

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

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**CASE NO. 5D21-1061**

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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,

*Appellant,*

vs.

ORANGE COUNTY, FLORIDA, ANITA YANES, AND BRITTNEY SMITH,

*Appellees.*

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On Appeal from the Ninth Judicial Circuit of Florida, No. 2018-CA-03554

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**BRIEF OF AMICI CURIAE EQUALITY FLORIDA INSTITUTE,  
IMPACT FUND, NATIONAL CENTER FOR LESBIAN RIGHTS, ADL,  
ACLU OF FLORIDA, FREEDOM FOR ALL AMERICANS,  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.,  
LEAGUE OF WOMEN VOTERS OF FLORIDA, LEGAL AID AT WORK,  
AND ZEBRA COALITION IN SUPPORT OF APPELLEES**

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## **INTEREST OF AMICI**<sup>1</sup>

This brief is submitted by Equality Florida Institute, Impact Fund, National Center for Lesbian Rights, and seven other nonprofit organizations (collectively “amici”) in support of Appellees. 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,

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<sup>1</sup> This Court granted amici leave to file this brief on September 21, 2021.

environmental, racial, and social justice. The Impact Fund provides funding, offers innovative 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, ADL continues 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 over one million 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 44,000 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.

**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 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. *See, 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. The League is concerned when local voters' voices are silenced when their local ordinances are preempted unnecessarily, as it erodes the confidence that voters have in the voting process and makes it more difficult for the League to convince citizens to register to vote and vote.

**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 LGBTQ+ and all youth 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 further 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 prohibit discrimination in employment, housing, and public accommodations to provide additional protections to their communities.

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 correctly denied summary judgment, holding that Orange County properly exercised its constitutional authority to adopt a human rights ordinance and that the Florida Civil Rights Act did not preempt the adopted ordinance. Amici urge this Court to affirm the circuit court's ruling and preserve the authority of municipal agencies to enforce local human rights ordinances and protect their communities from discrimination.

## **ARGUMENT**

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

Florida has made significant progress in combating discrimination and promoting equal opportunity for all. Nonetheless, as many recent studies and surveys document, Floridians continue to face harmful discrimination based on sex, sexual orientation, gender identity, race, disability, age, and other characteristics.

LGBTQ people continue to experience discrimination in a variety of settings. In a 2016 survey of LGBTQ people in Jacksonville, twenty-eight percent of respondents experienced workplace discrimination in the

preceding five years.<sup>2</sup> 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.”<sup>3</sup> A gay certified nursing assistant recently alleged he was harassed by multiple colleagues at a nursing facility in Jacksonville and was ultimately forced to resign.<sup>4</sup> Discrimination also occurs in public accommodations and housing.<sup>5</sup> A civil rights attorney reported that she has been kicked out of Jacksonville restaurants because she is a lesbian.<sup>6</sup> A widowed woman with Alzheimer’s was refused admittance to four

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<sup>2</sup> 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/wp-content/uploads/Impact-LGBT-Discrimination-FL-Sep-2017.pdf> (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* 31 tbl.2 (2016) (unpublished report), [https://jaxequality.files.wordpress.com/2016/03/unf\\_jacksonville\\_lgbt\\_survey\\_2016.pdf](https://jaxequality.files.wordpress.com/2016/03/unf_jacksonville_lgbt_survey_2016.pdf)).

<sup>3</sup> *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, 5:26 PM), <https://www.jacksonville.com/opinion/editorials/2015-03-03/story/its-myth-claim-jacksonvilles-lgbt-residents-arent-experiencing>).

<sup>4</sup> Erik Avancier, *Employee Files \$10M Sexual Harassment Suit Against Jacksonville Nursing Home*, News4Jax (Aug. 19, 2021, 8:47 PM), <https://www.news4jax.com/news/local/2021/08/20/employee-files-10m-sexual-harassment-suit-against-jacksonville-nursing-home>.

<sup>5</sup> Mallory et al., *supra* note 2, at 30.

