. Any suggestion that claims will be disproportionately made in this instance is untrue. There is no evidence that suggests LGBT employees are more likely to bring false claims, and beyond being factually unsupportable the implied suggestion that LGBT individuals are more likely to lie about such things is offensive.

As was established earlier in this report, the number of cases filed would be similar to those under other protected classes. Discrimination claims based on sexual orientation or gender identity/expression would have to meet the same burden of proof as claims based on other protected characteristics.

The suggestion in many testimonies that LGBT inclusion would be "different" is very much related to the assertion that a change in the current laws or policies creates "special rights" for special people. These are spurious contentions. Employees should be hired and fired based upon merit. Non-discrimination protections simply require that everyone be treated equally and not judged differently based upon considerations irrelevant to job performance. Adding sexual orientation and gender identity/expression to ELCRA does not protect only homosexuals and lesbians from being fired; it protects everyone with a sexual orientation (in other words, everyone) equally. A gay person could not be fired because they were gay, a straight person could not be fired because they were straight, and no person could not be fired because someone thought they were something they weren't.

Prohibiting discrimination based on sexual orientation in employment, housing, and public accommodation does not give special rights to LGBT persons any more than prohibiting discrimination based on national origin (presently covered) gives special rights to Germans or Italians.

Constitutionality

A few people raised the argument that sexual orientation and gender identity/expression should not be added to ELCRA because doing so would violate the US Constitution as they are not valid protected classes. This premise is based upon both a misreading of the law and misapplication of legal theory.

First, the US Constitution does not list "protected classes." The case law interpreting the general constitutional guarantee that all will be protected equally has been applied to prohibit government from limiting protections or enacting laws that harm people disproportionately based upon certain characteristics. Laws that affect these "suspect classes" disproportionally are examined with higher levels of scrutiny and require greater government justification for them to be upheld as constitutional. Thus a law that treats different races differently is held to a higher constitutional standard and more likely to be found unconstitutional. The constitutional question of to what extent sexual orientation is to be treated as a "suspect class" when laws treat persons of different orientations differently limits government's ability to treat people differently. The Court may or may not (it has yet to decide) prevent government from denying benefits to people of one orientation that are provided to another. However, whether persons of all orientations are entitled to equal protection under the law is not at issue.

"Protected classes" are created by legislatures in civil rights laws. The primary federal law is the Civil Rights Act of 1964, in Michigan it is the ELCRA. These laws ensure people are treated equally by identifying things that cannot legally be used as factors in how people are to be treated for certain purposes. For example, both the state and federal law say that it is illegal to treat people differently in employment or housing decisions based on their race. In this context, a class is any way of classifying people differently, and a "protected class" is one that legislation specifically identifies as impermissible to use in specific ways.

The state legislature may designate protected classes. If Michigan determined that people with big feet were being denied jobs, housing and tables at restaurants (see section one of this report), that other states had laws ensuring that people with big feet were not discriminated against (section two) and that people with big feet were leaving Michigan, declining to move

business into the state and declining to vacation here (section 3) it could determine that this was unfair and pass laws prohibiting discrimination based on foot size. Moreover, if a person with small feet was denied housing, employment, public services, or accommodations, she too would be able to file a complaint with the Department.

There is absolutely no prohibition on the number of groups a state can say must be treated fairly and equally. Michigan already bans discrimination based on religion, race, color, national origin, sex, disability and age (which would receive heightened constitutional scrutiny), as well as on marital status, height, weight, arrest record, genetic information, and familial status (which do not receive heightened scrutiny). There is no constitutional question that Michigan can constitutionally prohibit discrimination based on sexual orientation. The question remains, however, whether the state should prohibit discrimination as a matter of public policy. This is ultimately a matter left to the legislature to decide. If the citizens of Michigan feel strongly about this issue, it is their responsibility to make their opinions known to their elected officials.

