

**IN THE FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

CASE NO. 5D19-1853

ANITA YANES and BRITTNEY SMITH,
Appellants/Plaintiffs,

vs.

O C FOOD & BEVERAGE, LLC, d/b/a RACHEL'S and WEST PALM BEACH
FOOD AND BEVERAGE, LLC, d/b/a RACHEL'S ADULT ENTERTAINMENT
AND STEAKHOUSE,
Appellees/Defendants.

On Appeal from the Ninth Judicial Circuit of Florida

**BRIEF OF AMICI CURIAE EQUALITY FLORIDA INSTITUTE, IMPACT
FUND, NATIONAL CENTER FOR LESBIAN RIGHTS, AND EIGHT
ADDITIONAL NONPROFIT ORGANIZATIONS
IN SUPPORT OF APPELLANTS/PLAINTIFFS**

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<i>City of Hollywood v. Mulligan</i> , 934 So. 2d 1238 (Fla. 2006)	17
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<i>Metro. Dade Cty. Fair Hous. & Emp’t Appeals Bd. v. Sunrise Vill. Mobile Home Park, Inc.</i> , 511 So. 2d 962 (Fla. 1987).....	14, 17
<i>Morrow v. Duval Cty. Sch. Bd.</i> , 514 So. 2d 1086 (Fla. 1987).....	11
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§ 760.08, Fla. Stat.14

§ 760.23, Fla. Stat.14

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Alachua County Code § 111.0112

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Broward County Code §§ 16 1/2-33 to -3514

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Other Authorities

Op. Att’y Gen. Fla. 84-97 (1984)18

Secondary Sources

Adam Nagourney, *Old and on the Street: The Graying of America’s Homeless*,
 N.Y. Times (May 31, 2016), https://www.nytimes.com/2016/05/31/us/americas-aging-homeless-old-and-on-the-street.html?_r=015

Christopher Moffatt, “Uptight” Straight Republican: How a Lesbian Couple
 Opened My Eyes to Discrimination, Miami Herald (Oct. 4, 2016),
<https://www.miamiherald.com/news/local/community/gay-south-florida/article105918977.html>7

Christy Mallory et al., Williams Inst., *The Impact of Stigma and Discrimination
 against LGBT People in Florida* (Sept. 2017),
[https://williamsinstitute.law.ucla.edu/research/impact-stigma-discrimination-
 lgbt-people-florida/](https://williamsinstitute.law.ucla.edu/research/impact-stigma-discrimination-lgbt-people-florida/)7

Danielle Krusemark & Lynne Carroll, Univ. of N. Fla. Dep’t of Psychology, *A
 Survey of LGBTQ Experiences, Discrimination, and Perceived Necessity for an
 LGBT-Inclusive Human Rights Ordinance in Jacksonville, Florida* (2016)
 (unpublished report),
[https://jaxequality.files.wordpress.com/2016/03/unf_jacksonville_lgbt_survey_2
 016.pdf](https://jaxequality.files.wordpress.com/2016/03/unf_jacksonville_lgbt_survey_2016.pdf)7

Denise R. J. Finlay, *Employment Discrimination Against Domestic Violence
 Survivors: Strengthening the Disparate Impact Theory*, 88 N.D. L. Rev. 989
 (2012).....15

E.E.O.C., *Pacific Sunwear of California to Pay \$85,000 to Settle EEOC Disability Discrimination Suit* (Sept. 20, 2019), <https://www.eeoc.gov/eeoc/newsroom/release/9-20-19.cfm>.....10

E.E.O.C., *Seasons 52 to Pay \$2.85 Million to Settle EEOC Age Discrimination Lawsuit* (May 3, 2018), <https://www.eeoc.gov/eeoc/newsroom/release/5-3-18a.cfm>10

E.E.O.C., *Ruby Tuesday to Pay \$45,000 to Settle EEOC Age Discrimination Suit* (Oct. 26, 2017), <https://www.eeoc.gov/eeoc/newsroom/release/10-26-17.cfm> ...10

Elizabeth Aranda & Fernando I. Rivera, *Puerto Rican Families in Central Florida: Prejudice, Discrimination, and Their Implications for Successful Integration*, 4 *Women, Gender, and Families of Color* 57 (2016)9

Florida: LGBTQ Non-Discrimination in the States, Freedom for All Americans, at “History of LGBTQ Non-Discrimination in Florida” (last updated Feb. 7, 2018), <https://www.freedomforallamericans.org/category/states/fl/>13

