RESOLUTION IN SUPPORT OF THE EMPLOYMENT AND HOUSING NON-DISCRIMINATION ACT IN THE WEST VIRGINIA LEGISLATURE

Resolution Adopted by

City of Morgantown Human Rights Commission

December 19, 2013

MORGANTOWN HUMAN RIGHTS COMMISSION RESOLUTION ON WEST VIRGINIA EMPLOYMENT AND HOUSING NON-DISCRIMINATION ACT

Background: Protecting Gay, Lesbian, and Transgender People from Discrimination in Employment and Housing Has Become Mainstream Politics

Whereas, according to a January 2010 poll from Greenberg Quinlan, 61% of West Virginians "favor protecting gay and lesbian people from discrimination in employment and housing;"[1]

Whereas, as of June 19, 2013, twenty-one states and the District of Columbia have passed laws prohibiting employment discrimination because of sexual orientation;[2]

Whereas, as of June 19, 2013, seventeen states and the District of Columbia have passed laws prohibiting employment discrimination because of gender identity;[3]

Whereas, as of June 19, 2013, seventeen states and the District of Columbia have passed laws prohibiting housing discrimination because of sexual orientation and gender identity; ibid

Whereas, as of July 15, 2013, 170 cities in the United States have passed ordinances prohibiting housing discrimination because of sexual orientation and gender identity; ibid

Whereas, "[a]s of April 2013, 434 (88 percent) of the Fortune 500 companies had implemented non-discrimination policies that include sexual orientation, and 282 (57 percent) had policies that include gender identity;"[4]

Whereas the West Virginia AFL-CIO and the United Mine Workers have publicly endorsed state legislation prohibiting discrimination in employment and housing because of sexual orientation;[5]

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[1] *See* WVGAZZETTE.COM, *Equality: Human Rights for Gays*, THE CHARLSTON GAZETTE, Mar. 13, 2013, http://www.wvgazette.com/Opinion/201303130110.

[2] These states are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Maine, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. *See* HUMAN RIGHTS CAMPAIGN, STATEWIDE EMPLOYMENT LAWS AND POLICIES, http://www.hrc.org/files/assets/resources/employment_laws_062013.pdf.

[3] These are the same states that passed laws prohibiting discrimination because of sexual orientation except for Maryland, New Hampshire, New York, and Wisconsin. *See* HUMAN RIGHTS CAMPAIGN, STATEWIDE EMPLOYMENT LAWS AND POLICIES, http://www.hrc.org/files/assets/resources/employment_laws_062013.pdf

[4] *See* HUMAN RIGHTS CAMPAIGN, EMPLOYMENT, HOUSING NON-DISCRIMINATION ACT, http://www.hrc.org/laws-and-legislation/federal-legislation/employment-non-discrimination-act.

[5] *See* Ry Rivard, *Unions Support Anti-discrimination Bill*, CHARLESTON DAILY MAIL, Feb. 9, 2012, available at http://www.dailymailwv.com/News/statehouse/201202080227.

The United States Congress Is Currently Considering Amending Title VII of the Civil Rights Act to Prohibit Workplace Discrimination Because of Sexual Orientation and Gender Identity

Employment Non-discrimination Act of 2013
U.S. Senate Bill 815

Whereas on April 25, 2013, Senator Jeff Merkely [D-Oregon] introduced Senate Bill 815, the Employment Non-discrimination Act of 2013 (ENDA 2013), a bill which "[p]rohibits employment discrimination on the basis of actual or perceived sexual orientation or gender identity by covered entities (employers, employment agencies, labor organizations, or joint labor-management committees);"[6]

Whereas 56 United States senators, including Senator Jay Rockefeller [D-West Virginia], co-sponsored S.B. 815;[7]

Whereas two Republican senators and two Independent senators were among S.B. 815's co-sponsors;[8]

Whereas on November 7, 2013, the Senate passed S.B. 815 by a vote of 64-32, with four senators not voting;[9]

Whereas S.B. 815 received bipartisan support in the Senate, including the support of 52 Democratic, 10 Republican and 2 Independent senators;[10]

Whereas both senators from West Virginia, Senator Jay Rockefeller and Senator Joe Manchin, voted in favor of S.B. 815;[11]

Employment Non-discrimination Act of 2013
U.S. House Bill 1755

Whereas on April 25, 2013, Rep. Jared Polis [D-Colorado] introduced House of Representatives Bill 1755 (H.R. 1755), ENDA 2013;[12]

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[6] *See* Summary of S. 815, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/bills/113/s815#summary/libraryofcongress (last visited Nov. 29, 2013).

[7] *See* Overview of S. 815, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/bills/113/s815#overview (last visited Nov. 29, 2013).

[8] *See* On Passage of S. 815 in the Senate, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/votes/113-2013/s232 (last visited Nov. 30, 2013).

[9] *See* Overview of S. 815, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/bills/113/s815#overview (last visited Nov. 29, 2013).

[10] *See* On Passage of S. 815 in the Senate, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/votes/113-2013/s232 (last visited Nov. 30, 2013).

[11] *See* On Passage of S. 815 in the Senate, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/votes/113-2013/s232 (last visited Nov. 30, 2013).

[12] *See* Summary of H.R. 1755, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/bills/113/hr1755 (last visited Nov. 30, 2013).

