

STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES

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GENERAL COUNSEL
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IN RE: PETITION FOR RULEMAKING OF
EQUALITY FLORIDA INSTITUTE, INC.

Case No. _____

PETITION FOR RULEMAKING

Petitioner, Equality Florida Institute, Inc. (Equality Florida), by and through its undersigned counsel, and pursuant to Section 120.54(7), Florida Statutes, hereby requests that the Department of Management Services (Department) initiate rulemaking to prohibit discrimination on the basis of sexual orientation or gender identity in the State of Florida's system of personnel management. In support of this Petition for Rulemaking, Equality Florida states as follows:

I. INTRODUCTION

1. Equality Florida is a Florida not for profit corporation and is the largest civil rights organization in Florida dedicated to advancing equality for Florida's lesbian, gay, bisexual, and transgender (LGBT) community. For the purpose of this Petition, Equality Florida's contact information is the same as that of the undersigned counsel, as set forth at the end of this Petition.

2. This Petition requests that the Department initiate rulemaking to adopt a rule as part of the State of Florida's system of personnel management that prohibits discrimination on the basis of sexual orientation or gender identity.

II. BACKGROUND

3. Equality Florida has a network of more than 300,000 supporters, including active and retired State of Florida employees.

4. As part of Equality Florida's mission to combat harassment and discrimination against LGBT Floridians, Equality Florida has supported the enactment of LGBT civil rights laws at the state, county, and municipal levels. Equality Florida and its members have been actively involved in advocating for the Florida Competitive Workforce Act in the Florida Legislature, which would prohibit discrimination against the LGBT community in employment, housing, and public accommodations.

5. Currently, state statute does not explicitly codify nondiscrimination protection based on sexual orientation or gender identity. This lack of clarity creates confusion and gives rise to questions regarding the scope of protections available for LGBT Floridians facing discrimination. For example, the Florida Commission on Human Relations' "Frequently Asked Questions" webpage states:

What are the bases for employment discrimination and public accommodations?

Race, color, religion, sex/gender, pregnancy, national origin, age (all ages), handicap/disability, marital status. While lesbian, gay, bisexual and transgender (LGBT) categories are not specifically covered under Florida law, there are circumstances where the [Commission] will investigate these claims under the broader sex/gender category if the alleged discrimination occurred because the claimant did not fit within normal gender stereotypes.

Florida Commission on Human Relations, FAQ – Frequently Asked Questions, <https://fchr.myflorida.com/faq-frequently-asked-questions/> (last visited October 1, 2018).

6. Following the massacre at Pulse nightclub in Orlando, Equality Florida leadership met with Governor Rick Scott's staff on June 28, 2016, and requested an Executive Order

codifying employment nondiscrimination based on sexual orientation and gender identity for state workers and contractors. The Governor's prior Executive Order addressing nondiscrimination in government employment and contracting, Executive Order 11-04 (Jan. 4, 2011), did not address sexual orientation or gender identity.

7. The Governor's staff committed to investigate the potential for an Executive Order or advise if such an Executive Order was not possible.

8. As of this filing, the Governor has neither propounded an Executive Order nor stated that doing so is not possible.

9. In or around June 2017, coinciding with the one-year anniversary of the Pulse massacre, Governor Scott's spokesperson released a statement to media outlets that stated, "In accordance with federal guidelines, Florida state agencies do not discriminate on the basis of sexual orientation, and state employees should not be discriminated against in any way." *See, e.g.*, Michael Auslen, *LGBTQ Activists Say Rick Scott Promised to Ban Discrimination and Never Delivered*, TAMPA BAY TIMES, <https://www.tampabay.com/lgbtq-activists-say-rick-scott-promised-to-ban-discrimination-and-never/2327992> (last visited October 1, 2018); Mitch Perry, *Fla. Dems, Equality Florida Say Rick Scott 'Broke Promise' to Protect LGBTQ Employees*, Florida Politics, <http://floridapolitics.com/archives/240453-fla-dems-equality-florida-say-rick-scott-broke-promise-protect-lgbtq-employees> (last visited October 1, 2018).

III. AUTHORITY AND LAW TO BE IMPLEMENTED

10. The Department has authority to adopt rules and effectuate the purpose of Chapter 110 of the *Florida Statutes*, "State Employment." § 110.1055, Fla. Stat. (2018). Chapter 110's purpose is to establish a system of personnel management that "shall provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and shall include

policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.” § 110.105(1), Fla. Stat. Furthermore, the Department, “in consultation with the agencies that must comply with these rules, shall develop uniform personnel rules, guidelines, records, and reports relating to employees and positions in the career service.” § 110.201(1)(a), Fla. Stat. The Department is similarly charged with rulemaking for Florida’s Senior Management Service System and Selected Exempt Service System. §§ 110.403(1), 110.605(1), Fla. Stat.

11. Statute directs that “[t]he state, its agencies and officers shall ensure freedom from discrimination in employment as provided by the Florida Civil Rights Act of 1992, by s. 112.044, and by this chapter.” § 110.112(5), Fla. Stat. Florida’s statutory policy is:

[t]hat all appointments, terminations, assignments, and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, color, religion, national origin, political affiliation, marital status, or disability, unless a specific requirement constitutes a bona fide occupational qualification.

§ 110.105(2), Fla. Stat.

12. Sexual orientation and gender identity are not enumerated categories for nondiscrimination in state policy or the Florida Civil Rights Act. *See* § 760.10, Fla. Stat. Nevertheless, Florida clearly does not discriminate in employment on the basis of sexual orientation. Governor Rick Scott said so. The Department’s uniform rules should say so.

IV. RELIEF REQUESTED

13. Given statutory directive, state policy, and Governor Scott’s statements regarding discrimination in any form against state employees, Equality Florida requests that the Department

undertake rulemaking to clearly establish that the state's system of personnel management includes nondiscrimination protections on the basis of sexual orientation and gender identity.

Respectfully submitted,

/S/ Jonathan Harrison Maurer

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2018 the original of this pleading was hand delivered to Department of Management Services Agency Clerk Diane Wint at the Department of Management Services, Office of the General Counsel, 4050 Esplanade Way, Suite 160, Tallahassee FL, 32399. An electronic copy was emailed to Ms. Wint (Diane.Wint@dms.myflorida.com) and to Department of Management Services General Counsel Brittany Griffith (Brittany.Griffith@dms.myflorida.com).

/S/ Jonathan Harrison Maurer