Florida’s Equality Profile, Movement Advancement Project, http://www.lgbtmap.org/equality_maps/profile_state/FL; *Population and Demographic Data – Florida Products*, *supra* note 18, at “Population: April 1, 2019.”13

Jana Kasperkevic, *The veteran unemployment rate is down but that doesn’t mean they are doing great*, Marketplace (Nov. 10, 2017), <https://www.marketplace.org/2017/11/10/veteran-day-employment-jobs-numbers/>.....15

Jeffrey A. Will et al., Ne. Fla. Ctr. for Comm. Initiatives, *Examining Unemployment Disparities: Barriers to Employment in Duval County 2* (Jan. 2011), <https://www.unf.edu/uploadedFiles/aa/coas/cci/projects/Failure%20to%20Hire%20Report.pdf>9

Jerry D. Parrish, Fla. Chamber Found., *Quantifying the Unemployment Rate for Workers with Disabilities in Florida 2* (Jan. 6, 2016), <http://www.flchamber.com/wp-content/uploads/2016/06/Quantifying-the-Unemployment-Rate-for-Workers-with-Disabilities-in-Florida.pdf>.....10

LGBT Data & Demographics, Williams Inst., at “Socioeconomic Indicators: Florida” (last accessed Nov. 20, 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=12#density>9

Margaret C. Harrell & Nancy Berglass, Ctr. for a New Am. Security, *Employing America’s Veterans: Perspectives from Business* 5 (2012), <https://www.benefits.va.gov/VOW/docs/EmployingAmericasVeterans.pdf>15

Nat’l Ctr. for Transgender Equality, *2015 U.S. Transgender Survey: Florida State Report* 1 (Oct. 2017), <https://www.transequality.org/sites/default/files/docs/usts/USTSFLStateReport%281017%29.pdf>.....8

Population and Demographic Data – Florida Products, Office of Econ. & Demographic Research, at “Population: April 1, 2019” (last revised Nov. 14, 2019), <http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm>.....13

Shane Stahl, *Transgender Woman Harassed at Local Grocery Store Thankful for Local Non-Discrimination Protections*, Freedom for All Americans (Dec. 12, 2017), <https://www.freedomforallamericans.org/transgender-woman-harassment-store-local-non-discrimination-protections/>8

Times-Union Editorial, *It’s a Myth to Claim Jacksonville’s LGBT Residents Aren’t Experiencing Discrimination*, The Fla. Times-Union (Mar. 3, 2015), <http://jacksonville.com/opinion/editorials/2015-03-03/story/its-mythclaim-jacksonvilles-lgbt-residents-arent-experiencing>7

United States Census Bureau, *2015 SUSB Annual Datasets by Establishment Industry* (2018), <https://census.gov/data/tables/2015/econ/susb/2015-susb-annual.html>.....16

INTEREST OF AMICI¹

This brief is submitted by Equality Florida Institute, Impact Fund, National Center for Lesbian Rights, and eight other nonprofit organizations (collectively “amici”) in support of Plaintiffs-Appellants. All amici share an interest in ensuring the protections of local human rights ordinances in Florida.

Equality Florida Institute (Equality Florida) is the largest civil rights organization dedicated to securing full equality for Florida’s lesbian, gay, bisexual, transgender, and queer (LGBTQ) community. Through grassroots organizing and public education, Equality Florida is working to end LGBTQ discrimination, accelerate acceptance of all Floridians, make schools safe for LGBTQ students, and move equality forward. Equality Florida has supported the enactment of LGBTQ civil rights laws at the state, county, and municipal levels. Equality Florida staff and members were actively involved in the enactment of LGBTQ protections in the Orange County ordinance.

The **Impact Fund** is a nonprofit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative

¹ This Court granted amici leave to file this brief on December 10, 2019. Amici’s motion for leave for League of Women Voters of Florida to join this brief, filed on December 13, 2019, is currently pending.

training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as party or amicus counsel in a number of major civil rights cases brought under federal, state, and local laws, including cases challenging employment discrimination; unequal treatment of people of color, people with disabilities, and LGBTQ people; and limitations on access to justice. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

The **National Center for Lesbian Rights (NCLR)** is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBTQ people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in ensuring that LGBTQ people are free from discrimination in many contexts, including public accommodations, employment, housing, education, and health care.

Founded in 1913 in response to an escalating climate of anti-Semitism and bigotry, **ADL** is a leading anti-hate organization with the timeless mission to protect the Jewish people and to secure justice and fair treatment for all. Today, we continue to fight all forms of hate with the same vigor and passion. A global

leader in exposing extremism, delivering anti-bias education, and fighting hate online, ADL's ultimate goal is a world in which no group or individual suffers from bias, discrimination, or hate. To this end, ADL is an ardent advocate for comprehensive federal, state, and local anti-discrimination laws.

