



# Residents in South Dakota Would Gain Nondiscrimination Protections Under the Equality Act

April 20, 2021

The Equality Act is a landmark piece of legislation that codifies the U.S. Supreme Court decision in *Bostock v. Clayton County*<sup>1</sup> and would provide LGBTQ people with explicit protections from discrimination in employment, housing, credit, and jury service. The bill also prohibits discrimination based on sexual orientation, gender identity, and sex in federally funded programs as well as in public accommodations.<sup>2</sup> In addition, it expands the list of protected public accommodations to include retail stores, transportation services, services such as banks, and online retailers. This fact sheet provides adult population estimates of LGBTQ people, women, communities of color, and foreign-born individuals in South Dakota who would gain new civil rights protections with the passage of the Equality Act.

Based on an assessment of South Dakota's laws as of April 2021, passage of the Equality Act would extend additional rights in the state to a total of 20,000 LGBTQ adults and 332,162 women.<sup>3</sup> Note that employment nondiscrimination protections have been excluded from this analysis because the recent Supreme Court decision in *Bostock* explicitly extends Title VII employment discrimination protections based on sexual orientation and gender identity.<sup>4</sup>

## Housing

- The Fair Housing Act provides federal housing discrimination protections because of sex, race, color, religion, familial status, disability, or national origin.<sup>5</sup>
- While the Supreme Court's decision in *Bostock v. Clayton County* extends protections against discrimination because of sex to include sexual orientation and gender identity,<sup>6</sup> LGBTQ individuals in South Dakota are not protected from discrimination under current state law. The Equality Act would clarify that federal protections in housing extend to 20,000 LGBTQ adults in the state.

## Credit

- The Equal Credit Opportunity Act provides federal credit discrimination protections based on sex, race, color, religion, marital status, age, or national origin.<sup>7</sup>
- While the Supreme Court's decision in *Bostock v. Clayton County* extends protections against discrimination because of sex to include sexual orientation and gender identity, LGBTQ individuals in South Dakota are not protected from discrimination under current state law. The Equality Act would clarify that federal protections in credit extend to 20,000 LGBTQ adults in the state.

## Jury service in federal courts

- Currently, 28 U.S. Code Section 1862 provides federal jury service discrimination protections based on sex, race, color, religion, economic status, and national origin.<sup>8</sup>
- While the Supreme Court's decision in *Bostock v. Clayton County* extends protections against discrimination because of sex to include sexual orientation and gender identity, LGBTQ individuals in South Dakota are not protected from discrimination under current state law. The Equality Act would clarify that federal protections in jury service extend to 20,000 LGBTQ adults in the state.

## Federally funded programs

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs, currently provides protections based on race, color, or national origin.<sup>9</sup>
- The Equality Act would extend protections based on sex, sexual orientation, and gender identity under Title VI federally funded programs, such as those related to education and health care. This would provide protections for 332,162 women and 20,000 LGBTQ adults in the state.<sup>10</sup>

## Public accommodations

- Title II of the Civil Rights Act of 1964 provides federal public accommodation protections based on race, color, religion, or national origin.<sup>11</sup>
- Individuals in South Dakota are protected from discrimination based on sex under current state law.
- Individuals in South Dakota are not protected from discrimination based on sexual orientation or gender identity under current state law. The Equality Act would extend protections in public accommodations to 20,000 LGBTQ adults in the state.

## Endnotes

1 *Bostock v. Clayton County*, 590 U.S. \_\_\_ (June 15, 2020), available at <https://supreme.justia.com/cases/federal/us/590/17-1618/>.

2 Equality Act, H.R. 5, 117th Congress., 1st sess. (March 2, 2021), available at <https://www.congress.gov/bill/117th-congress/house-bill/5>.

3 For information on how these population estimates were derived, please see an overview on state-level gains under the Equality Act at Caroline Medina, Lindsay Mahowald, and Sharita Gruberg, "Millions Will Gain Nondiscrimination Protections Under the Equality Act," Center for American Progress, April 20, 2021, available at <https://www.americanprogress.org/?p=498164>.

4 *Bostock v. Clayton County*.

5 Williams Institute, "LGBT People in the US Not Protected by State Non-Discrimination Statutes" (Los Angeles: University of California Los Angeles School of Law, 2020), available at <https://williamsinstitute.law.ucla.edu/publications/lgbt-nondiscrimination-statutes/>.

6 U.S. Department of Housing and Urban Development, "HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity," Press release, February 11, 2021, available at [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_21\\_021](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_021).

7 *Ibid.*

8 Legal Information Institute, "28 U.S. Code § 1862 - Discrimination prohibited," available at <https://www.law.cornell.edu/uscode/text/28/1862> (last accessed April 2021).

9 *Ibid.*

10 U.S. Equal Employment Opportunity Commission, "Title VII of the Civil Rights Act of 1964," available at <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964> (last accessed April 2021).

11 U.S. Department of Justice, "Title II of the Civil Rights Act (Public Accommodations)," available at <https://www.justice.gov/crt/title-ii-civil-rights-act-public-accommodations> (last accessed April 2021).