<sup>6</sup> *Id.* at 31 (citing Times-Union Editorial, *supra* note 3).

assisted living facilities after she told the facilities she had recently lost her wife.<sup>7</sup> LGBTQ seniors often struggle to find housing that will accept them, forcing many to hide their identities in order to enter retirement communities or long-term care facilities.<sup>8</sup>

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 were fired, denied a promotion, or not hired because of their gender identity or expression.<sup>9</sup> Twenty-five percent of respondents experienced some form of housing discrimination in the past year, such as eviction from their home or denial of housing because of being transgender.<sup>10</sup> Respondents also described

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<sup>7</sup> *Id.* at 31 (citing Christopher Moffatt, *'Uptight' Straight Republican: How a Lesbian Couple Opened My Eyes to Discrimination*, Miami Herald (Oct. 4, 2016, 4:28 PM), <https://www.miamiherald.com/news/local/community/gay-south-florida/article105918977.html>).

<sup>8</sup> Hannah Critchfield, *For LGBTQ Seniors, Finding a House That Is a Home Can Be Problematic*, Tampa Bay Times (June 30, 2021), <https://www.tampabay.com/news/health/2021/06/30/for-lgbtq-seniors-finding-a-house-that-is-a-home-can-be-problematic/>.

<sup>9</sup> 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>.

<sup>10</sup> *Id.* at 2.

denial of equal treatment or service, verbal harassment, and physical attacks in places of public accommodation, including retail stores, hotels, and government offices.<sup>11</sup> In 2017, a woman was refused service at a grocery store in Miami Beach solely because she was transgender.<sup>12</sup>

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 have low-incomes than people who are not LGBT.<sup>13</sup>

Discrimination based on national origin and race 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

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<sup>11</sup> *Id.*

<sup>12</sup> FREEDOM FOR ALL AMERICANS, *Transgender Woman Harassed at Local Grocery Store Thankful for Local Non-Discrimination Protections* (Dec. 12, 2017, 9:34 AM), <https://www.freedomforallamericans.org/transgender-woman-harassment-store-local-non-discrimination-protections/>.

<sup>13</sup> WILLIAMS INST., *LGBT Demographic Data Interactive*, “Socioeconomic Indicators: Florida” (Jan. 2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=12#density> (select “Florida” on the map). 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 9, at 1.

well or spoke it with a Spanish accent.”<sup>14</sup> The study also found that respondents “felt singled out for their skin color, their dress, and even their surnames.”<sup>15</sup> 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 higher than the overall county population.<sup>16</sup> 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.<sup>17</sup> Some Floridians have experienced discrimination based on multiple intersecting aspects of their identities. For example, a recent lawsuit filed by the Equal Employment Opportunity Commission (EEOC) against a Plant City Applebee’s restaurant describes racist and homophobic slurs aimed at a Black gay line cook.<sup>18</sup>

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<sup>14</sup> Elizabeth Aranda & Fernando I. Rivera, *Puerto Rican Families in Central Florida: Prejudice, Discrimination, and Their Implications for Successful Integration*, 4 *Women, Gender, & Families of Color* 57, 76 (2016).

<sup>15</sup> *Id.*

<sup>16</sup> Jeffrey A. Will et al., NE. FLA. CTR. FOR COMM. INITIATIVES, *Examining Unemployment Disparities: Barriers to Employment in Duval County 2* (Jan. 2011), <https://perma.cc/X4RS-4X3F> (View the Live Page).

<sup>17</sup> *Id.* at 4.

<sup>18</sup> Press Release from EEOC (Aug. 12, 2021) (announcing EEOC lawsuit against Applebee’s franchise for sexual orientation and race discrimination, retaliation, and constructive discharge), <https://www.eeoc.gov/newsroom/>

Floridians seeking employment have also experienced discrimination because of disability and age. 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.<sup>19</sup> According to a lawsuit brought by the EEOC, 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.<sup>20</sup> 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.<sup>21</sup>

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<sup>19</sup> 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>.

