

ISSUE BRIEF

No. 4953 | MAY 1, 2019

How the Federal “Equality Act” Would Multiply the Harm Already Done by State SOGI Policies

Monica Burke

In order to anticipate how the proposed Equality Act (H.R. 5) would affect the nation, one need only observe how similar laws have affected citizens in individual states. In states that have included sexual orientation and gender identity (SOGI) in anti-discrimination law, fundamental freedoms of women and girls, medical professionals, parents, business owners, and charities have all been violated.

SOGI laws are inherently problematic because the terms “sexual orientation” and “gender identity” are by their very definition fluid and subjective. Since these categories rely on self-perception and are subject to change, unlike an objective, immutable category, such as race, it is extremely difficult to determine what constitutes discrimination on this basis. These categories also implicate conduct, something on which citizens can reasonably disagree, which also makes it difficult to determine what is discrimination, and what is a difference of opinion.

Moreover, SOGI laws extend special privileges to special interest groups, often at the expense of constitutionally protected freedoms, including speech and religion. Activists have wielded these laws as swords to punish those who dissent from new cultural orthodoxies—thereby distorting the original intent of civil rights laws.

The Civil Rights Movement set out to shield

African Americans and other racial minorities from invidious discrimination rooted in racial supremacy—denials of equal access to basic goods and services, such as hotels, restaurants, and bus seats. But in states that have enacted SOGI laws, activists have used them to impose their ideas about sexual orientation and gender identity on the entire population, resulting in the abridgment of freedom of speech and conscience and infringements on privacy and safety.

The U.S. Congress should be protecting Americans’ fundamental freedoms as detailed in the Constitution, not placing them in jeopardy. The Equality Act—a federal SOGI law—would jeopardize those fundamental freedoms.

Following are eight examples of the chilling and far-ranging effects of state SOGI laws around the country:

1. Georgia: SOGI Bathroom Policies Enable Sexual Assault. A boy who identifies as “gender fluid” and attends Oakhurst Elementary School in Decatur, sexually assaulted¹ Pascha Thomas’s five-year-old daughter in the girls’ restroom—to which he had access due to Decatur City Schools’ transgender restroom policy, which allows both sexes in all restrooms. School authorities refused to change its policy after Thomas reported the assault, so she removed her daughter from school for the girl’s safety. Thomas filed a complaint with the U.S. Department of Education’s Office for Civil Rights, which has launched an investigation.²

Such incidents will become common under SOGI policies. Meanwhile, victims will be less likely to report sexual misconduct and police will be less likely to get involved for fear of being accused of discrimination. The Equality Act would impose a nationwide bathroom policy that would leave women and children vulnerable to male predators.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4953>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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2. Alaska: Gender Identity Policies Re-Traumatize Victims of Sexual Assault. A biological male, born Timothy Coyle, who today goes by Samantha Coyle, twice tried to gain access to a shelter for homeless, abused, and trafficked women in Anchorage. During one such attempt, Coyle was inebriated and had just gotten into a fight with a staffer from another shelter, so the shelter staff paid his fare to the hospital emergency room. Coyle filed a lawsuit against the shelter alleging discrimination on the basis of gender identity. The Alliance Defending Freedom has filed a lawsuit in defense of the shelter.³

3. California, New Jersey, and Washington: SOGI Policies Weaponized to Coerce Medical Professionals. Two Catholic hospitals, one in California⁴ and one in New Jersey,⁵ have been sued for refusing to perform hysterectomies on otherwise healthy individuals who wanted to pursue a “gender transition.” A third Catholic hospital in Washington settled out of court after the American Civil Liberties Union sued it for declining to perform a double mastectomy and chest reconstruction surgery on a 16-year-old girl.⁶

If these lawsuits succeed, affected medical professionals would be unable to exercise their best medical judgment about these radical procedures. SOGI policies can be used to coerce medical professionals

through the threat of costly lawsuits. A nationwide SOGI policy, such as the Equality Act, would politicize medicine and compromise the health care profession.

