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**Documenting Discrimination on the Basis of Sexual Orientation  
and Gender Identity in State Employment**

**Title**

Mississippi - Sexual Orientation and Gender Identity Law and Documentation of  
Discrimination

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## MEMORANDUM

**From:** Williams Institute  
**Date:** September 2009  
**RE:** **Mississippi – Sexual Orientation and Gender Identity Law and Documentation of Discrimination**

### I. OVERVIEW

Mississippi has no current or pending state or local statutes recognizing sexual orientation or gender identity as protected classes of citizens.<sup>1</sup> More generally, Mississippi is not welcoming socially or in its laws to LGBT people.<sup>2</sup> Mississippi custody courts consider homosexuality negatively in determining custody disputes.<sup>3</sup> In 2001, Mississippi banned adoption by same-sex couples.<sup>4</sup> In 2004, eighty-six percent (86%) of Mississippians voted in favor of an amendment to the state constitution banning same-sex marriage and the recognition of same-sex marriages performed in other states.<sup>5</sup>

Further, Mississippi politicians and other public servants have, on several occasions, publicly spoken out against gays and gay rights. For example, in March of 2002 in response to a newspaper article on the expansion of rights to gay couples in other states, George County Justice Court Judge Connie Glen Wilkerson wrote a letter to *The George County Times* stating in part: “in my opinion, gays and lesbians should be put in some type of mental institute instead of having a law like this passed for them.”<sup>6</sup> The judge later repeated these views in a telephone interview stating, “homosexuality is an ‘illness’ which merited treatment, rather than punishment.”<sup>7</sup> Also, in July of 2003 in response to the Supreme Court’s ruling in *Lawrence*, Mississippi Gulfport city councilman Billy Hewes initiated a resolution condemning the Court’s ruling.<sup>8</sup> He called the ruling “the worst thing to happen since they took prayer out of school, and proclaimed Gulfport to be a “straight town.”<sup>9</sup>

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<sup>1</sup> See, e.g., MISS. STATE PERS. BD. POLICY AND PROC. MANUAL (2008), available at <http://www.spb.state.ms.us> (hereinafter “MISS. STATE PERS. BD.”).

<sup>2</sup> Sherri Williams, *Discrimination Comes with Disease Diagnosis*, CLARION-LEDGER, Dec. 1, 2002, at 10A (quoting Craig Thompson, STD/HIV director for the state Department of Health: “In Mississippi we are very conservative, very religious, and it’s not OK to be different here. What that translates into for a gay man is, he has to live a very secret life.”); Samantha Santa Maria, *I’m Gay...I Carry My Gun*, CLARION-LEDGER, Aug. 13, 2003, at 1E (quoting Jody Renaldo, Executive Director, Equality Mississippi: “Unless [homosexuals] are willing to risk being kicked out of their rented homes or their jobs, [they] have to hide”).

<sup>3</sup> See, e.g., *Weigand v. Houghton*, 730 So. 2d 581 (Miss. 1999).

<sup>4</sup> Miss Code. Ann. § 93-17-3 (rev. 2006).

<sup>5</sup> Associated Press, *Voters Pass All Eleven Bans on Gay Marriage*, MSNBC, Nov. 3, 2004, <http://www.msnbc.msn.com/id/6383353/> (last visited Sept. 3, 2009).

<sup>6</sup> See, e.g., *Miss. Comm’n on Jud. Performance v. Wilkerson*, 876 So. 2d 1006, 1008 (Miss. 2004).

<sup>7</sup> *Id.*

<sup>8</sup> Santa Maria, *supra* note 2.

<sup>9</sup> *Id.*

Documented examples of employment discrimination by state and local government employers against LGBT people in Mississippi include:

- A social worker at a state-funded center for mentally retarded children near Jackson who was fired after she put photos of her family on her desk. When the social worker, an African-American lesbian, interviewed for the position, an official said, “We will not tolerate discrimination based on race, sex or sexual orientation.” She responded, “I’m a lesbian; I have a white lover, and I don’t think you’ll have any problems with discrimination from me.” Two days later, she got the job. At the center, she continually saw photos of co-workers’ families. When a coworker asked to see photos of her partner, she brought in an album of pictures of herself, her partner and her two dogs. She was discreet with the photos and showed them only to those who asked. But while she was away from her desk, several co-workers looked at the photo album. Some expressed discomfort that she was in a mixed-race relationship, and one complained to management about the photos. Her boss asked her not to bring them to work. She agreed but suggested it was unfair that she was the only one not allowed to bring in family photos. She was fired 10 days later. The manager praised her work, however, saying she was one of the center’s best employees. He claimed he took the step because she brought in photos of her partner, not because she was gay. He alleged that some were obscene, although he had never seen them.<sup>10</sup>

As discussed below, Mississippi has a formal procedure for state employees’ grievances, which prevents state employees from filing employment claims in state court without first exhausting this internal grievance procedure. This structure may in part explain the dearth of case law on employment discrimination on the basis of sexual orientation or gender identity

Part II of this memo discusses state and local legislation, executive orders, occupational licensing requirements, ordinances and polices involving employment discrimination based on sexual orientation and gender identity, and attempts to enact such laws and policies. Part III discusses case law, administrative complaints, and other documented examples of employment discrimination by state and local governments against LGBT people. Part IV discusses state laws and policies outside the employment context.

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<sup>10</sup> Human Rights Campaign, *Documenting Discrimination: A special report from the Human Rights Campaign featuring cases of discrimination based on sexual orientation in America’s workplaces* (2001), available at <http://www.hrc.org/documents/documentingdiscrimination.pdf>.

## **II. SEXUAL ORIENTATION & GENDER IDENTITY EMPLOYMENT LAW**

### **A. State-Wide Employment Statutes**

None.

### **B. Attempts to Enact State Legislation**

None.

### **C. Executive Orders, State Government Personnel Regulations & Attorney General Opinions**

#### **1. Executive Orders**

None.

#### **2. State Government Personnel Regulations**

The Mississippi State Personnel Board (the “Board”) governs all employment issues relating to state employees. The Board’s Policy and Procedures Manual (the “Manual”) establishes regulations and guidelines for hiring, employee grievances, and termination.<sup>11</sup>

According to the Manual, state employers are not permitted to consider “political affiliation, race, national origin, sex, religious creed, age, or disability in hiring decisions.”<sup>12</sup> Moreover, employers should not ask potential candidates questions relating to “age or date of birth, arrest or conviction records, credit or garnishment records, family matters such as number and age of children, childcare requirements, marital status, health history, political affiliation, or religious preference.”<sup>13</sup> State licensing applications, such as those for teaching, law enforcement, and fire department typically do not include any of these categories or any reference to sexual preference, moral turpitude, etc.<sup>14</sup> The Manual does not provide for appeals by job applicants, and a comprehensive search did not reveal any claims of discrimination in hiring/recruitment on the basis of sexual orientation or gender identity.

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<sup>11</sup> MISS. STATE. PERS. BD., *supra* note 1.

<sup>12</sup> *Id.* (citing Miss. Code Ann. § 25-9-149 (2006)).

<sup>13</sup> *Id.* at 41.

<sup>14</sup> See General Guidelines for Mississippi Educator Licensure, [http://www.mde.k12.ms.us/ed\\_licensure/pdf/Licensure%20Guidelines%20revised%2010-08.pdf](http://www.mde.k12.ms.us/ed_licensure/pdf/Licensure%20Guidelines%20revised%2010-08.pdf) (last visited Sept. 3, 2009); Full Time Law Enforcement Application for Certification, [http://www.dps.state.ms.us/dps/dps.nsf/allforms/727724F91028C14686256D28007562D4/\\$File/BLEOST%20-%20Full-Time%20App%20&%20BI.pdf?OpenElement](http://www.dps.state.ms.us/dps/dps.nsf/allforms/727724F91028C14686256D28007562D4/$File/BLEOST%20-%20Full-Time%20App%20&%20BI.pdf?OpenElement) (last visited Sept. 3, 2009); Mississippi Fire Personnel Application for Certification, <http://www.mid.state.ms.us/minstand/pdf/Applicationforcert.pdf> (last visited Sept. 3, 2009).