V. RECOMMENDATIONS FOR ACTION

This report was intended to broaden the understanding of the social and economic impact of nondiscrimination laws in Michigan. The four preceding sections provide a picture of the degree to which Michigan citizens support or oppose LGBT-inclusive anti-discrimination policies and the reasons for their opinions. Information gleaned from this project suggests that there are numerous barriers to successfully pursuing expansion of existing nondiscrimination laws. Nonetheless, there are multiple recommendations for the Department and the Civil Rights Commission that stem from this project:

1. **The Commission should publicly support the expansion of federal, state, and local laws that protect people from discrimination on the basis of sexual orientation and gender identity/expression in employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities.** Specifically, the Department should recommend that the Michigan legislature expand the ELCRA to include sexual orientation and gender identity/expression or support legislation with comparable policy implications.
2. **In addition to promoting expanded civil rights laws and policies, the Commission should oppose laws and policies that restrict LGBT civil rights.** The Commission and Department should continue to issue statements of support and/or opposition on matters related to legal protections for all Michiganders, specifically for those who are marginalized.
3. **The Commission should direct the MDCR to amend intake forms to reflect an individual's sexual orientation and gender identity/expression.** It is important to recognize the high rates of discrimination based on sexual orientation and gender

identity/expression. Given the insistence by people opposed to inclusive nondiscrimination laws, it is important to develop and implement reliable means of tracking discrimination based on sexual orientation and gender identity/expression. The MDCR can ameliorate this process by formally asking about sexual orientation and gender identity/expression on their filing intake forms. Though claims based on sexual orientation and gender identity/expression cannot be investigated, this information may serve as a valuable source of data for a number of organizations. Intake staff may also be able to direct claimants to resources, such as Equality Michigan, the ACLU, or the EEOC, that may be able to handle the complaints using different legal avenues.

4. **The Department should continue to do outreach and partner with organizations that are already fielding complaints of discrimination based on sexual orientation and gender identity/expression**. These organizations include, but are not limited to the ACLU, Equality Michigan, the EEOC, the Michigan Fair Housing Centers, Transgender Michigan, and Transgender Detroit.
5. **Commissioners and Department staff should continue to further their internal understanding of LGBT issues and concerns**. More in-depth training that is tailored to different divisions within the Department is highly recommended. For example, it is recommended that the intake staff become acquainted with the local ordinances currently in effect so that they may be able to direct calls appropriately. Intake staff should also have on hand, applicable information on resources such as local LGBT organizations where callers can be referred for additional services and support.
6. **The Department and Commission should continue to support and pursue policy changes in the area of non-discrimination**. As such, it is recommended that the Department

seek additional funding for continued study on the economic impact of Michigan's laws and policies. In the last few years, there has been a seismic shift in the strategic cognitive framing of arguments for expanding nondiscrimination protections. Economically-based arguments now predominate and have been very persuasive. The economic impact associated with a lack of LGBT-inclusive policies should be further investigated.

7. **The Department should seek to rectify the discrepancy between voter perception of nondiscrimination protections for LGBT persons and the reality of current local and state nondiscrimination laws.** Research suggests that while many people do favor inclusive nondiscrimination laws, they have a faulty perception that state and federal law already provides protections based on sexual orientation and gender identity/expression. The Department should seek funding which would allow staff to present both the findings of this report as well as continue dialogue on how the state's laws and policies impact the LGBT community with citizens, civil rights stakeholders, and advocacy and service organizations. Targeted dissemination of this report may increase public knowledge regarding the status of LGBT rights. As other myths and misconceptions regarding LGBT rights become evident, a concerted effort should be made to provide the public with clarification.

8. **The Commission should advocate that the legislature strike from state policy discriminatory state laws that are superseded by federal laws or have been ruled unconstitutional by the United States Supreme Court, such as the law against sodomy and cohabitation.** The presence of these laws therefore serves merely as a reminder of a discriminatory past in which LGBT persons and same-sex couples had even fewer rights than they do today. Additionally, as previously outlined, people who oppose expanding ELCRA to include sexual orientation and cohabitation are using the presence of these state laws as

evidence that an expanded ELCRA would be in conflict with other state laws. These laws, rendered invalid and unenforceable, serve as a source of misinformation in the debate over LGBT civil rights.