4. Ohio, Illinois, California, and Vermont: Gender Identity Ideology Puts Families at Risk. An Ohio judge removed a 17-year-old girl from her parents’ custody after they declined to help her “transition” to male with testosterone supplements. After the Cincinnati Children’s Hospital gender clinic recommended these treatments for the child’s gender dysphoria, the parents had wanted to pursue counseling instead. County officials charged them with abuse and neglect.

The increase of SOGI policies across the country has created a cultural expectation that parents pursue “affirming treatments” for children with gender dysphoria, and that to do otherwise would be discriminatory. This expectation is now growing so strong that even absent a formal policy or law, adherence to the new gender ideology has become a litmus test for parental fitness in some places. A case in point is that the judge terminated the parents’ custody of their daughter even without a formal SOGI policy or law.⁷

In Illinois,⁸ California,⁹ and Vermont,¹⁰ foster parents are expected to provide children suffering from gender dysphoria with gender-affirming therapy over parents’ medical or moral objections.

1. “Narrative Complaint on Behalf of Minor Child [____] Concerning Violations of Title IX,” May 22, 2018, https://adfllegal.blob.core.windows.net/mainsite-new/docs/default-source/documents/legal-documents/thomas-v.-city-schools-of-decatur/thomas-v-city-schools-of-decatur---complaint.pdf?sfvrsn=173b1fc9_4 (accessed April 17, 2019).
2. “The *Pascha Thomas* Case,” Alliance Defending Freedom, <http://www.adfmedia.org/files/ThomasOnePageSummary.pdf> (accessed April 12, 2019).
3. News release, “Women’s Shelter to Court: End Anchorage’s Attack on Hurting Women,” Alliance Defending Freedom, November 1, 2018, <https://adfllegal.org/detailspages/press-release-details/women-s-shelter-to-court-end-anchorage-s-attack-on-hurting-women> (accessed April 17, 2019), and Monica Burke and Jared Eckert, “Voters in Anchorage Can Protect Women’s Privacy in Ballot Initiative,” *The Daily Signal*, March 22, 2018, <https://www.dailysignal.com/2018/03/22/voters-anchorage-can-protect-womens-privacy-ballot-initiative/> (accessed April 12, 2019).
4. News release, “Catholic Hospital Sued for Denying Sex Reassignment Surgery,” Catholic News Agency, April 27, 2017, <https://www.catholicnewsagency.com/news/catholic-hospital-sued-for-denying-sex-reassignment-surgery-11828> (accessed April 12, 2019).
5. Abigail Abrams, “Transgender Man Sues Catholic Hospital for Rejecting His Surgery,” *Time*, January 5, 2017, <http://time.com/4623998/transgender-man-catholic-hospital-st-josephs/> (accessed April 12, 2019).
6. News release, “ACLU-WA and PeaceHealth Agree to Settle Lawsuit Involving Transgender Healthcare,” ACLU, January 3, 2019, <https://www.aclu.org/news/aclu-wa-and-peacehealth-agree-settle-lawsuit-involving-transgender-healthcare> (accessed April 12, 2019).
7. Emilie Kao, “Pelosi’s Equality Act Could Lead to More Parents Losing Custody of Kids Who Want ‘Gender Transition,’” *The Daily Signal*, January 14, 2019, <https://www.dailysignal.com/2019/01/14/pelosis-equality-act-could-lead-to-more-parents-losing-custody-of-kids-who-want-gender-transition/>.
8. Doug Mainwaring, “Christians Who Reject Transgenderism Banned from Adoption, Working with Children in Illinois,” *Life Site News*, June 1, 2017, <https://www.lifesitenews.com/news/state-agencys-new-rules-accept-transgenderism-or-face-ban-from-working-with> (accessed April 12, 2019).
9. News release, “Lambda Legal Applauds as California Becomes First State to Guarantee Gender-Affirming Health Care for Transgender Foster Youth,” Lambda Legal, September 21, 2018, https://www.lambdalegal.org/news/ny_20180921_ca-becomes-first-state-to-guarantee-gender-affirming-health-care-for-transgender-foster-youth (accessed April 12, 2019).
10. “LGBTQ Youth in Foster Care,” Vermont Juvenile Court Improvement Program *Info Bulletin*, October, 2017, https://www.vermontjudiciary.org/sites/default/files/documents/LGBTQ_InfoBulletin.pdf (accessed April 12, 2019).