Discrimination and sexual harassment are “grievable issues” under the Manual for both permanent and probationary state employees. The Manual, however, only provides relief for discrimination on the basis of “race, color, creed, sex, religion, national origin, age, disability, or political affiliation and/or a violation of a right otherwise specifically protected by the U.S. Constitution or other law.”<sup>15</sup> Aggrieved employees must first exhaust grievance procedures internally as set forth in the Manual, after which if the employee has still not received a satisfactory result, she can appeal to the Employee Appeals Board (“EAB”), an arm of the Board specifically established to handle such employee grievances. Except as authorized under federal law, no aggrieved party may file a petition for judicial review with a court until a final written decision or order has been filed by the EAB.<sup>16</sup> State courts can only review EAB decisions to the extent that the decision is: “(a) not supported by any substantial evidence; (b) arbitrary or capricious; or (c) in violation of some statutory or constitutional right of the employee.”<sup>17</sup> A rebuttable presumption exists in favor of the EAB’s decision, and the burden of proof is on the challenging party.<sup>18</sup> EAB decisions are accessible to the public, but only at the EAB office in Mississippi. A comprehensive search through available digital sources did not reveal any claims of discrimination or sexual harassment on the basis of sexual orientation or gender identity.

### 3. **Attorney General Opinions**

None.

#### D. **Local Legislation**

None.

#### E. **Occupational Licensing Requirements**

None.

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<sup>15</sup> MISS. STATE. PERS. BD, *supra* note 1 at 73.

<sup>16</sup> *Id.* at 86.

<sup>17</sup> Miss. Code Ann. § 25-9-132 (2006).

<sup>18</sup> *Miss. Transp. Comm’n v. Anson*, 879 So. 2d 958, 963 (Miss. 2004).

### III. DOCUMENTED EXAMPLES OF EMPLOYMENT DISCRIMINATION AGAINST LGBT PEOPLE BY STATE & LOCAL GOVERNMENTS

#### A. Case Law

##### 1. State and Local Government Employees

None.

##### 2. Private Employees

None.

#### B. Administrative Complaints

None.

#### C. Other Documented Examples of Discrimination

##### State-Funded Children's Center

Valerie “Jesse” Shaw worked as a social worker at a state-funded center for mentally retarded children near Jackson. When Shaw, an African-American lesbian, interviewed for the position, an official said, “We will not tolerate discrimination based on race, sex or sexual orientation.” Shaw responded, “I’m a lesbian; I have a white lover, and I don’t think you’ll have any problems with discrimination from me.” Two days later, Shaw got the job. At the center, Shaw continually saw photos of co-workers’ families. When a coworker asked to see photos of Shaw’s partner, Shaw brought in an album of pictures of herself, her partner and her two dogs. Shaw was discreet with the photos and showed them only to those who asked. But while Shaw was away from her desk, several co-workers looked at the photo album. Some expressed discomfort that Shaw was in a mixed-race relationship, and one complained to management about the photos. Her boss asked her not to bring them to work. Shaw agreed but suggested it was unfair that she was the only one not allowed to bring in family photos. Shaw was fired 10 days later. The manager praised her work, however, saying she was one of the center’s best employees. He claimed he took the step because she brought in photos of her partner, not because she was gay. He alleged that some were obscene, although he had never seen them.<sup>19</sup>

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<sup>19</sup> Human Rights Campaign, *Documenting Discrimination: A special report from the Human Rights Campaign featuring cases of discrimination based on sexual orientation in America’s workplaces* (2001), available at <http://www.hrc.org/documents/documentingdiscrimination.pdf>.

#### IV. NON-EMPLOYMENT SEXUAL ORIENTATION & GENDER IDENTITY RELATED LAW

In addition to state employment law, the following areas of state law were searched for other examples of employment-related discrimination against LGBT people by state and local governments and indicia of animus against LGBT people by the state government, state officials, and employees. As such, this section is not intended to be a comprehensive overview of sexual orientation and gender identity law in these areas.