The American Civil Liberties Union Foundation (ACLU) is a nationwide nonpartisan organization of 930,000 members, dedicated to protecting the fundamental liberties and basic civil rights guaranteed by state and federal Constitutions. The **ACLU of Florida**, a state affiliate of the national ACLU, is devoted to advocacy on behalf of more than 38,000 statewide members and has litigated hundreds of cases in Florida's state and federal courts as a plaintiff, on behalf of plaintiffs, and as amicus curiae. The ACLU of Florida joins this brief to emphasize the importance of local nondiscrimination ordinances to support the civil rights of all Floridians.

Florida National Organization for Women (NOW) is a multi-issue, multi-strategy organization that takes a holistic approach to women's rights. Our priorities are winning economic equality and securing it with an amendment to the U.S. Constitution that will guarantee equal rights for women; championing abortion rights, reproductive freedom, and other women's health issues; opposing racism; fighting bigotry against the LGBTQIA community; and ending violence against women.

Freedom for All Americans is the bipartisan campaign to secure full nondiscrimination protections for LGBTQ people nationwide. It is a nonprofit organization that brings together Republicans and Democrats, businesses large and small, people of faith, and allies from all walks of life to make the case for comprehensive nondiscrimination protections that ensure everyone is treated fairly and equally.

Lambda Legal Defense and Education Fund, Inc. (Lambda Legal) is the nation's oldest and largest nonprofit legal organization working for full recognition of the civil rights of lesbian, gay, bisexual, and transgender (LGBT) people and everyone living with HIV through impact litigation, education, and policy advocacy. For over 45 years, Lambda Legal has striven to ensure that courts recognize and enforce the nondiscrimination protections that the LGBT community have under existing federal, state, and local law. *E.g., Hively v. Ivy Tech Cmty. Coll.*, 853 F.3d 339 (7th Cir. 2017) (en banc) (first federal appellate court to rule that Title VII proscribes sexual orientation discrimination). Of particular relevance here, Lambda Legal has served as counsel arguing against state preemption of existing municipal anti-discrimination ordinances. *Romer v. Evans*, 517 U.S. 620 (1996); *Carcaño v. Cooper*, 350 F. Supp. 3d 388 (M.D.N.C. 2018).

The League of Women Voters of Florida is a non-partisan political organization that encourages informed, active participation of citizens in

government and influences public policy through education and advocacy. It has twenty-nine local Leagues statewide striving to promote engaged citizenship at the local level and shares an interest in ensuring the protections of Florida's local human rights ordinances.

Legal Aid at Work (LAAW) is a nonprofit public interest law firm whose mission is to protect, preserve, and advance the employment and education rights of individuals from traditionally under-represented communities across California and the nation. LAAW has represented plaintiffs in cases of special import to communities of color, women, recent immigrants, individuals with disabilities, the LGBTQ community, veterans, and the working poor. LAAW has appeared in discrimination cases on numerous occasions both as counsel for plaintiffs as well as in an amicus curiae capacity. LAAW frequently represents workers who are protected in their communities through local human rights ordinances that expand the protections offered by the state, just as many states have chosen to expand the human rights protections offered by the federal government. These ordinances are critical to our clients who are members of the LGBTQ community.

Zebra Coalition is a network of organizations in Florida that provide services to lesbian, gay, bisexual, transgender, and all youth (LGBTQ+) ages 13-24. The Coalition assists young people facing homelessness, bullying, isolation from their families, and physical, sexual and drug abuse with individualized

programs to guide them to recovery and stability. The Coalition has an interest in ensuring the equal treatment of LGBTQ+ people in all areas of life.

SUMMARY OF ARGUMENT

Florida law prohibits discrimination in employment, housing, and public accommodations. Courts in this state have long recognized the critical role that local human rights ordinances play in eradicating discrimination. Absent express preemption or direct conflict with state law, local governments have broad authority to enact local laws that protect the dignity, health, safety, and welfare of their residents. Cities and counties have relied on this authority to enact protections against discrimination in employment, housing, and public accommodations that protect vulnerable Floridians.

Amici write to describe the urgent need to address ongoing discrimination in Florida, the many critical protections provided by local human rights ordinances, and the well-established authority of local governments to enact protections against discrimination. The circuit court's improper dismissal of Appellants' complaint under the Orange County Human Rights Ordinance potentially impacts future enforcement of local human rights ordinances and should be reversed.

