

SOGI Proposals: Unfair and Unjust

Every person should be treated with dignity and respect and not suffer unjust discrimination. Unfortunately, SOGIs¹ (legislation that adds sexual orientation and gender identity (“SOGI”) as protected classifications—including legislation that contains narrow exemptions for certain religious organizations such as the so-called “Fairness for All” model) fail to achieve this principle and instead compromise human flourishing, respect for diversity, and social harmony.

SOGIs Undermine Constitutionally-Guaranteed Freedoms. SOGIs imperil First Amendment freedoms by requiring individuals and organizations to speak or act contrary to their convictions on topics of deep significance to most Americans (e.g., marriage, sexuality, and what it means to be male and female). Such coercion has already happened to individuals and organizations, including adoption and foster care providers, homeless women’s shelters, religious schools, and even churches. But diversity of thought and the ability to disagree should not be subject to government punishment. First Amendment freedoms should not be compromised by laws that empower the government to unfairly coerce those with whom it disagrees.

SOGIs Harm Economic Freedom and Target Small Businesses. These proposals undermine the American dream by forcing small-business owners to choose between earning a living or operating consistent with their missions and beliefs.² Under SOGIs, Americans who gladly serve all people—including those who identify as gay and lesbian—face lawsuits, government fines, or even jail time because they declined to participate in an event or create a message. SOGIs also create untenable situations for employers, businesses, and organizations because of the vagueness of concepts like gender identity—which its proponents admit is fluid and may vary by time and place for a person. A person who asserts a gender-fluid or non-binary gender identity could initiate costly legal actions against an organization for everything from using the wrong pronoun to not allowing the gender-fluid person to alternate between male and female restrooms.

SOGIs Threaten Women’s Equality and Privacy. These proposals require sex-specific facilities, like women’s shelters, locker rooms, showers, and restrooms, to admit individuals in accordance with their chosen gender identity. Where enacted, they’ve been used to force women to share a locker room with men who profess a female identity and to allow men to sleep alongside women in women’s domestic violence shelters. They also eviscerate the academic and athletic advances women have made by allowing men who profess a female identity to take their spots on female teams and compete for scholarships and other opportunities designated for women.

¹ Some groups, such as the Council for Christian Colleges & Universities and the National Association of Evangelicals, are advocating for a nationwide federal law that would impose SOGI obligations on most Americans in exchange for limited special exemptions protecting their members.

² Notably, the majority of states ranked best for business, economic development, and recruitment and retention of young people do not have these types of laws, whereas the majority of states ranked worst do.

SOGI Proposals Don't Address Widespread Problems. Everyone should be treated with dignity and respect. The vast majority of Americans do not refuse to hire, serve, or rent to those who identify as gay or lesbian. Most Americans are tolerant and fair-minded, and the free market (through boycotts and public pressure) imposes substantial costs on anyone engaged in baseless discrimination. Justifying government intervention requires a significant, widespread problem; in the case of SOGIs, that would be consistent, systematic denial of access to essential goods and services to those who identify as LGBT. That thankfully does not currently exist in the U.S.³

SOGIs Aren't Politically Inevitable, and Opposition is Widespread. These laws are neither politically inevitable nor the last option for freedom. Americans and their elected officials are rejecting these laws throughout the country. The myriad concerns with SOGIs unite Americans across the political spectrum who value justice, fairness, and freedom, including those concerned about economic liberty, religious liberty, the freedom of speech, and limited government. Over the past several years, when SOGI proposals are introduced—even with limited protections for constitutional freedoms—legislatures in 27 states have consistently declined to pass these anti-diversity, coercive laws because they've witnessed their harm.

SOGI Proposals Harm Social Harmony. These proposals fail to provide the long-term solution that some promise, and actually worsen the opportunity for good will and respectful dialogue to flourish in our communities, regardless of our beliefs or how we identify. There will always be beliefs that are politically popular and beliefs that are unpopular. Our nation has a rich history of protecting those in the minority and those who wish to dissent. Ensuring respect for all is vital to continuing this legacy.

³ According to Professor Andrew Koppelman, an LGBT advocate, "There have been no claims of a right to simply refuse to deal with gay people." Andrew Koppelman, "A Zombie in the Supreme Court: The Elane Photography Cert Denial," *Alabama Civil Rights & Civil Liberties Law Review*, Vol. 7 (2015), pp. 77–95, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2455848 (accessed November 6, 2018).