##### A. Criminalization of Same-Sex Sexual Behavior

Another context in which Mississippi law has historically demonstrated animosity towards gays is its sodomy laws. Although struck down by *Lawrence v. Texas*<sup>20</sup> in 2003, Mississippi still has a sodomy statute on the books.<sup>21</sup> While it was constitutional, the statute was used to outlaw gay relations even between consenting adults.<sup>22</sup> Moreover, the statute was also used in other contexts to justify animosity towards gays. For example, in 1983 the Attorney General of Mississippi declined a petition for incorporation from Mississippi Gay Alliance, stating that the organization must be denied corporate status because its activities were prohibited under the sodomy statute.<sup>23</sup>

##### B. Parenting

Mississippi chancery courts are permitted to consider the sexual orientation of one parent in custody disputes.<sup>24</sup> Although the chancellor is not permitted to use this as the sole determining factor in a custody dispute, if on appeal it is clear that one parent's sexual orientation was the dispositive factor, the appellate court will uphold the decision so long as other factors in the record would lead to the same conclusion.<sup>25</sup>

For example, in *S.B. v. L.W.*,<sup>26</sup> the child's mother and father independently decided to share equal custody of their daughter. Under this arrangement, the daughter lived part-time with her mother and her mother's lesbian partner and part time with her father, his wife, and his wife's children. When the mother decided to quit her job and move out of state, the father brought suit for full custody. The chancellor awarded custody to the father. The chancellor ruled that the following factors were in the father's favor: employment, financial stability, stability of environment, and moral fitness.<sup>27</sup> In other words, the chancellor determined that the mother's lesbian "lifestyle" rendered her

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<sup>20</sup>539 U.S. 558 (2003).

<sup>21</sup> Miss. Code Ann. §97-29-59 (2006) ("Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of not more than ten years.").

<sup>22</sup> See, e.g., *State v. Mays*, 329 So. 2d 65 (Miss. 1976).

<sup>23</sup> Miss. Att'y Gen. LEXIS 39, 1 (1983).

<sup>24</sup> See *Weigand*, 730 So. 2d at 581.

<sup>25</sup> *S.B. v. L.W.*, 793 So. 2d 656, 661 (Miss. Ct. App. 2001).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 659.

morally unfit for parenthood.<sup>28</sup> The appellate court upheld the custody award, ruling that the chancellor was not manifestly wrong and did not clearly err in awarding custody to the father.<sup>29</sup> The court, citing to *Weigand*, held that even though the chancellor appeared to give great weight to the mother's homosexuality, it was not the sole factor, and therefore not an abuse of discretion.<sup>30</sup> The concurrence even went as far as saying that the aforementioned marriage, adoption, and sodomy laws evidence Mississippi State legislature's clear public policy against homosexual domestic relations.<sup>31</sup>

### C. Other Non-Employment Sexual Orientation & Gender Identity Related Laws

#### 1. George County Justice Court Judge Connie Glen Wilkerson Comments

In March of 2002 in response to a newspaper article on the expansion of rights to gay couples in other states, George County Justice Court Judge Connie Glen Wilkerson wrote a letter to *The George County Times* stating in part: "in my opinion, gays and lesbians should be put in some type of mental institute instead of having a law like this passed for them."<sup>32</sup> The judge later repeated these views in a telephone interview stating, "homosexuality is an 'illness' which merited treatment, rather than punishment."<sup>33</sup> When the judge was sued for violation of the Code of Judicial Conduct, the Mississippi