ARGUMENT

I. Floridians Across the State Face Discrimination in Employment, Housing, and Public Accommodations.

Discrimination continues to harm Floridians because of their sex, sexual orientation, gender identity, race, disability, and age, among other characteristics. Recent studies and surveys document discrimination in many aspects of life.

LGBT people are disadvantaged by multiple forms of discrimination. In a 2016 survey of LGBT people in Jacksonville, twenty-eight percent of respondents reported experiencing workplace discrimination in the preceding five years.² For example, a man in Jacksonville was terminated from his sales job “after clients complained that they did not want to work with a gay sales rep.”³ Discrimination also occurs in housing and public accommodations.⁴ A widowed woman with

² Christy Mallory et al., Williams Inst., *The Impact of Stigma and Discrimination against LGBT People in Florida* 26 (Sept. 2017), <https://williamsinstitute.law.ucla.edu/research/impact-stigma-discrimination-lgbt-people-florida/> (citing Danielle Krusemark & Lynne Carroll, Univ. of N. Fla. Dep’t of Psychology, *A Survey of LGBTQ Experiences, Discrimination, and Perceived Necessity for an LGBT-Inclusive Human Rights Ordinance in Jacksonville, Florida*, tbl.2 (2016) (unpublished report), https://jaxequality.files.wordpress.com/2016/03/unf_jacksonville_lgbt_survey_2016.pdf).

³ *Id.* at 29 (citing Times-Union Editorial, *It’s a Myth to Claim Jacksonville’s LGBT Residents Aren’t Experiencing Discrimination*, The Fla. Times-Union (Mar. 3, 2015), <http://jacksonville.com/opinion/editorials/2015-03-03/story/its-mythclaim-jacksonvilles-lgbt-residents-arent-experiencing>).

⁴ *Id.* at 30.

Alzheimer's was refused admittance to four assisted living facilities after she told the facilities she had recently lost her wife.⁵

Transgender people in Florida face an especially high risk of discrimination. The 2015 U.S. Transgender Survey, a national survey of nearly 28,000 transgender people, found that thirty percent of respondents in Florida who held or applied for a job that year reported being fired, denied a promotion, or not hired because of their gender identity or expression.⁶ Twenty-five percent of respondents had experienced some form of housing discrimination in the past year, such as being evicted from their home or denied a home or apartment because of being transgender.⁷ Respondents also reported being denied equal treatment or service, verbally harassed, or physically attacked in places of public accommodation, including retail stores, hotels, and government offices.⁸ In 2017, a woman was refused service at a grocery store in Miami Beach solely because she was

⁵ *Id.* at 31 (citing Christopher Moffatt, "Uptight" Straight Republican: How a Lesbian Couple Opened My Eyes to Discrimination, Miami Herald (Oct. 4, 2016), <https://www.miamiherald.com/news/local/community/gay-south-florida/article105918977.html>).

⁶ Nat'l Ctr. for Transgender Equality, *2015 U.S. Transgender Survey: Florida State Report 1* (Oct. 2017), <https://www.transequality.org/sites/default/files/docs/usts/USTSFLStateReport%281017%29.pdf>.

⁷ *Id.* at 2.

⁸ *Id.*

transgender.⁹ Discrimination contributes to social and economic disparities for LGBT Floridians, who are almost twice as likely to be unemployed and more likely to be food insecure and low-income than people who are not LGBT.¹⁰

Discrimination based on race, national origin, disability, and age also continues to endanger equal opportunity in Florida. For example, a 2016 study of Puerto Ricans in Central Florida documented reports of ongoing discrimination at work and in public “because they did not speak English well or spoke it with a Spanish accent.”¹¹ The study also found that respondents “felt singled out for their skin color, their dress, and even their surnames.”¹² A study for the Jacksonville Human Rights Commission showed that between 2005 and 2008, Black residents of Duval County experienced unemployment rates forty-two to seventy percent

⁹ Shane Stahl, *Transgender Woman Harassed at Local Grocery Store Thankful for Local Non-Discrimination Protections*, Freedom for All Americans (Dec. 12, 2017), <https://www.freedomforallamericans.org/transgender-woman-harassment-store-local-non-discrimination-protections/>.

¹⁰ *LGBT Data & Demographics*, Williams Inst., at “Socioeconomic Indicators: Florida” (last accessed Nov. 20, 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=12#density> (select “Florida”). Transgender people in Florida report even higher levels of unemployment (twenty-two percent) and poverty (twenty-seven percent). Nat’l Ctr. for Transgender Equality, *supra* note 6, at 1.