When medicine is politicized, gender ideology becomes a litmus test for parental fitness. SOGI policies create pressure to politicize medicine and curtail parental rights. The Equality Act would put parental rights at risk nationwide.

SOGI policies grant biological males access to female-only spaces even in sensitive situations. The Equality Act would open up single-sex facilities to members of the opposite sex, risking re-traumatizing victims of sexual assault.

5. Connecticut and Minnesota: SOGI Policies Allow Biological Boys to Compete Against Girls in Sports. Two boys who identify and—are allowed to compete—as girls, easily defeated all of their competitors at the State Track Championships in Connecticut. Transgender athlete Terry Miller (a boy) broke the state record in the *girls'* 100-meter dash. Another boy, Andraya Yearwood of Cromwell, also transgender, took second place.¹¹

Professional athletes are also being affected by SOGI policies. Representative Ilhan Omar (D-MN) submitted a letter to Minnesota Attorney General Keith Ellison asking him to investigate USA Powerlifting over its decision to bar a transgender woman (meaning a biological man) from competing against women. Omar accused the organization of discrimination on the basis of gender identity under the state's SOGI law, the Minnesota Human Rights Act.¹²

Women will continue to lose competitions, titles, and scholarships if the Equality Act passes because their male competitors have a natural biological advantage. They are also at higher risk for injuries. For example, transgender mixed-martial-arts fighter Fallon Fox sent a female opponent to the hospital with a concussion, broken orbital bone, and requiring seven stitches in the head.¹³

6. Virginia and Ohio: SOGI Policies Compel Speech. A Virginia school board voted unanimously to fire Peter Vlaming, a high school French teacher, after he refused to comply with administrators' orders to use a female student's preferred male pronoun. The school board cited the school's anti-discrimination policy. Vlaming used the student's new name to avoid upsetting the student, but refrained from using pronouns altogether in the student's presence to avoid speaking against his belief that God created human beings male and female.¹⁴

A similar situation occurred at Shawnee State University in Ohio, where Professor Nicholas Meriwether was punished by the university for declining to use the feminine pronoun for a male student. The professor has since filed a federal lawsuit in his defense.¹⁵

SOGI policies can be used to compel speech. Incidents like these have a chilling effect on speech overall. The Equality Act would constitute a nationwide preferred-pronoun policy and increase these conflicts.¹⁶

7. Colorado, Washington, Kentucky, Arizona, New Mexico, Oregon, Michigan, and Georgia: SOGI Policies Put People Out of Business. Jack Phillips' case went all the way to the Supreme Court after the Colorado Civil Rights Commission accused him of discriminating on the basis of sexual orientation for refusing to bake a custom cake for a same-sex wedding ceremony. Although the Supreme Court ruled in Phillips' favor and said that the commission could not target him for his religious beliefs, now the commission has found probable cause that Phillips discriminated on the basis of gender identity for declining to create a "gender transition cake." Phillips sued the commission, and they recently settled the case.¹⁷

