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FOR IMMEDIATE RELEASE

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**CoStar Group Research Operations Center
Charlotte, NC vs. Richmond, VA – A Policy Comparison**

“A Tale of Two Cities”

Last week CoStar Group announced that it chose to locate a 730-job expansion in Richmond, VA instead of Charlotte, NC. The [Charlotte Observer reported](#) on October 28th that the incentives package for Virginia totaled \$10.6 million, while North Carolina’s was \$9.7 million. CoStar CEO Andrew Florance was [quoted in the Washington Post](#) as saying that HB 2 was “more controversy than we want to engage in right now.”

Published articles imply that CoStar’s decision was made primarily because of HB 2. For whatever role HB 2 played in the decision against Charlotte, we offer the following comparison between Charlotte, NC and Richmond, VA. The company has chosen a venue where the actual laws relating to discrimination are no more “protective” of LGBT rights than those currently in effect in Charlotte.

Left-wing groups claim that Religious Freedom Restoration Acts are also discriminatory for legalizing denial of service. Remember Indiana, Mississippi and Arkansas. We do not agree that this claim has any validity. We note that North Carolina has no Religious Freedom Restoration Act. Virginia does: *Virginia Code Ann. § 57-2.02 (2009)*.

For the reasons stated under Legends #5 and #6 of [Legends vs. the Truth about HB2](#), we do not agree that “sexual orientation” or “gender identity” are reasonable categories for special legal rights. But for discussion purposes we offer the following comparison of anti-discrimination laws in Charlotte, NC and Richmond, VA:

NC Location: Charlotte, NC

The City of Charlotte has extensive policies on non-discrimination in city employment. These policies are expressly not preempted by House Bill 2, HB 2, Section 3.1(c) amended G.S. 143-422.2 to preempt local requirements on employers “except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law.”

The City of Charlotte states its [Diversity Philosophy and Non-discrimination policy](#) on its website:

Diversity Philosophy

“We believe that diversity contributes to our performance, the services we provide, the communities in which we live and work, and the lives of our employees and customers.

By promoting an inclusive environment where everyone respects individuals and values the contributions of people of different backgrounds, experiences, and perspectives, we can enrich and strengthen the quality of the products and services we deliver.”

Non-discrimination Statement

“No employee or applicant for employment shall suffer discrimination because of race, religion, color, sex, national origin, sexual orientation, age, disability, political affiliation, or on the basis of actual or perceived gender as expressed through dress, appearance or behavior.” *[emphasis added]*

Charlotte has an extensive [policy on workplace harassment](#) which states:

“The City will not tolerate or condone acts of harassment based upon race, religion, color, sex, national origin, sexual orientation, age, disability, or political affiliation.” *[emphasis added]*

The policy also describes harassment in part as: “verbal or non-verbal conduct or physical acts which are unwelcome or offensive to or retaliatory against an employee or group of employees based on their race, religion, color, sex, national origin, sexual orientation, age, disability or political affiliation...” *[emphasis added]*

Charlotte, NC is located in Mecklenburg County. Mecklenburg County’s Equal Employment Opportunity policy is as follows:

“Mecklenburg County will not engage in unlawful discrimination with respect to all aspects of County employment policy and practice including with respect to race, color, religion, sex, national origin, handicap, age, political affiliation, or on the basis of actual or perceived gender as expressed through dress, appearance, or behavior. In addition, the County will not engage in discrimination on the basis of sexual orientation with respect to all aspects of County employment policy and practice. Sexual orientation means heterosexuality, bisexuality or homosexuality...” *[emphasis added]*

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION I. BOARD POLICY Pages 9-10

Mecklenburg County has an extensive section on harassment under Prohibited Employment Practices:

“The County does not authorize and will not tolerate any form of harassment based on the following factors: race, religion, color, national origin, ancestry, citizenship, sex, sexual orientation, gender, gender identity, age, genetic information, political affiliation, protected disability or military/veteran status, and any other status protected by federal, state, or local law.

“This policy applies to management and non-management employees alike, and even to non-employees who harass our employees. Prohibited conduct includes but is not limited to conduct on County property, in County vehicles, on County communication systems, during County-sponsored events, and in connection with County business.

“Within this policy, the definition of “harassment” includes offensive language, jokes, or other physical, verbal, written, or pictorial conduct relating to the employee’s race, religion, color, national origin, ancestry, citizenship, sex, sexual orientation, gender, gender identity, age, genetic information, political affiliation, protected disability or military/veteran status, and any other status protected by federal, state, or local law that would make a reasonable person experiencing such behavior feel uncomfortable or would interfere with the person’s work performance... In general, any conduct based on these traits that could interfere with an individual’s work performance or could create

an offensive environment will be considered harassment in violation of this policy. This is the case even if the offending employee did not mean to be offensive. It is essential that employees be sensitive to the feelings of others.”
[emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION IV. EMPLOYEE RELATIONS Pages 96

Mecklenburg County also addresses other forms of harassment:

Sexual Harassment

“Sexual harassment (whether opposite-sex or same-sex or based on sexual orientation or identity) is strictly prohibited...” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION IV. EMPLOYEE RELATIONS Pages 97

Other Forms of Harassment

“Harassment on the basis of any other protected characteristic also is strictly prohibited. Under this policy, protected characteristics are: race, religion, color, national origin, ancestry, citizenship, sex, sexual orientation, gender, gender identity, age, genetic information, political affiliation, protected disability or military/veteran status, and any other status protected by federal, state, or local law.” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION IV. EMPLOYEE RELATIONS Pages 97

“Harassing” Use of the County Computer System

“Use of the County computer system, social media sites or other communication devices for any harassing purpose (as defined above) may be treated as a violation of *both* this Harassment Policy *and* the Mecklenburg County Acceptable Use and Social Media Policies. Examples of “dual violations” include the following:

...

- “Electronic “pranks” – for example, “mail-bombing” or “spamming” – based on the race, religion, color, national origin, ancestry, citizenship, sex, sexual orientation, gender, gender identity, age, genetic information, political affiliation, protected disability or military/veteran status, and any other protected status of the victim, or in retaliation for a harassment complaint.” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION IV. EMPLOYEE RELATIONS Pages 98

GRIEVANCES ALLEGING PROHIBITED PRACTICES

“Every employee has a duty to immediately report harassment so that the County can try to resolve the situation and conduct a prompt and thorough investigation... Full-time, part-time and limited part-time employees may file a grievance with Human Resources if it involves allegations related to the following:

- Harassment or Discrimination based on race, religion, color, national origin, ancestry, citizenship, sex, sexual orientation, gender, gender identity, age, genetic information, political affiliation, protected disability or military/veteran status, and any other status protected by federal, state, or local law...” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION IV. EMPLOYEE RELATIONS Pages 106

Mecklenburg County’s Compensation policy:

“The County is committed to the principle consistent with law and BOCC policy that individual employees should be compensated without discrimination on the basis of race, religion, color, national origin, ancestry, citizenship, sex, sexual orientation, gender, gender identity (perceived gender as expressed through dress, appearance or behavior), age, genetic information, political affiliation, protected disability or military/veteran status and any other status protected by federal, state, or local law.” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION VI. EQUAL EMPLOYMENT OPPORTUNITY Pages 141

EQUAL BENEFITS

“The HR Director or his/her designee will periodically review all benefit programs provided for employees to assure that all benefits are available to employees without discrimination on the basis of race, religion, color, national origin,

ancestry, citizenship, sex, sexual orientation, gender, gender identity (perceived gender as expressed through dress, appearance or behavior), age, genetic information, political affiliation, protected disability or military/veteran status and any other status protected by federal, state, or local law.” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION VI. EQUAL EMPLOYMENT OPPORTUNITY Pages 141-142

Mecklenburg County’s REDUCTION IN FORCE policy:

“Under no circumstance may any of the following factors be considered in selecting employees for reduction in force: age or eligibility for retirement; sex, national origin, race, or religion of the employee; pregnancy, veteran status, sexual orientation and disability status of the employee.” [emphasis added]

[MECKLENBURG COUNTY HUMAN RESOURCES POLICY & PROCEDURES](#)

SECTION VII. REDUCTION IN FORCE Page 145

Mecklenburg County also has an extensive [Diversity Management Plan](#), which has been in place since at least 2006 and which was revised in 2012. The County’s Diversity

Council is tasked to “advise and support Mecklenburg County in the process of being a model diverse organization. To that end, the Diversity Council’s work plan is structured around achieving several desired results. Each desired result has one or more corporate strategies tied to it, as well as tasks to implement those strategies. Lastly, a due date and performance measures are defined to establish accountabilities for the Diversity Council in achieving these desired results.”

On April 12, 2016, North Carolina Governor Pat McCrory signed [Executive Order No. 93](#) which expanded the non-discrimination employment policy for state employees to include the categories of sexual orientation and gender identity.

Chosen Location: Richmond, VA

The City of Richmond’s code lists its employee non-discrimination policy as follows:

Sec. 2-1264. - Created.

“Pursuant to Code of Virginia, § 15.2-1131, the Council establishes a personnel system for the City’s administrative officers and employees. Such personnel system shall be based on merit and professional ability and shall not discriminate on the basis of race, national origin, religion, sex, age, disabilities, political affiliation or marital status...”

(Code 1993, § 2-126; Code 2004, § 2-1206)

A similar personnel reference in the city code states:

§ 5A.03. - Personnel rules and regulations.

“The council, upon receiving any recommendations submitted to it by the mayor, shall establish a personnel system for the city administrative officials and employees. Such system shall be based on merit and professional ability and shall not discriminate on the basis of race, national origin, religion, sex, age, disabilities, political affiliation, or marital status...”

(Acts 1998, Ch. 711; Acts 2004, Ch. 877, § 1; Acts 2004, Ch. 898, § 1)

In 2015 the Human Rights Campaign [awarded Richmond points](#) for including sexual orientation and gender identity in its non-discrimination policy for city employment. This policy does not appear to be readily available online or to be mentioned in the city code, but for the purpose of this comparison, assume that to be true.