¹¹ Elizabeth Aranda & Fernando I. Rivera, *Puerto Rican Families in Central Florida: Prejudice, Discrimination, and Their Implications for Successful Integration*, 4 *Women, Gender, and Families of Color* 57, 76 (2016).

¹² *Id.*

higher than the overall county population.¹³ Survey respondents frequently cited one or more forms of discrimination as a reason for leaving past employment or being unemployed at the time of their response.¹⁴

A 2016 study from the Florida Chamber Foundation concluded that disabled people in Florida have an unemployment rate nearly three times that of Floridians without a disability.¹⁵ According to a recent lawsuit, a retail store manager in St. Augustine told an applicant who used a wheelchair that the store was not hiring, but told non-disabled applicants that the store was in fact hiring.¹⁶ And there are many reported instances of age discrimination in Florida, including recent claims by older workers that they were denied jobs at restaurants in Orlando and Boca Raton because of their age.¹⁷

¹³ Jeffrey A. Will et al., Ne. Fla. Ctr. for Comm. Initiatives, *Examining Unemployment Disparities: Barriers to Employment in Duval County 2* (Jan. 2011), <https://www.unf.edu/uploadedFiles/aa/coas/cci/projects/Failure%20to%20Hire%20Report.pdf>.

¹⁴ *Id.* at 4.

¹⁵ Jerry D. Parrish, Fla. Chamber Found., *Quantifying the Unemployment Rate for Workers with Disabilities in Florida 2* (Jan. 6, 2016), <http://www.flchamber.com/wp-content/uploads/2016/06/Quantifying-the-Unemployment-Rate-for-Workers-with-Disabilities-in-Florida.pdf>.

¹⁶ E.E.O.C., *Pacific Sunwear of California to Pay \$85,000 to Settle EEOC Disability Discrimination Suit* (Sept. 20, 2019), <https://www.eeoc.gov/eeoc/newsroom/release/9-20-19.cfm>.

¹⁷ E.E.O.C., *Seasons 52 to Pay \$2.85 Million to Settle EEOC Age Discrimination Lawsuit* (May 3, 2018), <https://www.eeoc.gov/eeoc/newsroom/release/5-3->

Discrimination denies Floridians equal opportunity and full access to public life, including the opportunity to participate in and contribute to society. *See, e.g.*, § 22-1(2) of Orange County Code (“[D]iscriminatory practices are . . . a menace to the public health and welfare of our citizens.”); § 27-1(2) of Osceola County Code (same); *Morrow v. Duval Cty. Sch. Bd.*, 514 So. 2d 1086, 1088 (Fla. 1987) (discrimination “inflicts on individual workers the economic and psychological injury accompanying the loss of opportunity to engage in productive and satisfying occupations”). Anti-discrimination protections continue to be needed in this state.

II. Local Human Rights Ordinances Provide Critical Protections for Vulnerable Individuals.

Local human rights ordinances provide vulnerable Floridians with critical protections against discrimination. In enacting or amending their human rights ordinances, many local governments specifically referenced the importance of these protections to the personal dignity, public safety, health, and general welfare of their residents.

In enacting its local human rights ordinance, the Board of County Commissioners of Osceola County decried discriminatory practices as “contrary to the public policy” of the county and “a menace to the public health and welfare of

18a.cfm; E.E.O.C., *Ruby Tuesday to Pay \$45,000 to Settle EEOC Age Discrimination Suit* (Oct. 26, 2017), <https://www.eeoc.gov/eeoc/newsroom/release/10-26-17.cfm>.

our citizens.” § 27-1(2) of Osceola County Code. Likewise, Orange County’s Human Rights Ordinance is intended to “make Orange County secure against strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, privileges of individuals within Orange County.” § 22-1(3) of Orange County Code; *see also* § 36-1 of Volusia County Code (stating similar purpose); *accord* § 111.01(b), (c) of Alachua County Code (same); § 9-1(3) of Leon County Code (same).

Many local governments have enacted ordinances that explicitly prohibit discrimination based on sexual orientation and gender identity. In amending its human rights ordinance, Hillsborough County specifically cited “dramatic findings on the impact of anti-transgender bias” and the “alarming rates” of discrimination that transgender people experience as a reason why prohibiting discrimination based on sexual orientation and gender identity or expression was “both timely and necessary.” § 30-18 of Hillsborough County Code.

