

No. 21-1506

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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ROBERT UPDEGROVE and LOUDOUN MULTI-IMAGES LLC, d/b/a BOB  
UPDEGROVE PHOTOGRAPHY,

*Plaintiffs-Appellants,*

v.

MARK R. HERRING, in his official capacity as Virginia Attorney General, and R.  
THOMAS PAYNE II, in his official capacity as Director of the Virginia Division of  
Human Rights and Fair Housing,

*Defendants-Appellees.*

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On Appeal from a Judgment of the United States District Court  
for the Eastern District of Virginia (before the Hon. Claude M. Hilton)  
Case No. 1:20-cv-01141-CMH-JFA

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**BRIEF OF AMICI CURIAE MASSACHUSETTS, CALIFORNIA,  
CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA,  
HAWAI'I, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA,  
NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK,  
NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND,  
AND VERMONT IN SUPPORT OF DEFENDANTS-APPELLEES**

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## INTERESTS OF AMICI

The *Amici* States—Massachusetts, California, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Vermont—file this brief pursuant to Fed. R. App. P. 29(a)(2) because we share sovereign and compelling interests in protecting our residents and visitors from discrimination. Like Virginia, we support civil rights protections for LGBTQ people, including prohibitions on discrimination in places of public accommodation: the diners, stores, and other businesses that are part of daily life in a free society. Such public accommodations laws respond to the pervasive discrimination LGBTQ people have long suffered, continuing to today, by ensuring equal enjoyment of goods and services and combatting the severe personal, economic, and social harms caused by discrimination.

The *Amici* States also share interests in upholding the rights protected by the First Amendment. We respect and do not seek to abridge the right to hold and express views regarding the nature of marriage, including views founded in religious faith. But the Free Speech Clause does not shield businesses from content-neutral, generally applicable civil rights laws like the one Robert Updegrove and his business, Loudon Multi-Images LLC d/b/a Bob Updegrove Photography (together, “Updegrove Photography”) propose to violate.

Exempting businesses from public accommodations laws on the basis of the First Amendment would undermine the vital benefits these laws provide to residents and visitors. Many Americans would face exclusion from a host of everyday businesses or, at the very least, face the ever-present threat that any business owner could refuse to serve them when they walk in the door—simply because of their sexual orientation, or their race, religion, or sex.

The *Amici* States therefore join Virginia in supporting affirmance of the decision below dismissing Updegrove Photography’s complaint and declining to enter a preliminary injunction.

### **ARGUMENT**

The District Court granted Virginia’s motion to dismiss on the ground that Updegrove Photography has no standing to challenge Virginia’s public accommodations law—a holding that, if affirmed, would obviate any need to consider the merits of Updegrove Photography’s claims. But, if the Court does reach Updegrove Photography’s merits arguments related to its request for a preliminary injunction, the *Amici* States urge the Court to reject those arguments and instead reaffirm the constitutionality of our Nation’s public accommodations laws.

**I. States across the country have enacted laws to combat discrimination against LGBTQ people in public accommodations.**

The States have sovereign and compelling interests in protecting their residents, and particularly members of historically disadvantaged groups, from the economic, personal, and social harms caused by invidious discrimination. *See Roberts v. United States Jaycees*, 468 U.S. 609, 624 (1984). Since the mid-nineteenth century, statutes focused on places of public accommodation have been a centerpiece of state efforts to combat discrimination. *See Romer v. Evans*, 517 U.S. 620, 627-28 (1996). These statutes have long been held constitutional as applied to a range of public accommodations, including commercial businesses. *See, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 260 (1964). Because “[o]ur society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth” and because this “interest is a weighty one,” many States and other jurisdictions throughout the country expressly protect LGBTQ people from discrimination in places of public accommodation. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021) (quoting *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018)); *see* Addendum Tables A and B, *infra* (collecting laws). These statutes recognize and work to redress the discrimination that LGBTQ Americans continue to face.

**A. LGBTQ Americans are a historically disadvantaged group.**

LGBTQ Americans have faced a long history of invidious discrimination—including legally sanctioned discrimination. *See Obergefell v. Hodges*, 576 U.S. 644, 660-61, 673-74, 677-78 (2015); *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 967-68 (Mass. 2003). LGBTQ people have been fired from their jobs, evicted from their homes, targeted by police, and denied service by businesses across the country simply because of their “distinct identity.” *Obergefell*, 576 U.S. at 660.

Discrimination against LGBTQ people is a severe and continuing problem. LGBTQ Americans are still much more likely to be bullied, harassed, and attacked in hate crimes than their non-LGBTQ peers.<sup>1</sup> LGBTQ people also report overt discrimination, particularly in the form of denial of service by businesses, at rates comparable to, or greater than, those for other historically disadvantaged groups.<sup>2</sup>

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<sup>1</sup> See Tasseli McKay et al., *Understanding (and Acting On) 20 Years of Research on Violence and LGBTQ + Communities*, 20 *Trauma, Violence, & Abuse* 665, 669-70 (2019); Tim Fitzsimons, *Nearly 1 in 5 Hate Crimes Motivated by Anti-LGBTQ Bias, FBI Finds*, NBC News (Nov. 12, 2019), <https://www.nbcnews.com/feature/nbc-out/nearly-1-5-hate-crimes-motivated-anti-lgbtq-bias-fbi-n1080891>.

<sup>2</sup> See Christy Mallory & Brad Sears, *Refusing to Serve LGBT People: An Empirical Assessment of Complaints Filed under State Public Accommodations Non-Discrimination Laws*, 8 *J. Res. Gender Stud.* 106, 113-16 (2018); Christy Mallory & Brad Sears, *LGBT Discrimination, Subnational Public Policy, and Law in the United States*, in *Oxford Research Encyclopedia of Politics* 1, 2-8 (2020),  
(footnote continued)

This continuing discrimination harms the health and well-being of LGBTQ people, their families, and their communities. A large and growing body of evidence shows that discriminatory social conditions have severe negative health impacts on LGBTQ people, including increased rates of mental health disorders and suicide attempts, especially for LGBTQ youth.<sup>3</sup> Notably, these outcomes are less severe and pervasive in communities that provide LGBTQ people with legal protection against discrimination.<sup>4</sup>

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<https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1200?rskey=tI5wxr&result=7>.

