

Sexual Orientation and Gender Identity Classifications: No Demonstrable Effect On Job Creation Or Economic Growth

There appears to be no evidence supporting the claim that the absence of sexual orientation and gender identity in a state's or city's nondiscrimination laws has any effect on job creation and economic growth. Despite the claims by some that the addition of these classifications is necessary if a city or state wants to grow its jobs and economy, the facts indicate otherwise. Indeed, numerous studies suggest that states without these classifications may actually have greater economic growth, while states with them have comparatively weaker economies and slower job growth.¹

Indeed, the fact that many of the strongest economies are in states that do not recognize these classifications belies the contention that these classifications are prerequisites for job growth and economic flourishing. Put differently, the evidence demonstrates that cities and states do not need to add sexual orientation and gender identity classifications in order to attract or retain businesses, create jobs, or grow their economies.

This paper summarizes some of the recent studies.

1. At the Time of Publication, Seven of Forbes' Most Recent Top Ten States for Business Did Not Have State Nondiscrimination Laws that Included Sexual Orientation and Gender Identity.

Each year, Forbes publishes its list of the "top ten states for business." The magazine considers many factors, including items such as business cost, regulatory environment, economic climate, and growth prospects. Its most recent list, published in 2014, is telling. Of the top ten states for business, six of them do not currently include sexual orientation and gender identity in their nondiscrimination laws.² And the state that is ranked first, Utah, did not recognize sexual orientation or gender identity as protected classes at the time Forbes released its study. Thus, when the most recent Forbes study was released, seven of the top ten states for business did not have laws that protected sexual orientation and gender identity.

2. Three of Forbes' Most Recent Top Five States for Projected Job Growth Do Not Have State Nondiscrimination Laws that Include Sexual Orientation and Gender Identity.

Forbes also publishes an annual list of the five states that have the best indicators for future job creation. Three of these states—Arizona, Florida, and Georgia—do not include sexual orientation and gender identity in their nondiscrimination laws.³

¹ This is not to suggest that there is a correlation between low economic growth and the presence of these classifications in the law or between strong economic growth and the absence of these classifications. Our main point is that there is absolutely no correlation between stronger economic growth and these classifications.

² "The Best States for Business and Careers," *Forbes.com*, <http://www.forbes.com/best-states-for-business/> (last visited Nov. 6, 2015). The states in the top ten that do not include sexual orientation and gender identity in their nondiscrimination laws are North Dakota (2nd), North Carolina (3rd), Virginia (4th), Texas (6th), Nebraska (7th), and Oklahoma (10th).

³ Badenhausen, Kurt, "The Best States for Future Job Growth," *Forbes*, Oct. 21, 2015, *available at* <http://www.forbes.com/sites/kurtbadenhausen/2015/10/21/the-best-states-for-future-job-growth/> (last visited Nov. 6, 2015).

3. At the Time of Publication, Eight of Pew Charitable Trusts’ Most Recent Top Ten States for Job Growth Did Not Have State Nondiscrimination Laws that Included Sexual Orientation and Gender Identity.

In 2014, Pew Charitable Trusts published its research on the states that it believes will experience the greatest job growth in the near future.⁴ At the time the list was published, eight of the top ten states did not recognize sexual orientation and gender identity in their nondiscrimination laws.⁵

4. Three of Forbes’ Top Five States for Actual Job Growth Do Not Have State Nondiscrimination Laws that Include Sexual Orientation and Gender Identity.

Forbes also publishes a list of the top states for job growth. Three of the five states that experienced the most job growth in 2014 do not include sexual orientation and gender identity in their nondiscrimination laws.⁶

5. Nine of CNBC’s Top 15 States For Business Do Not Have State Nondiscrimination Laws that Include Sexual Orientation and Gender Identity.

CNBC publishes an annual study of states that it believes are best for businesses. It considers ten categories of measurements, including factors such as the cost of doing business in the state, the state’s economy, the quality of life for the state’s citizens, and the cost of living. In CNBC’s most recent study, nine of the fifteen states with the best economic climate for businesses do not have state nondiscrimination laws that include sexual orientation and gender identity.⁷ In 2014, eleven of the top fifteen states in the CNBC rankings did not recognize sexual orientation and gender identity.⁸

⁴ We are not aware of a list more recent than the one cited, which was published in January 2014.