<sup>20</sup> Press Release from EEOC (Sept. 20, 2019) (announcing \$85,000 settlement with Pacific Sunwear of California in EEOC disability discrimination suit), <https://www.eeoc.gov/eeoc/newsroom/release/9-20-19.cfm>.

<sup>21</sup> Press Release from EEOC (May 3, 2018) (announcing \$2.85 million settlement with Seasons 52 in EEOC age discrimination suit), <https://www.eeoc.gov/eeoc/newsroom/release/5-3-18a.cfm>; Press Release from EEOC (Oct. 26, 2017) (announcing \$45,000 settlement with Ruby Tuesday in EEOC age discrimination suit), <https://www.eeoc.gov/eeoc/newsroom/release/10-26-17.cfm>.

As local governments, the legislature, and the Supreme Court recognize, discrimination denies Floridians equal opportunity and full access to public life, including the opportunity to participate in and contribute to society. See, e.g., § 760.01(2), Fla. Stat. (2021) (purposes of the Florida Civil Rights Act include making available individuals’ “full productive capacities”); Orange County, Fla., Code § 22-1(2) (2021) (“[D]iscriminatory practices are . . . a menace to the public health and welfare of our citizens . . . .”); Osceola County, Fla., Code § 27-1(2) (2021) (same); *Morrow v. Duval Cnty. 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”). State and local anti-discrimination protections continue to be needed.

## **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 our citizens.” Osceola County, Fla., Code § 27-1(2) (2021). 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, [and] privileges of individuals within Orange County.” Orange County, Fla., Code § 22-1(3) (2021); see *also* Volusia County, Fla., Code § 36-1 (2021) (stating similar purpose); *accord* Alachua County, Fla., Code §§ 111.01(b), (c) (2020) (same); Leon County, Fla., Code § 9-1(3) (2021) (same).

Many local governments have enacted ordinances that ban discrimination based on sexual orientation and gender identity, which is not explicitly covered in state antidiscrimination laws. 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 reasons why prohibiting discrimination based on sexual orientation and gender identity or expression was “both timely and necessary.” Hillsborough County, Fla.,

Code § 30-18 (2021). Today, twelve counties and twenty-seven cities in Florida have ordinances that explicitly forbid discrimination based on sexual orientation and gender identity in private employment, housing, and public accommodations.<sup>22</sup> These municipalities include the state's seven most populous counties, most populous city, and at least three counties and six

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<sup>22</sup> See Alachua County, Fla., Code ch. 111 (2020); City of Atlantic Beach, Fla., Code ch. 9 (2020); City of Boynton Beach, Fla., Code § 1-12(a) (2021); Broward County, Fla., Code ch. 16 1/2 (2021); City of Delray Beach, Fla., Code ch. 137 (2021); City of Fernandina Beach, Fla., Code ch. 54 (2021); City of Fort Lauderdale, Fla., Code ch. 29 (2021); City of Gainesville, Fla., Code ch. 8 (2021); City of Greenacres, Fla., Code § 1-25 (2021); City of Gulfport, Fla., Code ch. 26 (2020); Town of Haverhill, Fla., Code § 2-177 (2020); Hillsborough County, Fla., Code ch. 30 (2021); City of Jacksonville, Fla., Code tit. XI (2021); Town of Juno Beach, Fla., Code § 1-12 (2021); Town of Lake Park, Fla., Code art. I § 2-4 (2021); City of Lake Worth Beach, Fla., Code ch. 20 (2021); City of Leesburg, Fla., Code ch. 15, art. II (2021); Leon County, Fla., Code ch. 9 (2021); City of Mascotte, Fla., Code ch. 9 (2021); City of Miami Beach, Fla., Code ch. 62 (2021); Miami-Dade County, Fla., Code ch. 11A (2021); Monroe County, Fla., Code ch. 14 (2021); City of Mount Dora, Fla., Code ch. 28 (2021); Village of North Palm Beach, Fla., Code § 1-11 (2021); City of North Port, Fla., Code ch. 16 (2021); Town of Ocean Ridge, Fla., Code § 1-14 (2020); Orange County, Fla., Code ch. 22 (2021); City of Orlando, Fla., Code ch. 57 (2021); Osceola County, Fla., Code ch. 27 (2021); Palm Beach County, Fla., Code ch. 2, art. VI (2021); *id.* ch. 15; Pinellas County, Fla., Code ch. 70 (2021); City of Riviera Beach, Fla., Ordinance 4153 (Oct. 7, 2020); City of Sarasota, Fla., Code ch. 18 (2021); City of Tampa, Fla., Code ch. 12 (2021); City of Venice, Fla., Code ch. 2, art. VII (2021); Volusia County, Fla., Code ch. 36 (2021); City of Wellington, Fla., Code § 1-13 (2021); City of Westlake, Fla., Ordinance 2020-06 (June 8, 2020); City of West Palm Beach, Fla., Code ch. 42 (2021) .