<sup>3</sup> Ctr. for the Study of Inequality, Cornell University, *What Does the Scholarly Research Say About the Effects of Discrimination on the Health of LGBT People?*, What We Know Project (2019), <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-scholarly-research-say-about-the-effects-of-discrimination-on-the-health-of-lgbt-people/> (detailing findings from 300 peer-reviewed studies); *see also, e.g.*, Julia Raifman et al., *Association of State Laws Permitting Denial of Services to Same-Sex Couples with Mental Distress in Sexual Minority Adults: A Difference-in-Difference-in-Differences Analysis*, 75 *JAMA Psychiatry* 671, 673-75 (2018); Julia Raifman et al., *Difference-in-Differences Analysis of the Association Between State Same-Sex Marriage Policies and Adolescent Suicide Attempts*, 171 *JAMA Pediatrics* 350, 353-55 (2017); Mark L. Hatzenbuehler, *Structural Stigma: Research Evidence and Implications for Psychological Science*, 71 *Am. Psychologist* 742, 745-46 (2016); Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay, and Bisexual Youth*, 127 *Pediatrics* 896, 899-901 (2011); Mark L. Hatzenbuehler et al., *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 *Am. J. Pub. Health* 2275, 2277-78 (2009).

<sup>4</sup> *See* Raifman et al. (2018), *supra* n.3; Raifman et al. (2017), *supra* n.3; Hatzenbuehler et al., *supra* n.3.

**B. States prohibit discrimination against LGBTQ people in public accommodations to prevent severe economic, personal, and social harms.**

Discrimination by places of public accommodation causes unique and severe economic, personal, and social harms. It denies equal access to important goods and services and, by segregating the market, has a well-established “substantial and harmful effect” on the economy. *Heart of Atlanta*, 379 U.S. at 258 (acknowledging broad impacts of seemingly local discrimination); *see also Roberts*, 468 U.S. at 625-26. Such discrimination also stigmatizes its victims, causing them intense dignitary injuries, and encourages social fragmentation and conflict. *See Roberts*, 468 U.S. at 625-26; *Daniel v. Paul*, 395 U.S. 298, 306 (1969); *Heart of Atlanta*, 379 U.S. at 250; *see also Masterpiece*, 138 S. Ct. at 1727 (allowing wedding service providers to refuse to provide goods and services to same-sex couples would create “a community-wide stigma inconsistent with the history and dynamics of civil rights laws”).

As the Supreme Court has long recognized, “no action is more contrary to the spirit of our democracy and Constitution—or more rightfully resented by a . . . citizen who seeks only equal treatment”—than a denial of equal service by a business “ostensibly open to the general public.” *Daniel*, 395 U.S. at 306-08 (quotations omitted); *see also Heart of Atlanta*, 379 U.S. at 292 (Goldberg, J., concurring) (“Discrimination is not simply dollars and cents, hamburgers and

movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color.” (quoting S. Rep. No. 88-872, at 16 (1964)).

Accordingly, the Supreme Court has instructed the lower courts to resolve public accommodations cases “without subjecting gay persons to indignities when they seek goods and services in an open market.” *Masterpiece*, 138 S. Ct. at 1732.

The American legal and political system has long recognized the importance of public accommodations being open to all. Modern statutes codify and expand upon a common law doctrine, dating back at least to the sixteenth century, that generally required public accommodations to serve all customers. *See Heart of Atlanta*, 379 U.S. at 261 (recognizing that such statutes “codify the common-law innkeeper rule”); *see also, e.g., Lombard v. Louisiana*, 373 U.S. 267, 275-77 & n.6 (1963) (Douglas, J., concurring) (collecting references dating back to 1558). States began enacting public accommodations statutes in 1865 to prohibit discrimination against African Americans. *See Act Forbidding Unjust Discrimination on Account of Color or Race*, 1865 Mass. Acts, ch. 277 (May 16, 1865). Although there is some variation across the States, “public accommodations” laws generally guarantee that when customers enter a business that has opened its doors to the public, they will not be denied service simply because of the color of their skin,

their sex, their disability, or—under many state and local laws—their sexual orientation.

A majority of Americans now live in communities that “carr[y] forward [this] tradition,” *Masterpiece*, 138 S. Ct. at 1725, by prohibiting places of public accommodation from discriminating on the basis of sexual orientation. Twenty-two States and the District of Columbia have laws expressly protecting their residents against discrimination in public accommodations on the basis of sexual orientation. *See* Addendum Table A, *infra*.<sup>5</sup> These state-level protections are supplemented by local laws and ordinances enacted by hundreds of cities, towns, and counties across the country. *See* Addendum Table B, *infra* (collecting citations to roughly 100 local laws and ordinances in the States that do not have statewide laws protecting against discrimination in public accommodations based on sexual orientation). All told, according to U.S. Census Bureau data, the number of Americans living in jurisdictions that have such statewide or local protections is

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<sup>5</sup> In addition to these twenty-three jurisdictions with express statutory protections, in Florida, the State’s Commission on Human Relations has recently announced that, based on the Supreme Court’s decision in *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020), the Commission will interpret Florida’s public accommodations law’s prohibition of discrimination on the basis of sex to prohibit discrimination on the basis of sexual orientation. *See* Florida Commission on Human Relations, *Notice: Sexual Discrimination* (2021), <https://fchr.myflorida.com/sexual-discrimination>.



over 189 million (or 57.6% of the national population). *See* Addendum Tables A & B, *infra*.

These laws—including the Virginia statute at issue before this Court—reflect recognition of the strong evidence of discrimination against LGBTQ people. *See, e.g.*, N.Y. Sexual Orientation Non-Discrimination Act of 2002, ch. 2, § 1 (prejudice on account of sexual orientation “has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering,” and “fostered a general climate of hostility and distrust, leading in some instances to physical violence”). And such public accommodations laws ban the very “acts of . . . discrimination” that “cause [the] unique evils that government has a compelling interest to prevent,” thereby “respond[ing] precisely to the substantive problem which legitimately concerns’ the State[.]” *Roberts*, 468 U.S. at 628-29 (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984)) (describing gender discrimination).

In conjunction with bans on acts of discrimination, state public accommodations laws commonly also prohibit posting notices and advertisements that indicate that services will be denied on the basis of a protected characteristic. At least twenty-three States (including Virginia) and the District of Columbia expressly prohibit such discriminatory advertising by public accommodations. *See*

Addendum Table C, *infra*; Va. Code Ann. § 2.2-3904(B) (stating that it is unlawful for public accommodations “to publish, circulate, issue, display, post, or mail, either directly or indirectly, any communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from, or denied to any individual on the basis of . . . sexual orientation”). Prohibitions against discriminatory advertising are also commonly included in anti-discrimination measures directed at housing and employment. *See, e.g.*, 42 U.S.C. § 3604 (barring housing advertising that “indicates any preference, limitation, or discrimination based on” a protected characteristic); 42 U.S.C. § 2000e-3(b) (similar prohibition for employment advertisements). The States and federal government, recognizing that advertisements themselves may serve as the means by which businesses discriminatorily turn away customers, have thus prohibited such advertisements in order to prevent the resulting harms.