Today, twelve counties and twenty cities in Florida have ordinances that prohibit discrimination based on sexual orientation and gender identity in private employment, housing, and public accommodations, including the state’s five most populous counties and most populous city, as well as least three counties and six

cities within the Fifth Appellate District.¹⁸ Five additional cities provide partial protections limited to either sexual orientation or gender identity or to a subset of private employment, housing, or public accommodations.¹⁹ These types of

¹⁸ See Ch. 111 of Alachua County Code; Ch. 9 of City of Atlantic Beach Code; § 1-12(a) of City of Boynton Beach Code; Ch. 16 1/2 of Broward County Code; Ch. 137 of City of Delray Beach Code; Ch. 54 of City of Fernandina Beach Code; Ordinance No. C-19-30 of City of Fort Lauderdale (Sept. 17, 2019) (to be codified at Ch. 29); Ch. 8 of City of Gainesville Code; § 1-25 of City of Greenacres Code; Ch. 26 of City of Gulfport Code; Ch. 30 of Hillsborough County Code; Tit. XI of City of Jacksonville Code; Ch. 20 of City of Lake Worth Code; Ch. 15, Art. III of City of Leesburg Code; Ch. 9 of Leon County Code; Ch. 9 of City of Mascotte Code; Ch. 62 of City of Miami Beach Code; Ch. 11A of Miami-Dade County Code; Ch. 14 of Monroe County Code; Ch. 58 of City of Mount Dora Code; Ch. 16 of City of North Port Code; Ch. 22 of Orange County Code; Ch. 57 of City of Orlando Code; Ch. 27 of Osceola County Code; Ch. 2, Art. VI of Palm Beach County Code; *id.* Ch. 15; Ch. 70 of Pinellas County Code; Ch. 18 of City of Sarasota Code; Ch. 12 of City of Tampa Code; Ch. 2, Art. VII of City of Venice Code; Ch. 36 of Volusia County Code; § 1-13 of City of Wellington Code; Ch. 42 of City of West Palm Beach Code. These jurisdictions include the five largest counties and the largest city by population: Broward, Hillsborough, Miami-Dade, Orange, and Palm Beach Counties, and the consolidated city of Jacksonville/Duval County. See *Population and Demographic Data – Florida Products*, Office of Econ. & Demographic Research, at “Population: April 1, 2019” (last revised Nov. 14, 2019), <http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm> (documenting the populations of those locales). Within the jurisdiction of the Fifth Appellate District, Orange, Osceola, and Volusia Counties and the cities of Leesburg, Mascotte, Mount Dora, Orlando, St. Augustine, and St. Augustine Beach maintain sexual orientation and gender identity protections.

¹⁹ See Ch. 42 of City of Dunedin Code; Ch. 38 of City of Key West Code; Ch. 16 of City of St. Augustine Code; Ch. 3 of City of St. Augustine Beach Code; Ordinance No. 517-G of City of St. Petersburg (Jan. 3, 2002). Three of these cities—Dunedin, Key West, and St. Petersburg—are additionally covered by broader county protections.

protective ordinances have been in effect for decades.²⁰ Altogether, sixty percent of Floridians (over twelve million people) are protected by ordinances prohibiting discrimination based on sexual orientation and gender identity.²¹

Many local human rights ordinances also provide nondiscrimination protections based on characteristics not enumerated in state civil rights laws. For example, Miami-Dade, Orange, Osceola, and Volusia Counties extend housing and public accommodations protections to older residents, as state housing and public accommodations laws do not prohibit age discrimination. *See, e.g.*, §§ 22-42(a), 22-52(a) of Orange County Code (including “age” as a protected characteristic in housing and public accommodations laws); §§ 27-12(a), 27-16(a) of Osceola County Code (same); §§ 36-41(a), 36-52(a) of Volusia County Code (same); *Metro. Dade Cty. Fair Hous. & Emp’t Appeals Bd. v. Sunrise Vill. Mobile Home Park, Inc.*, 511 So. 2d 962, 963-64 (Fla. 1987) (interpreting Miami-Dade County’s prohibition on age discrimination in housing, § 11A-3 of Miami-Dade County Code); *cf.* §§ 760.08, 760.23, Fla. Stat. Broward County and Miami-Dade County,

²⁰ *Florida: LGBTQ Non-Discrimination in the States*, Freedom for All Americans, at “History of LGBTQ Non-Discrimination in Florida” (last updated Feb. 7, 2018), <https://www.freedomforallamericans.org/category/states/fl/>.