Whereas H.R. 1755 has 200 co-sponsors, including five Republican representatives;[13]

Whereas on April 25, 2013, H.R. 1755 was referred to committee where it currently remains;[14]

W.V. Employment and Housing Non-discrimination Act Amends the West Virginia Human Rights Act to Prohibit Discrimination in Employment and Housing Because of Sexual Orientation

Whereas The West Virginia Human Rights Act (WVHRA) codified at § 5-11-1 to § 5-11-20 currently prohibits covered employers from discriminating because of "race, religion, color, national origin, ancestry, sex, age, blindness, or disability," but does not prohibit such discrimination because of sexual orientation;[15]

Whereas the WVHRA currently prohibits discrimination in public accommodation on the basis of "race, religion, color, national origin, ancestry, sex, blindness, disability or familial status," but does not prohibit such discrimination because of sexual orientation;[16]

Whereas the WVHRA created the West Virginia Human Rights Commission to enforce rights established by the WVHRA;[17]

Whereas The West Virginia Fair Housing Act (WVFHA) codified at § 5-11A-1 to § 5-11A-20 currently prohibits various unfair housing practices because of "race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin," but does not prohibit such discrimination because of sexual orientation;[18]

Whereas the West Virginia legislature has several times attempted to amend the WVHRA by virtue of the West Virginia Employment and Housing Nondiscrimination Act (WVEHNDA);

Whereas the WVEHNDA would prohibit employment, public accommodation, and housing discrimination because of sexual orientation;

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[13] *See* Summary of H.R. 1755, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/bills/113/hr1755 (last visited Nov. 30, 2013).

[14] *See* Summary of H.R. 1755, Employment Non-Discrimination Act, available at https://www.govtrack.us/congress/bills/113/hr1755 (last visited Nov. 30, 2013).

[15] W.V. CODE, § 5-11-2. A current version of the WVHRA is available on-line at http://www.legis.state.wv.us/WVCODe/code.cfm?chap=05&art=11.

[16] W.V. CODE, § 5-11-2.

[17] *See* W.V. CODE, §§ 5-11-4, 5-11-8.

[18] A current version of the WVFHA is available on-line at http://www.legis.state.wv.us/WVCODe/code.cfm?chap=05&art=11A.

Whereas, on March 7, 2013, West Virginia Delegates Skinner, Morgan, Ferns, Hunt, Sponaugle, Poore, Perdue, Fleischauer, Moore, Marshall and Barrett re-introduced the WVEHNDA;[19]

Whereas, on March 8, 2013, West Virginia Senate President Kessler and Senators Snyder, Palumbo, Wells, Beach, McCabe, Edgell, Fitzsimmons, and Cookman;[20]

Whereas the current version of the WVEHNDA bill exempts religious organizations and affiliated corporations from employment discrimination;[21]

Whereas the current version of the WVEHNDA bill exempts small businesses defined as businesses that employee fewer than 15 employees;[22]

West Virginia Employment and Housing Non-discrimination Act Would Merely Extend to the State Level What Is Already Occurring at Other Governing Levels

Whereas a Charleston city ordinance already forbids discrimination in employment and housing based on an individual's sexual orientation.[23]

Whereas a Morgantown city ordinance has established a Human Rights Commission with the following purpose among other purposes:

> The Commission . . . shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of . . . sexual orientation . . . , and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of . . . sexual orientation . . . .[24]

Whereas the West Virginia University Board of Governors policy on Affirmative Action and Equal Employment Opportunity is to "[r]ecruit, hire,

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[19] *See* H.B. 2856. A current version of this bill is available at http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=hb2856%20intr.htm&yr=2013&sesstype=RS&i=2856.

[20] *See* S.B. 486. A current version of this bill is available at http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=sb486%20intr.htm&yr=2013&sesstype=RS&i=486.

[21] *See* proposed W.V. CODE, § 5-11-3(d) (amending definition of employer):

> *Provided, however,* That this article, with regards to sexual orientation, shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) pursuant to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e-1(a), 2000e-2(e)(2)), except in the operation of a program funded by the state.

[22] *See supra* proposed W.V. CODE, § 5-11-3(d) (amending definition of employer).

[23] *See* CHARLESTON MUN. CODE § 86-261 (2008).

[24] *See* MORGANTOWN MUN. CODE § 153.07.

train, promote, retain and compensate all individuals in [listed] job titles without regard to . . . sexual orientation," among other protected categories;[25]

Now, therefore, BE IT RESOLVED that the City of Morgantown Human Rights Commission affirms its support of prohibiting discrimination because of sexual orientation in employment, public accommodation, and housing; and

BE IT FURTHER RESOLVED that the City of Morgantown Human Rights Commission calls on our West Virginia state legislators to sponsor and vote for legislation that prohibits discrimination because of sexual orientation in employment, public accommodation, and housing.

BE IT FURTHER RESOLVED that the City of Morgantown Human Rights Commission calls on our the City of Morgantown to concur in this resolution.

Adopted by the HRC this 2nd day of December, 2013.

Don Spencer
Chairperson

Jan Derry
Vice Chairperson

Anna-Marlene Robinson-Savino
Secretary

Mike Fike
Board Member

Anne Marie Lofaso
Board Member

Fran Whiteman
Board Member

Vacant
Board Member

[25] *See* W. Va. Univ. Bd. of Govs. Pol'y 34: Affirmative Action and Equal Employment Opportunity § 2-1 (2006), available at http://bog.wvu.edu/r/download/4239 (last visited Nov. 29, 2013).