**II. The First Amendment does not exempt businesses open to the public from state anti-discrimination laws.**

There is no real dispute that Updegrove Photography’s stated intent to refuse services to potential LGBTQ customers in the future would violate Virginia’s anti-discrimination law: Updegrove Photography “solicits and receives inquiries for [its] photography business from the general public” and “offers several kinds of photography services to the public,” JA016 (¶¶ 20-21), while categorically refusing

to “provide wedding photography that celebrates any marriage not between one man and one woman, such as same-sex . . . engagements or marriages,” JA025 (¶ 106). An objection to two people of the same sex marrying cannot reasonably be divorced from the status of being LGBTQ. *See Bostock v. Clayton County*, 140 S. Ct. 1731, 1741-42 (2020); *Christian Legal Soc. v. U.C. Hastings*, 561 U.S. 661, 689 (2010); *Lawrence v. Texas*, 539 U.S. 558, 583 (2003); *cf. Holcomb v. Iona Coll.*, 521 F.3d 130, 138-39 (2d Cir. 2008) (recognizing that “where an employee is subjected to adverse action because an employer disapproves of interracial [marriage], the employee suffers discrimination because of the employee’s own race”). Nor is it a defense to provide photography services to LGBTQ people marrying individuals of the opposite sex, to LGBTQ parents associated with opposite-sex weddings, or to LGBTQ clients of Updegrove Photography’s event photography business. *Cf.* JA028 (¶¶ 125-27); Appellants’ Br. 50. Public accommodations laws exist to prevent not only outright exclusion, but also separate and unequal treatment. Otherwise, our country would be blighted by segregated businesses that serve in perniciously unequal ways, reserving some services only for customers who are members of preferred groups. *See Katzenbach v. McClung*, 379 U.S. 294, 296-97 (1964) (discussing restaurant that served African American customers through a take-out window but refused to serve them in the dining area).

The First Amendment does not require permitting such unequal treatment by businesses that offer their services to the public. No matter the sincerity of a business owner's religious beliefs or other deeply held views, the Free Speech Clause does not allow a business to pick and choose its customers in violation of laws that prohibit discriminatory conduct.<sup>6</sup>

**A. Prohibiting businesses from discriminating against customers does not compel speech.**

Although the First Amendment prohibits States from “telling people what they must say” or requiring them to “speak the government’s message,” *Rumsfeld v. Forum for Acad. & Inst’l Rights, Inc.*, 547 U.S. 47, 61, 63 (2006) (“*FAIR*”), public accommodations statutes like Virginia’s do neither.

Indeed, Virginia’s public accommodations law does not regulate speech at all. In *FAIR*, the Supreme Court rejected the argument that a prohibition on law schools discriminating against military recruiters when providing campus access to

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<sup>6</sup> Updegrove Photography’s complaint also seeks relief under the First Amendment’s Free Exercise and Establishment Clauses. JA052-55 (¶¶ 276-96). Because Updegrove Photography does not premise its request that this Court order entry of a preliminary injunction on either of these counts, *see* Appellants’ Br. 45-53, this brief does not address either claim in depth. In short, the Free Exercise Clause simply does not excuse businesses from complying with neutral laws of general applicability, including public accommodations laws like Virginia’s. *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990); *Masterpiece*, 138 S. Ct. at 1727 (While a person’s “religious and philosophical objections are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.”).

outside employers regulated the law schools' speech. *Id.* at 60. The Court concluded that the prohibition regulated “conduct, not speech” given that “[i]t affects what law schools must *do*—afford equal access to military recruiters—not what they may or may not *say*.” *Id.* That reasoning applies equally to this case. State anti-discrimination laws like Virginia's affect what public accommodations “must *do*”—provide equal access to LGBTQ people—“not what they may or may not *say*.” *Id.* In other words, Virginia's law does not require speaking or endorsing a government motto, pledge, or message. *See id.* at 62. Rather, the law simply prohibits refusing to “afford equal access” to the full range of a business's services to LGBTQ couples. *Id.* at 60.

Moreover, even assuming that wedding photography is a form of speech, Virginia law does not “compel” wedding photography or the creation of public galleries, nor does it regulate the process of wedding photography in any particular way. Updegrove Photography is under no legal obligation to offer wedding photography as a service of its broader photography business, *see* JA016-17 (¶¶ 22-25) (noting that Updegrove Photography also offers event photography services), nor to take photographs or post those photographs on the business's website in any specific manner. And Virginia law *certainly* does not compel Mr. Updegrove to “express[] his approval of the marriage by joyfully interacting” with his business's clients and their families or by “verbally encouraging them to enjoy

and celebrate the wedding.” JA026 (¶ 111). Virginia law simply requires that businesses offering their services to the public make wedding photography for LGBTQ customers if, and to the extent that, they provide wedding photography for other customers—just as under the Solomon Amendment at issue in *FAIR*, recruiting assistance involving “elements of speech” like posting notices of employer visits was “only ‘compelled’ if, and to the extent, the school” chose to assist “other recruiters.” 547 U.S. at 61-62. This type of non-discrimination requirement is a “far cry” from laws “dictat[ing] the content of . . . speech.” *Id.* (distinguishing cases like *Wooley v. Maynard*, 430 U.S. 705 (1977)). As the *FAIR* Court noted with an example also apposite here, “prohibit[ing] employers from discriminating in hiring on the basis of race” does not compel speech, and “it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.” *Id.* (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)).<sup>7</sup>

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<sup>7</sup> Public accommodations laws also leave businesses like Updegrove Photography free to disclaim any message it worries may be communicated by providing non-discriminatory service. So long as businesses treat all customers equally, they may, for example, create and disseminate a disclaimer stating that the provision of a service does not constitute an endorsement or approval of any customer or conduct. *See FAIR*, 547 U.S. at 64-65; *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 86-88 (1980).