²¹ *Florida’s Equality Profile*, Movement Advancement Project, http://www.lgbtmap.org/equality_maps/profile_state/FL; *Population and Demographic Data – Florida Products*, *supra* note 18, at “Population: April 1, 2019.”

the state’s two largest counties, provide even more protections to disadvantaged groups. Both counties’ human rights ordinances include victims of stalking and domestic violence, and Broward County additionally includes veterans and service members. *See* §§ 16 1/2-3(p), 16 1/2-33 to -35 of Broward County Code; §§ 11A-12, 11A-20, 11A-26 of Miami-Dade County Code. These laws provide needed protections, as members of these groups experience elevated rates of job and housing instability.²²

Finally, local human rights ordinances can regulate businesses not covered by the Florida Civil Rights Act, which proscribes discrimination in workplaces with fifteen or more employees. § 760.02(7), Fla. Stat. Many local ordinances

²² Jana Kasperkevic, *The veteran unemployment rate is down but that doesn’t mean they are doing great*, Marketplace (Nov. 10, 2017), <https://www.marketplace.org/2017/11/10/veteran-day-employment-jobs-numbers/> (observing that veterans are more likely to be underemployed); Adam Nagourney, *Old and on the Street: The Graying of America’s Homeless*, N.Y. Times (May 31, 2016), https://www.nytimes.com/2016/05/31/us/americas-aging-homeless-old-and-on-the-street.html?_r=0 (reporting that people over fifty years old make up thirty-one percent of the nation’s homeless population); Margaret C. Harrell & Nancy Berglass, Ctr. for a New Am. Security, *Employing America’s Veterans: Perspectives from Business* 5 (2012), <https://www.benefits.va.gov/VOW/docs/EmployingAmericasVeterans.pdf> (reporting that veterans experienced higher rates of unemployment than their civilian counterparts); Denise R. J. Finlay, *Employment Discrimination Against Domestic Violence Survivors: Strengthening the Disparate Impact Theory*, 88 N.D. L. Rev. 989, 998 (2012) (observing that “[i]t is common for employed domestic violence survivors to be fired due to ‘absences, workplace disruptions, performance problems—or simple prejudice against victims’”).

prohibit discrimination by employers with five or more employees, a lower threshold than that set by state law. *See, e.g.*, § 22-27 of Orange County Code; § 27-7 of Osceola County Code; § 36-2 of Volusia County Code. The Florida Supreme Court has affirmed local governments’ ability to regulate employers not covered by state law. *Laborers’ Int’l Union of N. Am., Local 478 v. Burroughs*, 541 So. 2d 1160, 1161 (Fla. 1989). Given that employers with fewer than twenty workers employ more than 1.3 million people in Florida, these more expansive ordinances likely protect thousands of people who work for employers beyond the reach of state law.²³ Local human rights ordinances are critical tools for local governments to address discrimination in their communities.

III. Local Governments Possess the Authority to Protect Their Communities Through Human Rights Ordinances.

Florida’s Constitution and civil rights laws demonstrate the state’s deep commitment to combatting discrimination. *See, e.g., Joshua v. City of Gainesville*, 786 So. 2d 432, 435 (Fla. 2000) (stating that the general purpose of the Florida Civil Rights Act “include[s] freedom from discrimination for all individuals and preserving the general welfare of all”); *Traylor v. State*, 596 So. 2d 957, 969 (Fla.

²³ *See* United States Census Bureau, *2015 SUSB Annual Datasets by Establishment Industry* (2018), <https://census.gov/data/tables/2015/econ/susb/2015-susb-annual.html> (summing the number of workers at firms in Florida with zero to nineteen employees).

1992) (“The Equal Protection Clause of our state Constitution was framed to address all forms of invidious discrimination under the law”) (internal footnote omitted).

At the same time, Florida law provides local governments with “broad authority” to protect their residents under their municipal home rule powers.

Masone v. City of Aventura, 147 So. 3d 492, 494-95 (Fla. 2014) (quoting *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006)); see Art. VIII, §§ 1(g), 2(b), Fla. Const. Courts generally avoid imposing rules that circumscribe a local government’s home rule authority. *D’Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017).

Local governments have a special interest in the health and welfare of their communities. *City of Boca Raton v. Gidman*, 440 So. 2d 1277, 1280 (Fla. 1983). To safeguard this interest, cities and counties may exercise their broad authority to enact ordinances that prevent and redress discrimination. *Metro. Dade Cty. Fair Hous. & Emp’t Appeals Bd.*, 511 So. 2d at 965. This authority is limited only where the state legislature has expressly preempted local lawmaking or where local laws directly conflict with state law. *Masone*, 147 So. 3d at 495 (discussing preemption framework); *Phantom of Brevard, Inc. v. Brevard Cty.*, 3 So. 3d 309, 314 (Fla. 2008) (same).