cities within the Fifth Appellate District.<sup>23</sup> Five additional cities provide partial explicit protections limited to either sexual orientation or gender identity or to a subset of private employment, housing, or public accommodations.<sup>24</sup> Today, sixty percent of Floridians (over twelve million people) are protected by local ordinances that expressly prohibit discrimination based on sexual orientation and gender identity.<sup>25</sup> These types of protective ordinances have been in effect for decades.<sup>26</sup>

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<sup>23</sup> UNIV. OF FLA., BUREAU OF ECON. & BUS. RSCH., *Florida Estimates of Population 2020*, 27 tbl.6 (April 1, 2020), <http://edr.state.fl.us/Content/population-demographics/data/Estimates2020.pdf> (listing Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, and Pinellas Counties). In 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 explicit sexual orientation and gender identity protections.

<sup>24</sup> See City of Dunedin, Fla., Code ch. 42 (2021); City of Key West, Fla., Code ch. 38 (2021); City of St. Augustine, Fla., Code ch. 16 (2021); City of St. Augustine Beach, Fla., Code ch. 3 (2021); City of St. Petersburg, Fla., Ordinance 517-G (Jan. 3, 2002). Three of these cities—Dunedin, Key West, and St. Petersburg—are additionally covered by broader county protections.

<sup>25</sup> MOVEMENT ADVANCEMENT PROJECT, *Florida's Equality Profile*, "Local Nondiscrimination Ordinances," [http://www.lgbtmap.org/equality\\_maps/profile\\_state/FL](http://www.lgbtmap.org/equality_maps/profile_state/FL) (last visited Sept. 3, 2021).

<sup>26</sup> FREEDOM FOR ALL AMERICANS, *Florida: LGBTQ Non-Discrimination in the States*, "History of LGBTQ Non-Discrimination in Florida" (Jan. 5, 2021), <https://www.freedomforallamericans.org/category/states/fl/>.

Recently, the Florida Commission on Human Relations announced it will accept and investigate complaints of sex discrimination based on sexual orientation or gender identity in employment, public accommodations, and housing.<sup>27</sup> That announcement implements the U.S. Supreme Court’s unequivocal holding in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), that it is “impossible to discriminate against a person” for being LGBTQ “without discriminating against that individual based on sex,” *id.* at 1741.

While the Commission’s implementation of *Bostock* clarifies the scope of state law, local human rights ordinances explicitly prohibiting discrimination based on sexual orientation or gender identity remain critically important, especially as many ordinances regulate businesses not covered by state law. For example, the Florida Civil Rights Act governs workplaces with fifteen or more employees, § 760.02(7), Fla. Stat. (2021), while many local ordinances prohibit discrimination by employers with five or more employees. See, e.g., Orange County, Fla., Code § 22-27 (2021); Osceola County, Fla., Code § 27-7 (2021); Volusia County, Fla., Code § 36-2 (2021). The Florida Supreme Court has affirmed local governments’

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<sup>27</sup> FLA. COMM’N ON HUM. REL., *Notice*, <https://perma.cc/N6GH-7LWC> (as of August 13, 2021).

ability to regulate employers not covered by state law. *Laborers' Int'l Union of N. Am., Loc. 478 v. Burroughs*, 541 So. 2d 1160, 1161 (Fla. 1989).