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11. Karma Allen, "Transgender Teens Outrun Track and Field Competitors But Critics Close Behind," ABC News, June 13, 2018, <https://abcnews.go.com/US/transgender-teens-outrun-track-field-competitors-critics-close/story?id=55856294> (accessed April 12, 2019).
 12. Jack Crowe, "Omar Demands USA Powerlifting Lift Ban on Trans Women," *National Review*, February 6, 2019, <https://www.nationalreview.com/news/omar-demands-usa-powerlifting-lift-ban-on-trans-women/> (accessed April 12, 2019).
 13. Alan Murphy, "Transgender Fighter Fallon Fox Sends Opponent to Hospital," #WHOATV, September 15, 2014, <http://whoatv.com/transgender-fighter-fallon-fox-sends-opponent-to-hospital/> (accessed April 12, 2019).
 14. Monica Burke, "This Teacher Was Fired for 'Misgendering' a Student. Who Could Be Next?" *The Daily Signal*, December 10, 2018, <https://www.dailysignal.com/2018/12/10/this-teacher-was-fired-for-misgendering-a-student-who-could-be-next/>.
 15. News release, "Shawnee State: Professors Must Speak Contrary to their Beliefs or Be Punished," Alliance Defending Freedom, November 5, 2018, <https://www.adflegal.org/detailspages/press-release-details/shawnee-state-professors-must-speak-contrary-to-their-beliefs-or-be-punished> (accessed April 12, 2019).
 16. Rod Dreher, "Under FFA, a Nation of Peter Vlamings?" *The American Conservative*, December 17, 2018, <https://www.theamericanconservative.com/dreher/ryan-t-anderson-sogi-fairness-for-all-peter-vlaming/> (accessed April 2, 2019).
 17. News release, "Colorado Loses Bid to Dismiss Cake Artist's Lawsuit," Alliance Defending Freedom, January 7, 2019, <https://adflegal.org/detailspages/press-release-details/colorado-loses-bid-to-dismiss-cake-artist-s-lawsuit> (accessed April 12, 2019).
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TABLE 1

Breakdown of States with Sexual Orientation and Gender Identity Laws

State	Public Accommodations	Employment	Housing	Education	Therapy Ban
California	Yes	Yes	Yes	Yes	Yes
Colorado	Yes	Yes	Yes	Yes	No
Connecticut	Yes	Yes	Yes	Yes	Yes
D.C.	Yes	Yes	Yes	Yes	Yes
Delaware	Yes	Yes	Yes	No	Yes
Hawaii	Yes	Yes	Yes	Yes	Yes
Illinois	Yes	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	Yes	No
Maine	Yes	Yes	Yes	Yes	No
Maryland	Yes	Yes	Yes	No	Yes
Massachusetts	Yes	Yes	Yes	Yes	No
Minnesota	Yes	Yes	Yes	Yes	No
Nevada	Yes	Yes	Yes	Yes	Yes
New Hampshire	Yes	Yes	Yes	No	Yes
New Jersey	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes*	Yes
New York	Yes	Yes	Yes	Yes	Yes
Oregon	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	No	Yes
Utah	No	Yes	Yes	No	No
Vermont	Yes	Yes	Yes	Yes	Yes
Washington	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes*	Yes*	Yes*	Yes*	No

* Sexual orientation only

SOURCE: Human Rights Campaign, "State Maps of Laws & Policies," <https://www.hrc.org/state-maps/> (accessed April 24, 2019).

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Phillips is but one of many vendors who have either shut down or paid thousands in hefty fines and legal fees under SOGI policies just for operating their business consistent with their moral or religious beliefs.¹⁸

The Equality Act could impose a nationwide compelled speech policy that could lead to more litigation against business owners who do not comply with the new gender orthodoxy.

18. For similar lawsuits brought under state and local SOGI policies, see *303 Creative v. Elenis* (CO, ongoing); *Arlene's Flowers Inc. v. Washington* (WA, ongoing); *Lexington-Fayette Urban County Human Rights Commission v. Hands On Originals* (the Kentucky Supreme Court ruled in favor of Hands On Originals in May 2017); *Brush & Nib Studio v. City of Phoenix* (AZ, ongoing); *Elane Photography, LLC v. Willock* (NM, New Mexico Supreme Court ruled against Elane Photography in August 2013, and the U.S. Supreme Court denied petition for writ of certiorari in April 2014); *Klein v. Oregon Bureau of Labor and Industries* (OR, ongoing); *Telescope Media Group v. Lindsey* (MI, ongoing); *Country Mill Farms v. City of East Lansing* (MI, a federal judge ruled in favor of Country Mill Farms in September 2017); and *Cochran v. City of Atlanta* (GA, a federal district court ruled in favor of Fire Chief Kelvin Cochran in December 2017, and the City of Atlanta awarded him \$1.2 million in damages and attorneys' fees in October 2018).