State courts have long recognized local governments' authority to enact human rights ordinances. *See Metro. Dade Cty. Fair Hous. & Emp't Appeals Bd.*, 511 So. 2d at 965 ("Courts may not substitute their social and economic beliefs for the judgment of legislative bodies which are elected to pass laws, nor may the judiciary pass on the wisdom of legislative enactments."). The Florida Supreme Court affirmed Miami-Dade County's authority to prohibit age discrimination in housing, *id.*, and recognized Broward County's authority to prohibit racial discrimination in housing, *Broward Cty. v. La Rosa*, 505 So. 2d 422, 423 (Fla. 1987). It also upheld an "eminently reasonable" administrative interpretation that the Miami-Dade County ordinance prohibiting sex discrimination encompassed sexual harassment. *Burroughs*, 541 So. 2d at 1162. Other courts have also recognized the validity of local human rights ordinances, as has the Office of the Florida Attorney General. *See, e.g., City of Clearwater v. Studebaker's Dance Club*, 516 So. 2d 1106, 1108 (Fla. 2d DCA 1987) (enforcing city ordinance prohibiting sex discrimination in public accommodations); *Bohentin v. CESC, Inc.*, No. 2016-CA-002411, slip op. at 3 (Fla. 2d Cir. Ct. Sept. 27, 2017) (upholding the Leon County Human Rights Ordinance); *see also* Op. Att'y Gen. Fla. 84-97 (1984) ("In sum, it is my opinion that local governmental bodies are empowered to enact and enforce local anti-discrimination ordinances to the extent that such legislation does not conflict with state statutes . . ."). The Florida Supreme Court has

“commend[ed]” at least one local government for adopting a local ordinance that evinced a “moral commitment” to combatting discrimination. *La Rosa*, 505 So. 2d at 424.

It is well established that human rights ordinances can coexist with state civil rights laws. *See Burroughs*, 541 So. 2d at 1161; *Bohentin*, No. 2016-CA-002411, slip op. at 3 (ruling that the Leon County Human Rights Ordinance and the Florida Civil Rights Act can “co-exist”); *cf. Hoesch v. Broward Cty.*, 53 So. 3d 1177, 1189 (Fla. 4th DCA 2011) (citing *City of Kissimmee v. Fla. Retail Fed’n, Inc.*, 915 So. 2d 205 (Fla. 5th DCA 2005)) (“[I]t is not a conflict if an ordinance is more stringent than a statute.”). This remains true in the present appeal.

Harmful discrimination affects many Floridians and correlates with higher rates of poverty, housing insecurity, and unemployment. For decades, local governments have adopted human rights ordinances, including the Orlando Human Rights Ordinance at issue here, to protect their communities from discrimination. In turn, Florida’s judiciary has recognized the authority of local government to protect their communities. When Florida’s local governments take action to safeguard the most vulnerable, their authority and freedom to do so must be preserved.

CONCLUSION

For the foregoing reasons, the ruling of the Ninth Judicial Circuit Court should be reversed.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2019 a true and correct copy of the foregoing motion was electronically filed with the Clerk of Court through the eDCA Portal to be served on the following counsel: Alain E. Boileau at aboileau@fortlauderdale.gov; Amber L. Slayton at aslayton@cityofnorthport.com; Elaine M. Asad at Elaine.Asad@ocfl.net; Faroat Andasheva at FaroatAndasheva@miamibeachfl.gov; Brian Franklin at FranklinBW@cityofgainesville.org; Matthew W. Dietz at mdietz@justdigit.org; Robert F. Rosenwald at robertrosenwald@miamibeachfl.gov; Sarah E. Warren at sarah.warren@sarasotagov.com; Kerry Ezrol at kezrol@gorencherof.com; Diriki T. Geuka at dgeuka@pinellascounty.org; Laurie Cohen at lcohen@wellingtonfl.gov; Lynn Gelin at GelinL@mydelraybeach.com; Dan Rigo at rigod@leoncountyfl.gov; Robert B. Shillinger at Shillinger-Bob@monroecounty-fl.gov; Denise Marie Nieman at DNieman@pbcgov.org; Ursula Richardson at Ursula.Richardson@tampagov.net; Thomas J. Trask at tom@cityattorneys.legal; Andrew J. Hand at ahand@shepardfirm.com; Andrew W. Mai at andrew.mai@osceola.org; Jody Litchford at Jody.Litchford@cityoforlando.net; Ellen Glasser at eglasser@coab.us; Adam Katzman at AKatzman@broward.org; Courtney Wilson at

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the text of the foregoing Initial Brief is written in Times New Roman 14-point font pursuant to Rule 9.210(A)(2), Florida Rules of Appellate Procedure.

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