In addition to regulating businesses not covered by state law, many local human rights ordinances also provide protection from discrimination based on characteristics not explicitly enumerated in or protected by state civil rights laws. For example, Miami-Dade, Orange, Osceola, and Volusia Counties extend housing and public accommodations protections to older residents, while state housing and public accommodations laws do not prohibit age discrimination. See, e.g., Orange County, Fla., Code §§ 22-42(a), 22-52(a) (2021) (including “age” as a protected characteristic in housing and public accommodations laws); Osceola County, Fla., Code §§ 27-12(a), 27-16(a) (2021) (same); Volusia County, Fla., Code §§ 36-41(a), 36-52(a) (2021) (same); *Metro. Dade Cnty. Fair Hous. & Emp. 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, Miami-Dade County, Fla., Code § 11A-3); cf. §§ 760.08, 760.23, Fla. Stat. (2021). The human rights ordinances enacted by Broward County and Miami-Dade County, the state’s two largest counties, include victims of stalking and domestic violence. See Broward County, Fla., Code §§ 16 1/2-3(p), 16 1/2-33 to -35 (2021); Miami-Dade

County, Fla., Code §§ 11A-12, 11A-20, 11A-26 (2021). Broward County additionally includes veterans and service members. Broward County, Fla., Code §§ 16 1/2-3(p). These vulnerable individuals cannot seek remedies under state law alone from discrimination based on their status.

For all these reasons, 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*, 768 So. 2d 432, 435 (Fla. 2000) (stating that the general purpose of the Florida Civil Rights Act "include[s] securing freedom from discrimination for all individuals and preserving the general welfare of all"); *Traylor v. State*, 596 So. 2d 957, 969 (Fla. 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. See *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. See *Metro. Dade Cnty. Fair Hous. & Emp. 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 Cnty.*, 3 So. 3d 309, 314 (Fla. 2008) (same).

State courts have long recognized the authority of local governments to enact human rights ordinances. See *Metro. Dade Cnty. Fair Hous. & Emp. 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.* at 965-66,

and recognized Broward County's authority to prohibit racial discrimination in housing, *Broward Cnty. v. La Rosa*, 505 So. 2d 422, 423 (Fla. 1987). The Supreme Court "commend[ed]" Broward County for adopting a local ordinance that evinced a "moral commitment" to combatting discrimination. *Id.* at 424. 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, 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 . . .").

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, at 3 (ruling that the Leon County Human Rights Ordinance and the Florida Civil Rights Act can “co-exist”); *cf. Hoesch v. Broward Cnty.*, 53 So. 3d 1177, 1179 (Fla. 4th DCA 2011) (citing *City of Kissimmee v. Fla. Retail Fed’n, Inc.*, 915 So. 2d 205, 208-09 (Fla. 5th DCA 2005)) (“[I]t is not a conflict if an ordinance is more stringent than a statute. . . .”). This is 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 Orange County Human Rights Ordinance at issue here, to address discrimination. In turn, Florida’s judiciary has recognized and confirmed the authority of local governments to protect their communities. When Florida’s local governments take action to safeguard their most vulnerable, in concert with state protections, their authority and freedom to do so must be preserved.

### **CONCLUSION**

For the foregoing reasons, the order of the Ninth Judicial Circuit Court should be affirmed.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 30, 2021 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: Elaine M. Asad at Elaine.Asad@ocfl.net, judith.catt@ocfl.net, Gail.Stanford@ocfl.net; Matthew W. Dietz at mdietz@justdigit.org, aa@justdigit.org, dig@myecfx.com; and Steven G. Mason at amandatolley2016@gmail.com, sgmasonlaw@gmail.com.

/s/ Diana L. Martin  
DIANA L. MARTIN

## **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the text of the foregoing Amicus Brief is written in Arial 14-point font, proportionally spaced, and consists of 4,550 words.

/s/ Diana L. Martin  
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