⁵ Prah, Pamela, “Which States Will Generate Jobs in 2014?,” *The Pew Charitable Trusts*, Jan. 7, 2014, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/01/07/which-states-will-generate-jobs-in-2014> (last visited Nov. 6, 2015). The eight states without sexual orientation or gender identity classifications that Pew identified are North Dakota (1), Arizona (2), Texas (3), Florida (5), Georgia (6), South Carolina (7), Idaho (9), and Utah (10). Utah added sexual orientation and gender identity to portions of its nondiscrimination laws in 2015; but at the time the Pew list was published, Utah did not recognize these classifications.

⁶ Dill, Kathryn, “The Top 10 Cities and States for Job Growth,” *Forbes*, Nov 4, 2014, available at <http://www.forbes.com/sites/kathryndill/2014/11/04/the-top-10-cities-and-states-for-job-growth/> (last visited Nov. 6, 2015). The three states without sexual orientation or gender identity classifications that Forbes includes in its top 5 for job growth potential are North Dakota (1), Texas (3), and Florida (5).

⁷ “America’s Top States for Business 2015,” *CNBC*, available at <http://www.cnbc.com/2015/06/24/americas-top-states-for-business.html> (last visited Nov. 6, 2015). Those states are Texas (2), Georgia (5), North Dakota (6), Nebraska (7), North Carolina (9), South Dakota (11), Virginia (12), Indiana (13), and Idaho (14).

⁸ “America’s Top States for Business 2014,” *CNBC*, available at <http://www.cnbc.com/2014/06/24/americas-top-states-for-business.html> (last visited Nov. 6, 2015). Those states are Georgia (1), Texas (2), Utah (3), Nebraska (4), North Carolina (5), Virginia (9), North Dakota (10), South Dakota (11), Arizona (13), Tennessee (14), and Kansas (15). As has already been noted, Utah added sexual orientation and gender identity to parts of its state nondiscrimination law in 2015. But at the time the 2014 study was released, the state did not recognize these classifications.

6. Eight of the Ten States That ALEC Projects to Have The Best Economic Outlook in 2015 Do Not Have State Nondiscrimination Laws that Include Sexual Orientation and Gender Identity.

The American Legislative Exchange Council (ALEC) evaluates the economic outlook of all fifty states. In constructing its rankings, ALEC utilizes fifteen policy considerations that it contends “have proven, over time, to be the best determinants of economic success.” Twelve of its top fifteen states do not have state nondiscrimination laws that include sexual orientation and gender identity.⁹

7. At the Time of Publication, Eight of Pew Charitable Trusts’ Most Recent Bottom Ten States for Job Growth Had State Nondiscrimination Laws that Included Sexual Orientation and Gender Identity.

Eight of the ten states that Pew identified in 2014 as having the worst forecast for job creation were states that have added sexual orientation and gender identity to their state nondiscrimination laws. These states were New Mexico (1), New Hampshire (2), Massachusetts (4), New York (6), Vermont (7), Maine (8), Illinois (9), and the District of Columbia (10).¹⁰

* * * * *

To summarize, while the debate about adding sexual orientation and gender identity to existing nondiscrimination laws is likely to continue, no one should think that adding these classifications will improve their city or state’s economic outlook. The weight of the research simply does not support the claim that these classifications are essential for a thriving economy.

⁹ Laffer, Arthur, et al., “Rich States, Poor States, 2015 Edition” *American Legislative Exchange Council*, available at <http://www.alec.org/publications/rich-states-poor-states/> (last visited Nov. 6, 2015). Those states are North Dakota (2), Indiana (3), North Carolina (4), Arizona (5), Idaho (6), Georgia (7), Wyoming (8), South Dakota (9), Texas (11), Virginia (12), Alaska (14), and Florida (15).

¹⁰ *Id.* Of the states that do not include sexual orientation and gender identity, only Tennessee (3) and Alaska (5) were projected to be among the bottom ten states for job creation. *Id.*