This doctrine also lays bare why Updegrove Photography is wrong to rely on *Hurley v. Irish American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), in arguing that Virginia’s public accommodations law unlawfully compels its speech. *See, e.g.*, Appellants’ Br. 47-48, 50. Updegrove Photography’s argument relies on the premise that commercial businesses’ refusal to serve customers from a historically disadvantaged group should receive the same First Amendment protection afforded to private, non-commercial organizations engaged in expressive associational activities at the core of the First Amendment’s protections. But this premise elides the fundamental distinction between a private speaker sharing its *own* message and a public accommodation that offers services to the general public. While *Hurley* noted that “business corporations generally” enjoy a speaker’s “autonomy to choose the content of his *own* message,” and that a private parade organizer may “customar[ily] determin[e]” which expressive units it wishes to present, 515 U.S. at 573-75 (emphasis added), *Hurley* nowhere suggested that a business that offers as a service to the general public the creation of a product could refuse to provide the service to customers on the basis of their sexual orientation, nor that laws requiring such service compel any form of speech, *see FAIR*, 547 U.S. at 63 (“The expressive nature of a parade was central to our holding in *Hurley*.”). Rather, just as a commercial business has no protected expressive interest in its relationship with its customers, *see Roberts*, 468 U.S. at

638 (O'Connor, J., concurring); *Goodpaster v. City of Indianapolis*, 736 F.3d 1060, 1073 (7th Cir. 2013), a business offering services to the general public does not have the right to express a message by offering only a subset of its services to clients of particular sexual orientations, *see Elane Photography, LLC v. Willock*, 309 P.3d 53, 68 (N.M. 2013) (“While photography may be expressive, the operation of a photography business is not.”). Similarly, such a business is not unlawfully compelled to speak when it is required to offer those clients all of its services on equal footing. *See id.*

**B. The First Amendment does not protect advertisements giving notice that public accommodations will refuse service on the basis of a protected characteristic.**

Public accommodations laws’ restrictions on discriminatory advertising do not violate the free speech rights of business owners who wish to post notices of their intent to deny services on the basis of a protected characteristic. *See* JA032 (¶¶ 150-53) (describing intent to adopt policy statement “bind[ing] Bob Updegrove Photography to not photograph same-sex weddings”); JA034 (¶¶ 162-65) (describing intent to post statement to website “explaining his religious reasons for why he only promotes marriages between one man and one woman”). Such advertisements may be prohibited for at least two reasons.

First, to the extent the notices constitute commercial speech, they can be banned outright simply because they advertise unlawful, discriminatory activities.



*Pittsburgh Press Co. v. Human Relations Comm'n*, 413 U.S. 376, 388-89 (1973) (employment discrimination ordinance validly prohibited newspaper from publishing sex-segregated employment advertisements); accord *United States v. Hunter*, 459 F.2d 205, 211-13 (4th Cir. 1972) (statute limiting commercial advertising of an intent to discriminate in the sale or rental of a dwelling does not violate the First Amendment).

Second, commercial speech doctrine aside, a state may prohibit such signs as part and parcel of, and incidental to, the public accommodations law's restriction on discriminatory conduct. Such laws in essence prohibit discriminatory refusals of service that are communicated preemptively in a notice, rather than only after service is requested by the customer. See *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011) ("That is why a ban on race-based hiring may require employers to remove 'White Applicants Only' signs." (quoting *FAIR*, 547 U.S. at 62) (internal quotation marks omitted)); cf. *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) ("If an employer should announce his policy of discrimination by a sign reading 'Whites Only' on the hiring-office door, his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs."). Indeed, even some of the case law *Updegrove Photography* itself cites, see Appellants' Br. 48, 50, 52, recognizes that, insofar as a state can constitutionally prohibit a discriminatory refusal to provide services, the state can

also “forbid the [business owners] from advertising their intent to engage in discriminatory conduct.” *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 757 n.5 (8th Cir. 2019) (citing *FAIR*, 547 U.S. at 62). This is why courts repeatedly hold that, even in contexts like newspapers that are widely understood to be protected, discriminatory advertising is not entitled to First Amendment protection. *Cf., e.g., Joyner v. Whiting*, 477 F.2d 456, 463 (4th Cir. 1973) (stating that “freedom of the press furnishes no shield for discrimination in advertising” accepted by student newspaper).

**C. Public accommodations laws like Virginia’s satisfy any level of constitutional scrutiny.**

For all the reasons above, Virginia’s neutral and generally applicable statute regulates conduct and commercial speech, and therefore is not subject to strict scrutiny.<sup>8</sup> The law would, however, survive even strict scrutiny. As the Supreme Court has found time and again, “public accommodations laws ‘plainly serv[e] compelling state interests of the highest order.’” *Bd. of Dirs. of Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 549 (1987) (quoting *Roberts*, 468 U.S. at 624).

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<sup>8</sup> Updegrave Photography’s contention that Virginia’s statute is somehow *not* viewpoint-neutral, *see* Appellants’ Br. 51, defies both common sense and decades of precedent. *See, e.g., Christian Legal Soc.*, 561 U.S. at 695 (“all-comers requirement” is “textbook viewpoint neutral”).

**1. States have a compelling interest in eliminating sexual orientation discrimination in public accommodations.**

States have a “compelling interest of the highest order” in eradicating invidious discrimination against historically marginalized groups, *Duarte*, 481 U.S. at 549 (quoting *Roberts*, 468 U.S. at 624)—including LGBTQ persons. *See Masterpiece*, 138 S. Ct. at 1727 (“The exercise of their freedom on terms equal to others must be given great weight and respect by the courts.”). Courts across the country have recognized as much. *See, e.g., 303 Creative LLC v. Elenis*, No. 19-1413, 6 F.4th 1160, 2021 WL 3157635, at \*9 (10th Cir. July 26, 2021); *Cervelli v. Aloha Bed & Breakfast*, 415 P.3d 919, 931, 935 (Haw. Ct. App. 2018); *Gifford v. McCarthy*, 137 A.D.3d 30, 40 (N.Y. App. Div. 2016); *N. Coast Women’s Care Med. Grp., Inc. v. San Diego Cty. Super. Ct.*, 189 P.3d 959, 968 (Cal. 2008); *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 31-37 (D.C. 1987).

As discussed above, LGBTQ Americans continue to suffer severe and pervasive discrimination in employment, housing, and places of public accommodation, among other facets of their everyday lives. *See Part I, supra*, at 4-5 & nn.1-4. And research bears out the terrible injuries this discrimination inflicts on LGBTQ people, their families, and their communities—not only lost employment or housing, but also severe harms to their health and wellbeing. *See Part I, supra*, at 4-5 & nn.1-4. Updegrove Photography asserted before the District

Court that refusals of service on the basis of sexual orientation are not an “actual problem” in light of the existence of other photographers who will provide services for same-sex weddings, Dkt. 6 (Pls.’ PI Mem.) at 27, but this contention belies the lamentable reality exemplified by Updegrove Photography’s own expressed intention to discriminate if presented with the opportunity. And the Supreme Court has long recognized the significant harm caused by such discrimination on its own, as well as the States’ concomitant compelling interests in preventing these harms. *See, e.g., Masterpiece*, 138 S. Ct. at 1728-29; *Duarte*, 481 U.S. at 549.

**2. Public accommodations laws are narrowly tailored to serve the States’ compelling interest in combatting discrimination.**

Just as employment discrimination laws are “precisely tailored” to advance a state interest in providing “equal opportunity to participate in the workforce,” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 733 (2014), public accommodations laws like Virginia’s are precisely tailored to advance a state interest in ensuring equal access to the businesses that sustain our everyday life. *See Roberts*, 468 U.S. at 628. Virginia’s law is therefore constitutional.