In other areas:

The City's policy for awarding contracts is listed as follows:

Sec. 21-219. - Discrimination prohibited.

"In the solicitation or awarding of contracts, the City shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror."

(Code 1993, § 22.1-139; Code 2004, § 74-269)

Richmond's Fair Housing policy is as follows:

ARTICLE II. - FAIR HOUSING

Sec. 17-19. - Declaration of policy.

"It is the policy of the City to provide for fair housing throughout the City, to all its citizens, regardless of race, color, religion, national origin, sex, age, marital status, presence of children in the family or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity and general welfare of all the inhabitants of the City may be protected and ensured. To this end, the City encourages the enforcement, by both public and private agencies, of laws prohibiting discriminatory practices as defined in this article..." (Code 1993, § 16-91(a); Code 2004, § 58-31)

The city code on fair housing contains several references to the above categories of non-discrimination. None of the references mention sexual orientation, gender identity or gender expression.

Richmond's city code on residential real estate transactions states:

Sec. 17-22. - Discrimination in residential real estate-related transactions.

- (a) "It shall be unlawful for any person, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, age, familial status, or disability. It shall not be unlawful, however, for any person whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan for which such person is making application."

(Code 1993, § 16-94; Code 2004, § 58-34)

Richmond prohibits employment discrimination by contractors, but does not mention sexual orientation, gender identity or gender expression:

Sec. 21-70. - Employment discrimination by contractor prohibited; required contract provisions.

"The City shall include in every contract of more than \$10,000.00 the following provisions:

- (1) During the performance of this contract, the contractor agrees as follows:
- a. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause."

...

(Code 1993, § 22.1-68; Code 2004, § 74-74)

The City will not give tax exemptions to organizations that discriminate in the following way:

Sec. 26-548. - Criteria for consideration of exemption.

"No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin..."

(Code 1993, § 27-128; Code 2004, § 98-249; Ord. No. 2004-369-332, § 1, 12-13-2004)

Richmond also addresses discrimination in restrictive covenants:

Sec. 17-24. - Certain restrictive covenants void; instruments containing such covenants.

- (a) "Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, age, familial status, or disability, whether included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of this Commonwealth."

(Code 1993, § 16-95; Code 2004, § 58-36)

Finally, Richmond has specific policies regarding contracts with faith-based organizations:

“(e) A faith-based organization contracting with the City:

- (1) Shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice or on the basis of race, age, color, gender or national origin; and...”

(Code 1993, § 22.1-72; Code 2004, § 74-47)

Richmond is not inside the territory of any Virginia county.

The State of Virginia has no state-wide law prohibiting discrimination based on sexual orientation, gender expression or gender identity.

On May 10, 2016 the Attorney General of Virginia released an [extensive letter](#) in which he concludes that Virginia statutes, including the Virginia Human Rights Act, “most likely prohibit discriminatory conduct against LGBT Virginians when that conduct is based on sex-stereotyping or on treating them less favorably on account of their gender...Additionally, while a strong argument could be made that discrimination on the basis of gender identity or sexual orientation is always sex discrimination within the meaning of Virginia’s anti-discrimination statutes, the Supreme Court of Virginia has not considered and resolved that question.”

While the Attorney General correctly notes that the terms “sex,” “sexual orientation” and “gender identity” have not been defined in terms of non-discrimination statutes by the state’s General Assembly or Supreme Court (see letter, pg. 17), the State of Virginia is subject to the [nationwide injunction](#) issued on August 21, 2016 (subsequent to this letter) in *State of Texas v United States of America*.

Dating back to at least *Winchester v. Redmond* in 1896, Virginia has adhered to the Dillon Rule of strict construction. The Supreme Court of Virginia described this policy in its 1980 decision *Tabler v. Fairfax County*: “Virginia follows the Dillon Rule of strict construction concerning the legislative powers of local governing bodies...The Dillon Rule provides that local governing bodies have only those powers that are expressly granted, those that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.” In essence, local governing bodies exercise limited powers and functions of a public nature granted to them expressly or by necessary implication, and none other. Any doubts as to the existence of a power must be resolved against the locality. Absent enabling legislation from the General Assembly or the Constitution, local governing bodies cannot enact ordinances or policies that are more stringent, i.e., protect more classes of people, than do state statutes.

In HB2 North Carolina stated that local laws on discrimination were preempted. (This does not include local laws applicable to city/county employees.) But that was not a change of the law. That had been the constitutional economic position of North Carolina since 1835. The case law of Virginia stated above is to the same effect.

On January 11, 2014 Virginia Governor Terence McAuliffe signed [Executive Order No. 1](#) which modified the state’s non-discrimination employment policy for state employees to prohibit “discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, or against otherwise qualified persons with disabilities.” [emphasis added] THIS IS THE SAME TYPE OF ORDER SIGNED BY GOVERNOR PAT MCCRORY IN APRIL 2016 (see pg. 4).