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<sup>28</sup> *See id.*

<sup>29</sup> *Id.* at 661.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 662 ("While I do agree with the majority, I write separately because I feel the dissent has delved into an area where our State legislature has made clear its public policy position relating to particular rights of homosexuals in domestic relations settings. In my review of statutory authority, I find that in 2000 the legislature added an amendment to Miss. Code Ann. § 93-17-3 (Supp. 2000) which reads, "(2) Adoption by couples of the same gender is prohibited."... Another statute which shows the legislature's intention concerning homosexuals and family relations is Miss. Code Ann. § 93-1-1(2) (Supp. 2000). A 1997 amendment to that statute added the sub-section which reads, "Any marriage between persons of the same gender is prohibited and null and void from the beginning. Any marriage between persons of the same gender that is valid in another jurisdiction does not constitute a legal or valid marriage in Mississippi." Additionally, Miss. Code Ann. § 97-29-59 (Rev. 2000) states, "Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of not more than ten years." That statute has been held to apply to homosexual acts. *See Miller v. State*, 636 So. 2d 391 (Miss. 1994); *Haymond v. State*, 478 So. 2d 297 (Miss. 1985); *State v. Mays*, 329 So. 2d 65 (Miss. 1976). Looking to these cited authorities and to the United States Supreme Court case of *Bowers v. Hardwick*, 478 U.S. 186 (1986), which upheld the constitutionality of a Georgia sodomy statute, I find that the legislature has clearly set forth the public policy of our State with regard to the practice of homosexuality." (Payne, J., concurring)). It should be noted that Judge Leslie Southwick, who now sits on the Fifth Circuit, joined in both the majority and concurring opinions in this case. In 2007 when President Bush nominated Judge Southwick for a position to the Fifth Circuit, several prominent gay rights groups spoke out against his unnecessary participation in this concurrence. *See, e.g.*, Letter from Lambda Legal to Patrick J. Leahy, Chairman of the U.S. Senate Committee on the Judiciary (May 9, 2007), [http://data.lambdalegal.org/pdf/southwick\\_uss\\_x\\_20070509\\_letter-of-concern.pdf](http://data.lambdalegal.org/pdf/southwick_uss_x_20070509_letter-of-concern.pdf) (last visited Sept. 3, 2009).

<sup>32</sup> *Wilkerson*, 876 So. 2d at 1008.

<sup>33</sup> *Id.*



Supreme Court ruled that the judge had not violated any canon of judicial conduct because the judge had not actually acted impartially in any proceeding.<sup>34</sup> Moreover, the court ruled that any gay parties before the judge had adequate protection through the recusal process.<sup>35</sup>

## 2. Councilman Billy Hewes

In July of 2003, in response to the Supreme Court's ruling in *Lawrence*, Mississippi Gulfport city councilman Billy Hewes initiated a resolution condemning the Court's ruling.<sup>36</sup> He called the ruling "the worst thing to happen since they took prayer out of school, and proclaimed Gulfport to be a "straight town."<sup>37</sup>

## 3. Soulforce Equality Ride

In March of 2007, Clinton, Mississippi police officers harassed and arrested members of the 2007 Soulforce Equality Ride, a group of young adults who walked onto the campus of Mississippi College to educate the students on the university's discriminatory policies towards gay students.<sup>38</sup> According to Lambda Legal and other prominent gay activist groups, the Soulforce members were repeatedly harassed by police officers and ordered to leave town, even though they were not actually violating any laws.<sup>39</sup>

## 4. Senator Jamie Franks

In September of 2007, Democratic lieutenant governor nominee and former Mississippi Senator Jamie Franks stated in his campaign that he would continue the fight against same-sex marriage and homosexual adoption and that he believed homosexuality was a lifestyle choice.<sup>40</sup>

## 5. Coffeeville School District

In addition, in *U.S. v. Coffeeville Consol. Sch. Dist.*, the Coffeeville School authorities fired one African American teacher in part because she discussed the meaning

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<sup>34</sup> *Id.* at 1015.

<sup>35</sup> *Id.* at 1016. The current Mississippi Code of Judicial Conduct, promulgated on April 4, 2002, Canon 3[5] states: "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to ...sexual orientation." *In re Miss. Code of Jud. Conduct*, NO. 89-R-99013-SCT, 2002 Miss. LEXIS 124, 22 (Miss. 2002).

<sup>36</sup> Santa Maria, *supra* note 2.

<sup>37</sup> *Id.*

<sup>38</sup> Bronwen Tomb, *Five Arrested at Mississippi College; Members of Nationwide Journey of Gay and Straight Young Adult Leaders Challenge Anti-Gay Policy*, SOULFORCE, March 22, 2007, <http://www.soulforce.org/article/1212>.

<sup>39</sup> Letter from Lambda Legal. to Rosemary G. Aultman, Mayor (Mar. 23, 2007), [http://www.thetaskforce.org/press/releases/prSF\\_032307](http://www.thetaskforce.org/press/releases/prSF_032307) (last visited Sept. 3, 2009).

<sup>40</sup> David McRaney, *Not a 'Rubber Stamp,' Frank Says*, HATTIESBURG AMERICAN, Sept. 6, 2007.

of “queer,” which led into a discussion on homosexuality with her class of eighth grade boys. 513 F.2d 244, 250-53 (1975).