Public accommodations laws directly combat the economic, personal, and social harms caused by discrimination. By guaranteeing full and equal access to the commercial marketplace, these laws ensure that LGBTQ residents are not denied—or forced to overcome artificial barriers to acquire—“tangible goods and

services.” *Id.* at 625-26; *see also Romer*, 517 U.S. at 631 (“[T]hese are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life.”); *303 Creative LLC*, 2021 WL 3157635, at \*10-11. Public accommodations laws also provide protection from the “stigmatizing injury” and “deprivation of personal dignity” that necessarily “accompanies denials of equal access to public establishments.” *Roberts*, 468 U.S. at 625 (quoting *Heart of Atlanta*, 379 U.S. at 250); *see Masterpiece*, 138 S. Ct. at 1727, 1729, 1732. By ensuring that such public establishments are indeed open to the entire public, these laws foster not only the economic, but also the social and political integration of residents. *Roberts*, 468 U.S. at 625-26. In so doing, these laws deliver many benefits, including counteracting the negative health effects caused by stigmatization and social exclusion, *see supra* nn.3-4. In short, Virginia’s law and its analogues across the country serve to vindicate the “equal dignity” of LGBTQ people. *Obergefell*, 576 U.S. at 681.

Given these “compelling state interests of the highest order” directly served by public accommodations laws, they are constitutional, including when applied to business owners who would prefer to discriminate based on their personal views. *Duarte*, 481 U.S. at 549 (quoting *Roberts*, 468 U.S. at 624). Updegrave Photography’s suggestion that the potential LGBTQ customers it wishes to turn away can simply hire other wedding photographers, JA027 (¶ 122); Pls.’ PI Mem.

27, ignores this central animating purpose of anti-discrimination laws: to ensure that people will *not* be turned away from a business on account of their race, sex, religion, or sexual orientation. Updegrove Photography’s “just go elsewhere” argument would hearken back to the days when Black travelers relied on the “Negro Motorist Green Book” to find accommodations that would serve them while on the road, thus reinforcing the kind of social disintegration and economic fragmentation that public accommodations laws like Virginia’s are intended to combat.

For the same reason, the examples of further tailoring that Updegrove Photography proposes, Appellants’ Br. 53, fundamentally hamstring Virginia’s public accommodations law. Exceptions for businesses like Updegrove Photography would not constitute better tailoring; rather, they would frustrate the law’s very purpose. To take one example, Updegrove Photography proposes that Virginia limit its public accommodations law to apply “only to essential or non-expressive businesses.” *Id.* But this ill-defined restriction removes from the scope of the law’s protections countless businesses that could be deemed “expressive” (to take just one of the proposed exempted categories)—including architects, sign makers, hairdressers, make-up artists, chefs, and more. Exempting businesses like these from public accommodations laws leaves LGBTQ people (and Black people, and Jews, and women, and myriad other protected groups) vulnerable to

discrimination across the marketplace. Laws like Virginia’s effectively ensure equal access and combat discrimination’s harms only when they comprehensively cover places open to the public; States cannot both combat discrimination and, at the same time, license businesses to discriminate. *See State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203, 1235 (Wash. 2019) (“carv[ing] out a patchwork of exceptions for ostensibly justified discrimination” would “fatally undermine[]” this interest).

Accordingly, for well over a century, courts have upheld the constitutionality of public accommodations laws against challenges by businesses seeking to discriminate based on personal convictions. *See, e.g., McClung*, 379 U.S. at 298 n.1 (rejecting argument that restaurant could discriminate against African Americans based on “personal convictions and . . . choice of associates,” as argued in the Brief for Appellees, No. 543, 1964 WL 81100, at \*32-33 (U.S. Oct. 2, 1964)). The Supreme Court has long decried discrimination in public establishments as a “unique evil” entitled to “no constitutional protection,” *Roberts*, 468 U.S. at 628-29, and has described state laws prohibiting such discrimination as “unquestionab[ly]” constitutional, *Heart of Atlanta*, 379 U.S. at 260-61. So too here.

**III. A First Amendment exemption to public accommodations laws of the kind sought by Appellants would dramatically undermine anti-discrimination laws.**

Although the claim here on its face relates to just one photography business, the consequences of ruling in its favor would have far broader consequences for our public accommodations laws, our residents, and our society.

As discussed above, *supra* at 22, Updegrove Photography offers no principled basis for distinguishing a photography business from myriad other businesses that may seek to claim an exemption from public accommodations laws. An architect, sign-maker, hairdresser, make-up artist, chef: Each is engaged in a business that its operator may view as involving “expressive” activity. Indeed, there is no reason that Updegrove Photography’s sweeping view of *Hurley*, Appellants’ Br. 47-48, 50, would be limited to its category of “expressive” businesses, as opposed to other businesses that offer services with potentially expressive aspects—like a hotel ballroom that posts custom signs to announce its events. Under Updegrove Photography’s view of *Hurley*’s reach, LGBTQ people could be exposed to discrimination in a broad swath of the commercial marketplace, particularly when attempting to exercise their fundamental right to marry or to celebrate other important life events.

Moreover, the free-speech exemption Updegrove Photography seeks would not be limited to opposition to marriage between same-sex couples or to beliefs



rooted in religious convictions. Under its theory, for example, a baker opposed to mixed-race relationships could refuse to bake wedding cakes for interracial couples, or a real estate agent opposed to racial integration could refuse to represent non-white couples. It remains a sad fact of American society that such views remain disturbingly prevalent.<sup>9</sup> Although the First Amendment tolerates all manner of odious speech in the public square, *see, e.g., Snyder v. Phelps*, 562 U.S. 443 (2011), it does not require insulating from liability businesses that violate content-neutral laws by turning away customers because of their race, religion, sex, or sexual orientation.

To the extent the merits of Updegrove Photography’s claims are considered here, this Court should heed the Supreme Court’s instruction to ensure that LGBTQ persons are not subjected “to indignities when they seek goods and services in an open market.” *Masterpiece*, 138 S. Ct. at 1732. The States must be

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<sup>9</sup> *See, e.g., Reuters/Ipsos/UVA Center for Politics Race Poll* (Sept. 11, 2017), <http://www.centerforpolitics.org/crystalball/wp-content/uploads/2017/09/2017-Reuters-UVA-Ipsos-Race-Poll-9-11-2017.pdf> (showing 16% of U.S. adults—*i.e.*, approximately 35 million people—agree that “[m]arriage should only be allowed between people of the same race,” and 5% of adults—*i.e.*, approximately 12 million people—disagree that “[p]eople of different races should be free to live wherever they choose”); *The Economist/YouGov Poll* (Mar. 10-13, 2018), [https://d25d2506sfb94s.cloudfront.net/cumulus\\_uploads/document/y3tke5cxwy/econTabReport.pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/y3tke5cxwy/econTabReport.pdf) (stating that 17% of U.S. adults believe that interracial marriage is “morally wrong”).

permitted to preserve their residents' social and economic well-being and protect all within their borders from the manifest harms of discrimination.

### CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

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## CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B), because it contains 5,757 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman style, 14-point font.

/s/ Robert E. Toone, Jr.  
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## ADDENDUM

### Table A: State Laws

The following States have laws expressly prohibiting discrimination on the basis of sexual orientation in places of public accommodation. The population data is taken from the United States Census Bureau's estimate of State populations as of July 1, 2020.<sup>10</sup>

<i>State</i>	<i>Population</i>	<i>State Law</i>
California	39,368,078	Cal. Civ. Code § 51 (2018).
Colorado	5,807,719	Colo. Rev. Stat. § 24-34-601 (2014).
Connecticut	3,557,006	Conn. Gen. Stat. § 46a-64 (2019).
Delaware	986,809	Del. Code Ann. tit. 6, § 4504 (2013).
District of Columbia	712,816	D.C. Code § 2-1402.31 (2001).
Hawaii	1,407,006	Haw. Rev. Stat. § 489-3 (2006).
Illinois	12,587,530	775 Ill. Comp. Stat. 5/1-102, 5/5-102 (2015).
Iowa	3,163,561	Iowa Code § 216.7 (2007).
Maine	1,350,141	Me. Rev. Stat. tit. 5, § 4592 (2019).
Maryland	6,055,802	Md. Code Ann., State Gov't § 20-304 (West 2018).
Massachusetts	6,893,574	Mass. Gen. Laws. ch. 272, § 98 (2018).
Minnesota	5,657,342	Minn. Stat. § 363A.11 (2019).
Nevada	3,138,259	Nev. Rev. Stat. § 651.070 (2011).
New Hampshire	1,366,275	N.H. Rev. Stat. § 354-A:17 (2009).
New Jersey	8,882,371	N.J. Stat. § 10:5-12(f) (West 2013).
New Mexico	2,106,319	N.M. Stat. § 28-1-7 (2008).

<sup>10</sup> See U.S. Census Bureau, *Annual Estimates of Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2020* (Dec. 2020), <https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates/2020-evaluation-estimates/2010s-state-total.html>

New York	19,336,776	N.Y. Exec. Law § 291 (McKinney 2010).
Oregon	4,241,507	Or. Rev. Stat. § 659A.403 (2019).
Rhode Island	1,057,125	R.I. Gen. Laws § 11-24-2 (2019).
Vermont	623,347	Vt. Stat. tit. 9, § 4502 (2019).
Virginia	8,590,563	Va. Code Ann. § 2.2-3904 (2020).
Washington	7,693,612	Wash. Rev. Code § 49.60.030 (2019).
Wisconsin	5,832,655	Wis. Stat. § 106.52 (2018).

### Table B: Local Laws

The following local jurisdictions have laws or ordinances prohibiting discrimination on the basis of sexual orientation in places of public accommodation and are jurisdictions *not* covered by the State-level public accommodations laws listed in Table A. The list is not exhaustive but includes the laws and ordinances that could be readily identified and reviewed through publicly available sources. The population data is taken from the U.S. Census Bureau's estimates of local populations as of July 1, 2018.<sup>11</sup> (This table omits the numerous local non-discrimination ordinances in the States listed in Table A.)

<i>Population</i>	<i>Ordinance</i>
<b>Alabama</b>	
209,403	Birmingham, Ala., Ordinance No. 17-121 (2017).
<b>Alaska</b>	
288,000	Anchorage, Alaska, Anchorage Municipal Code tit. 5, ch. 5.20, § 5.20.050 (2015).
31,974	Juneau, Alaska, Compiled Laws of the City and Borough of Juneau, Alaska tit. 41, ch. 41.05, § 41.05.020 (2019).
<b>Arizona</b>	
1,680,992	Phoenix, Ariz., Phx. City Code art 1, ch. 18, §18-4 (2013).
548,073	Tucson, Ariz., Tucson City Code ch. 17, art. 3, § 17-12 (1999).
195,805	Tempe, Ariz., Tempe City Code ch. 2, § 2-603(1) (2019).
75,038	Flagstaff, Ariz., Flagstaff City Code ch. 14-02-001-0003(A) (2013).
<b>Florida</b>	
2,716,940	Miami-Dade County, Fla., The Code of Miami-Dade County ch. 11A, art. 3, § 11A-19 (2014).

<sup>11</sup> U.S. Census Bureau, *Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2019 Population: April 1, 2010 to July 1, 2019* (April 2021) (data accessible at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>); U.S. Census Bureau, *Annual Estimates of the Resident Population for Minor Civil Divisions: April 1, 2010 to July 1, 2019* (April 2021) (accessible at same link); U.S. Census Bureau QuickFacts: United States (Dec. 2019) (<https://www.census.gov/quickfacts/>).

1,952,778	Broward County, Fla., Broward County, Fla., Code of Ordinances ch. 16½, §§ 16½-3(p), 16½-34 (2011).
1,471,968	Hillsborough County, Fla., Hillsborough County Code of Ordinances and Laws ch. 30, § 30-23 (2014).
1,393,452	Orange County, Fla., Orange County Code of Ordinances ch. 22, art. 3, § 22-42 (2013).
974,996	Pinellas County, Fla., Pinellas County Code of Ordinances ch. 70, art. 2, § 70-214 (2014).
553,284	Volusia County, Fla., Municipal Code of Ordinances ch. 36, art. 3, § 36-41 (2019).
293,582	Leon County, Fla., Leon County Code of Ordinances ch. 9, art. 3, § 9-42 (2019).
269,043	Alachua County, Fla., Alachua County Code of Ordinances ch. 111, art. 1, § 111.06 (2013).
<b>Georgia</b>	
506,811	Atlanta, Ga., Atlanta Code of Ordinances ch. 94, art. 3, § 94-68 (2000).
<b>Idaho</b>	
228,959	Boise, Idaho, Boise City Code ch. 6, § 6-02-03(B) (2012).
56,637	Pocatello, Idaho, City Code tit. 9, ch. 9.36, § 9.36.030(B) (2013).
52,414	Coeur D'Alene, Idaho, Coeur d'Alene, Idaho City Code tit. 9, ch. 9.56, § 9.56.030(B) (2019).
25,702	Moscow, Idaho, Moscow City Code tit. 10, ch. 19, § 19-23(B) (2013).
<b>Indiana</b>	
964,582	Indianapolis-Marion County, Ind., Rev. Code of the Consolidated City and County ch. 581, art. 1, § 581-101 (2008).
270,402	Fort Wayne, Ind., Fort Wayne City Code tit. 9, ch. 93, § 93.018 (2003).
195,732	Tippecanoe County, Code of Tippecanoe County tit. 3, ch. 31, §§ 31.75, 31.76 (2001).
181,451	Vanderburgh County, Ind., Vanderburgh County Code tit. 2, ch. 2.56, § 2.56.020 (2020).
148,431	Monroe County, Ind., Monroe County Code ch. 520-2 (2020).