8. Pennsylvania, New York, Illinois, California, Massachusetts, Michigan, Texas, and the District of Columbia: SOGI Policies Weaponized to Shut Down Adoption and Foster Care Agencies. Just days after the city of Philadelphia put out an urgent call for 300 families to provide foster care for children, the city halted the child placements of Catholic Social Services to investigate whether the agency had violated the city's Fair Practices Ordinance, a policy that prohibits discrimination on the basis of sexual orientation or gender identity. Several affected foster families and former foster children have filed a lawsuit to defend the agency that is making its way through the courts.¹⁹

Faith-based agencies in Michigan and Texas have been sued under SOGI laws for operating consistent with their religious beliefs about marriage and family.²⁰ Meanwhile, numerous agencies have been shut down in New York, Illinois, California, Massachusetts, and the District of Columbia.²¹ This phenomenon leaves states that are already facing a shortage of foster parents with even fewer partners for recruiting

families for children left without parents, many of them because of the opioid crisis.²² More charities would shut down under the Equality Act.

State-by-State Overview

In the absence of a national SOGI anti-discrimination law, activist groups have lobbied to pass SOGI laws and policies at the state and local level.²³ This includes laws that ban discrimination on the basis of sexual orientation and gender identity in employment, public accommodations, housing, and education, as well as bans on counseling for individuals with unwanted same-sex attraction or gender dysphoria.

In addition to the 23 states listed in Table 1, hundreds of cities and localities across all 50 states have adopted SOGI policies by local ordinance.²⁴

What is the status of SOGI in your state?

—*Monica Burke is Research Assistant in the Richard and Helen DeVos Center for Religion and Civil Society, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation.*

19. Monica Burke, "Philadelphia Sabotages Its Own Adoption and Foster Care System," *The Daily Signal*, April 6, 2018, <https://www.dailysignal.com/2018/04/06/philadelphia-sabotages-adoption-foster-care-system/>.

20. Emilie Kao and Zachary Jones, "ACLU Threatens to Stamp Out Diversity by Shuttering Faith-Based Adoption Agencies," *The Daily Signal*, October 31, 2017, <https://www.dailysignal.com/2017/10/31/aclu-threatens-to-stamp-out-diversity-by-shuttering-faith-based-adoption-agencies/>; <https://www.texastribune.org/2018/02/20/texas-lesbian-couples-sues-trump-administration-over-refugee-adoption/>.

21. Monica Burke, "States Must Stop the War on Faith-Based Adoption Agencies," *The Daily Signal*, August 29, 2018, <https://www.dailysignal.com/2018/08/29/states-must-stop-the-war-on-faith-based-adoption-agencies/>, and Ryan Anderson and Sarah Torres, "Adoption, Foster Care, and Conscience Protection," Heritage Foundation *Backgrounder* No. 2869, January 15, 2014, <https://www.heritage.org/marriage-and-family/report/adoption-foster-care-and-conscience-protection>.

22. Emilie Kao, "A Chance for Hope, Star of the State of the Union," *Religion News Service*, January 31, 2018, <https://religionnews.com/2018/01/31/a-chance-for-hope-star-of-the-state-of-the-union/> (accessed April 12, 2019).

23. Andy Kroll, "Meet the Megadonor Behind the LGBTQ Rights Movement," *Rolling Stone*, June 23, 2017, <https://www.rollingstone.com/politics/politics-features/meet-the-megadonor-behind-the-lgbtq-rights-movement-193996/> (accessed April 12, 2019).

24. As of January 28, 2018, at least 225 cities and counties included gender identity as a protected class in local employment ordinances. "Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity," Human Rights Campaign, <https://www.hrc.org/resources/cities-and-counties-with-non-discrimination-ordinances-that-include-gender> (accessed April 12, 2019). Hundreds more also ban discrimination on the basis of sexual orientation in a variety of contexts (such as public accommodations, employment, and housing). Movement Advancement Project, "Local Non-Discrimination Ordinances: City and County Listing," http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances/policies (accessed April 12, 2019).