9. **The Department should share with the governor's policy staff the results of the survey that shows out-migration of professional students due to a lack of statewide LGBT inclusive policies.** Results suggest that Michigan is not currently perceived of as a welcoming state for LGBT professionals or their allies. This information may be disseminated in the form of a one- or two-page summary of the survey's findings to those who argue that Michigan needs to recruit and retain college educated citizens and professionals.
10. **The Department should make itself available to consult with communities with local nondiscrimination ordinances or that are considering local non-discrimination ordinances.** When municipalities pass local ordinances that prohibit discrimination based on sexual orientation and/or gender identity/expression, a number of considerations should inform the development and implementation of such ordinances. The Department may be able to offer consult on how to develop the most relevant, enforceable municipal ordinances.
11. **The Department should make this report readily available to business owners so that they can better understand and make the business case for anti-discrimination employment protections**. As this report shows, employer-based practices are related to heterosexism, job performance, and business profitability. Many large, successful businesses have already altered their employment practices and policies to better address institutional heterosexism. The information contained in this report provides further arguments for the expansion of such protections.

VI. APPENDICES

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Glossary of Terms, Acronyms, and Definitions

Ally: A person who is concerned with the well-being of lesbian, gay, bisexual, transgender, transsexual, and intersex community. An ally is someone who is actively committed to diversity and inclusion for people of all sexual orientations, gender identities and expression.

Bisexual: A person emotionally, physically, and/or sexually attracted to males/men and females/women. This attraction does not have to be equally split between genders and there may be a preference for one gender over others.

Cisgender: A person who by nature or by choice conforms to gender-based expectations of society.

Cross-dresser: Someone who wears clothes of another gender/sex.

Gay: A person primarily emotionally, physically, and/or sexually attracted to members of the same sex. This term is generally used to refer to a male homosexual.

Gender: One's expressions of masculinity, femininity or androgyny in words, self-expression, or characteristics.

Gender Expression: A person's choice and/or manipulation of "gender cues." Gender expression may or may not be congruent with or influenced by a person's biological sex.

Gender Identity: A person's psychological sense of being masculine, feminine, or another gender (e.g., masculine, feminine, androgynous, genderqueer).

Genderqueer: A gender diverse person whose gender identity is neither male nor female, is between or beyond genders, or is some combination of genders. This identity is usually related to or in response to the social construction of gender, gender stereotypes and the gender binary system.

Hermaphrodite: An out-of-date and possibly offensive term for a person who is intersex. (See "Intersex".)

Homosexual: A person primarily emotionally, physically, and/or sexually attracted to members of the same sex.

Intersex: A person whose body does not fit into the dyadic categories of male or female, due to genital, gonadal, chromosomal, reproductive, and/or hormonal variation; intersex indivduals may have typical masculine or feminine identities, or may identify as gender diverse.

Lesbian: This term is used to describe women who are emotionally, physically, and/or sexually attracted to other women.

LGBT: Lesbian, Gay, Bisexual, and Transgender

MCRC: Michigan Civil Rights Commission, also referred to as "The Commission"

MDCR: Michigan Department of Civil Rights, also referred to as "The Department"

Sexual Orientation: The desire for intimate emotional and/or sexual relationships with people of the same gender/sex, another gender/sex, or multiple genders/sexes.

Transgender: When the boundaries between "traditional" masculinity and femininity are blurred. It may be used as an umbrella term for any gender non-conformity or variation. It may also be used as a personal identity for an individual whose psychological identity varies from the sex or gender they were assigned at birth. Sexual orientation varies and is not dependent on gender identity.

Transsexual: A person who identifies psychologically as a gender/sex other than the one they were assigned at birth. Transsexuals often take steps to transform their bodies hormonally and surgically to match their inner sense of gender/sex.