102,026	South Bend, Ind., Municipal Code of South Bend, Ind. ch. 2, art. 9, § 2-127.1 (2012).
75,522	Hammond, Ind., City of Hammond, Ind. Code of Ordinances tit. 3, ch. 37, § 37.057 (2019).
67,999	Muncie, Ind., Code of Ordinances tit. 3, ch. 34, div. 5, § 34.87(F) (2015).
33,897	Valparaiso, Ind. Ordinance No. 16-09 (2017).
31,015	Michigan City, Ind., Michigan City Code ch. 66, div. 3, § 66-114 (2019).
28,357	Zionsville, Ind., Zionsville Town Code tit. 9, ch. 103, § 103.07 (2019).
<b>Kansas</b>	
98,193	Lawrence, Kan., City Code of Lawrence ch. 10, art. 1, § 10-110 (2019).
54,604	Manhattan, Kan., Code of Ordinances City of Manhattan, Kan. ch. 10, art. 3, § 10-17 (2019).
<b>Kentucky</b>	
617,638	Louisville-Jefferson County, Ky., Metro Code tit. 9, ch. 92, § 92.05 (2004).
323,152	Lexington-Fayette County, Ky., Charter and Code of Ordinances Lexington-Fayette Urban County Gov't ch. 2, art. 2, § 2-33 (1999).
40,341	Covington, Ky., Covington, Ky. Code of Ordinances tit. 3, ch. 37, § 37.07 (2003).
27,755	Frankfort, Ky., City of Frankfort, Ky. Code of Ordinances tit. 9, ch. 96, § 96.08 (2013).
7,562	Morehead, Ky., City of Morehead, Ky. Code of Ordinances tit. 9, ch. 96, § 96.07 (2013).
<b>Louisiana</b>	
390,144	New Orleans, La., Code of the City of New Orleans, Louisiana ch. 86, art. 6, § 86-33 (1999).
187,112	Shreveport, La., City Code of Ordinances City of Shreveport ch. 39, art. 1, § 39-2 (2013).
<b>Michigan</b>	
670,031	Detroit, Mich., Detroit City Code ch. 27, art. 6, § 27-6-1 (2008).

119,980	Ann Arbor, Mich., Code City of Ann Arbor tit. 9, ch. 112, §§ 9:150, 9:153 (2020).
118,210	Lansing, Mich., Codified Ordinances of Lansing, Mich. tit. 12, ch. 297.04 (2019).
76,200	Kalamazoo, Mich., Kalamazoo City Code ch. 18, art. 2, § 18-20 (2009).
48,145	East Lansing, Mich., Code of Ordinances City of East Lansing, Mich. ch. 22, art. 2, § 22-35 (2012).
20,033	Ferndale, Mich., Code of Ordinances City of Ferndale, Mich. ch. 28, §28-4 (2006).
15,738	Traverse City, Mich., Codified Ordinances of Traverse City, Mich. Pt. 6, ch. 605, § 605.04 (2010).
2,425	Pleasant Ridge, Mich., Code of Ordinances City of Pleasant Ridge, Mich. ch. 40, § 40-4 (2013).
<b>Mississippi</b>	
160,628	Jackson, Miss., Code of Ordinances City of Jackson, Miss. ch. 86, art. 10, § 86-302 (2019).
<b>Missouri</b>	
994,205	St. Louis County, Mo., Code of Ordinances, tit. 7, ch. 718, § 718.020 (2012).
495,327	Kansas City, Mo., Code of Ordinances of Kansas City, Mo. vol. 1, ch. 38, art. 3, § 38-113 (2013).
300,576	St. Louis, Mo., The Charter, the Scheme, and the General Ordinances of the City of St. Louis, Mo. tit. 3, ch. 3.44, § 3.44.080(E) (2003).
123,195	Columbia, Mo., Code of Ordinances ch. 12, art. 3, div. 1, §12-35 (2012).
71,028	St. Charles, Mo., Code of Ordinances of the City of St. Charles ch. 240, art. 3, § 240.090 (2019).
<b>Montana</b>	
75,516	Missoula, Mont., Missoula Municipal Code tit. 9, ch. 64, §9.64.040 (2010).
49,831	Bozeman, Mont., Municipal Code of the City of Bozeman, Mont. Ch. 24, art. 10, § 24.10.050 (2014).
34,207	Butte-Silver Bow, Mont., Butte-Silver Bow Municipal Code tit. 5, ch. 5.68, §5.68.040 (2014).

33,124	Helena, Mont., Municipal Code of the City of Helena, Mont. tit. 1, ch. 8, § 1-8-4 (2019).
8,295	Whitefish, Mont., The City Code of the City of Whitefish, Mont. tit. 1, ch. 10, § 1-10-4 (2019).
<b>Nebraska</b>	
478,192	Omaha, Neb., Omaha Municipal Code, Charter, and General Ordinances of the City vol. I, ch. 13, art. 3, div. 1, § 13-84 (2012).
<b>Ohio</b>	
898,553	Columbus, Ohio, Columbus – City Code of Ordinances tit. 23, ch. 2331, § 2331.04 (2008).
381,009	Cleveland, Ohio, Code of Ordinances § 667.01 (2019).
303,940	Cincinnati, Ohio, Municipal Code of Cincinnati, Ohio § 914-7 (2006).
272,779	Toledo, Ohio, Toledo Municipal Code § 554.05 (2019).
197,597	Akron, Ohio, Code of Ordinances tit. 3, ch. 38, § 38.04 (2019).
140,407	Dayton, Ohio, Code of Ordinances City of Dayton, Ohio tit. III, div. I, § 32.04 (2007).
65,469	Youngstown, Ohio, Codified Ordinances of the City of Youngstown, Ohio pt. 5, ch. 147, § 547.04 (2019).
49,678	Lakewood, Ohio, Codified Ordinances of Lakewood, Ohio pt. 5, § 516.04 (2019).
50,315	Newark, Ohio, City of Newark Code of Ordinances pt. 6, ch. 632, §632.03(c) (2007).
43,992	Cleveland Heights, Ohio, Codified Ordinances of the City of Cleveland Heights, Ohio pt. 7, ch. 749, § 749.15 (2019).
31,504	Bowling Green, Ohio, City of Bowling Green Code of Ordinances tit. 3, ch. 39, §§ 39.01, 39.03 (2018).
24,536	Athens, Ohio, Code of Ordinances tit. 3, ch. 3.07, §3.07.62 (2019).
23,110	Oxford, Ohio, Codified Ordinances of the City of Oxford, Ohio pt. 1, ch. 143, § 143.04 (2019).
13,770	Bexley, Ohio, Bexley City Codes ch. 637, § 637.04 (2018).
11,051	Coshocton, Ohio, Codified Ordinances of the City of Coshocton, Ohio pt. 1, tit. 5, ch. 159, § 159.03(c) (2014).

<b>Oklahoma</b>	
124,880	Norman, Okla., Norman, Oklahoma - Code of Ordinances, ch. 7, § 7-104 (2020).
<b>Pennsylvania</b>	
1,584,064	Phila., Pa., The Philadelphia Code tit. 9, § 9-1106 (2016).
1,216,045	Allegheny County, Pa., Administrative Code div. 2, ch. 215, art. 5, § 215-35 (2009).
269,728	Erie County, Pa., Erie County Code, ord. 59, art. 11 (2004).
121,442	Allentown, Pa., The Ordinances of the City of Allentown, Pa. tit. 11, art. 181, § 181.06 (2019).
88,375	Reading, Pa., Reading, Pa. Code of Ordinances pt. 5, ch. 23, § 23-509 (2019).
49,271	Harrisburg, Pa., The Harrisburg Municipal Code tit. 4, pt. 1, ch. 4- 101, § 4-105.3 (2018).
42,160	State College, Pa., Borough Codification of Ordinances ch. 5, pt. E, § 505 (2018).
40,766	Wilkes-Barre, Pa., Code of Ordinances City of Wilkes-Barre, Pa. ch. 14, §§ 14-1, 14-3 (2018).
2,530	New Hope, Pa., Code of the Borough of New Hope ch. 129, art. 1, § 129-4 (2007).
<b>South Carolina</b>	
415,759	Richland County, S.C., Code of Ordinances of Richland County, S.C. ch. 16, art. 6, §16-68 (2017).
137,566	Charleston, S.C., Code of the City of Charleston, S.C. ch. 16, art. IV, § 16-29 (2019).
<b>South Dakota</b>	
24,415	Brookings, South Dakota, Brookings, South Dakota - Code of Ordinances, ch. 2, art. V, div. 2, § 2-143(5) (2019).
<b>Texas</b>	
1,547,253	San Antonio, Tex., Code City of San Antonio Tex. ch. 2, art. 10, div. 5, § 2-592 (2018).
1,343,573	Dallas, Tex., The Dallas City Code vol. II, ch. 46, art. II, § 46-6.1 (2019).
978,908	Austin, Tex., The Code of the City of Austin, Tex. Tit. 5, ch. 5-2, § 5-2- 4 (1992).
909,585	Fort Worth, Tex., City of Fort Worth Code of Ordinances pt. 2, ch. 17, art. 2, § 17-48 (2019).

681,728	El Paso, Tex., A Codification of the General Ordinances of El Paso, Tex. Tit. 10, ch. 10.16, § 10.16.010 (2003).
287,677	Plano, Tex., Code of Ordinances City of Plano, Tex. ch. 2, art. I, § 2- 11(d) (2019).
<b>West Virginia</b>	
46,536	Charleston, W. Va., Code of the City of Charleston, W. Va. Ch. 62, art. 3, § 62-81(6) (2007).
45,110	Huntington, W. Va., Codified Ordinances of Huntington, W. Va. pt. 1, ch. 5, art. 147, § 147.08(f) (2018).
6,029	Charles Town, W. Va., Codified Ordinances of Charles Town pt. 1, ch. 5, art. 154, § 154.03(6) (2018).
3,807	Lewisburg, W. Va., Codified Ordinances of Lewisburg, W. Va. Pt. 1, ch. 5, art. 137, § 137.08(f) (2019).
<b>Wyoming</b>	
32,711	Laramie, Wyo., Laramie, Wyo. Municipal Code tit. 9, ch. 9.32, § 9.32.040 (2015).

### Table C: Discriminatory Advertising Laws

The following States prohibit discriminatory advertising or notices as part of their public accommodations laws.

<i>State</i>	<i>State Law</i>
<b>Alaska</b>	Alaska Stat. § 18.80.230 (2000).
<b>Colorado</b>	Colo. Rev. Stat. §§ 24-34-601(2)(a), 701 (2021).
<b>Delaware</b>	Del. Code Ann. tit. 6, § 4504(b) (West 2019).
<b>District of Columbia</b>	D.C. Code § 2-1402.31(a)(2) (2006).
<b>Idaho</b>	Idaho Code Ann. § 67-5909(5)(b) (2005).
<b>Illinois</b>	775 Ill. Comp. Stat. § 5/5-102(B) (2007).
<b>Iowa</b>	Iowa Code § 216.7(1)(b) (2019).
<b>Kentucky</b>	KY. Rev. Stat. Ann. § 344.140 (West 1992).
<b>Maine</b>	Me. Rev. Stat. tit. 5, § 4592(2) (2019).
<b>Massachusetts</b>	Mass. Gen. Laws ch. 272, § 92A (2016).
<b>Michigan</b>	Mich. Comp. Laws § 37.2302(b) (1977).
<b>Montana</b>	Mont. Code Ann. § 49-2-304(1)(b) (1993).
<b>New Hampshire</b>	N.H. Rev. Stat. Ann. § 354-A:17 (2019).
<b>New Jersey</b>	N.J. Stat. Ann. § 10:5-12(f)(1) (West 2020).
<b>New York</b>	N.Y. Civ. Rights Law § 40 (McKinney 1945).
<b>North Dakota</b>	N.D. Cent. Code § 14-02.4-16 (1995).
<b>Oregon</b>	Or. Rev. Stat. § 659A.409 (2007).
<b>Pennsylvania</b>	43 Pa. Cons. Stat. § 955(i)(2) (2009).

<b>Rhode Island</b>	R.I. Gen. Laws § 11-24-2 (2001).
<b>South Dakota</b>	S.D. Codified Laws § 20-13-25 (1986).
<b>Tennessee</b>	Tenn. Code Ann. § 4-21-502 (West 1978).
<b>Virginia</b>	Va. Code Ann. § 2.2-3904 (2020).
<b>West Virginia</b>	W. Va. Code § 5-11-9(6)(B) (2016).
<b>Wisconsin</b>	Wis. Stat. § 106.52(3)(3)-(3m) (2016).