

FAMILY ISSUE FACT SHEET

NO. 2019-03 (UPDATED FEBRUARY 1, 2019)

SB 1249/HB 2546 ANTIDISCRIMINATION; EMPLOYMENT; HOUSING; PUBLIC ACCOMMODATIONS

SB 1389 EMPLOYMENT; HOUSING; PUBLIC ACCOMMODATIONS; ANTIDISCRIMINATION

EXECUTIVE SUMMARY

Current law prohibits discrimination in employment, housing, and public accommodations based on a person's race, color, religion, sex, age, disability, familial status or national origin. Sexual orientation and gender identity (SOGI) laws — like SB 1249, SB 1389, and HB 2546 — add sexual orientation and gender identity to these protected classes.

Nondiscrimination laws are meant to be a *shield* to protect people from unjust discrimination. However, SOGI laws are a solution in search of a problem and instead of shielding people, they are being used as a *sword* against individuals and organizations who have a historic understanding of marriage and gender.

Instead of solving a problem, SOGI laws create a host of problems, like undermining constitutionally guaranteed freedoms of speech and religion, threatening women's equality and privacy, and harming small businesses.

To compound the problem, these bills include no religious exemptions whatsoever, thereby placing a target on houses of worship, religious schools, and faith-based organizations that hold to a historic understanding of marriage and gender.

BACKGROUND

Five cities in Arizona currently have a SOGI law: Phoenix, Tucson, Flagstaff, Tempe, and Sedona. Although some of these laws have narrow religious exemptions for houses of worship, they do not protect the rights of people of faith to live and work according to their religious convictions. Rather, these are the types of laws that have been used around the country to punish photographers, florists, and cake artists who have declined to participate in a same-sex wedding.

On January 22, 2019, the Arizona Supreme Court heard arguments in *Brush & Nib Studio v. City of Phoenix*, where two artists are challenging the city's SOGI ordinance. The painter and calligrapher in this case face criminal penalties of \$2,500 per day and up to six months in jail if they decline to create custom wedding invitations for a same-sex wedding. The artists serve all people, but they do not communicate all messages.

Before considering any proposed SOGI law, the Arizona legislature should first wait for the Supreme Court to rule on *Brush & Nib*. Nevertheless, these SOGI bills have been introduced.

PROBLEMS WITH SB 1249, SB 1389, AND HB 2546

SOGI laws, like SB 1249, SB 1389, and HB 2546, create substantial privacy and safety concerns for women and girls. For example, under these two bills:

- Gyms, water parks, YMCA's, swimming pools open to the public, and similar facilities will have to allow men identifying as women to access women's showers, locker rooms, and bathrooms. Naturally, sexual predators will take advantage of the law to access potential victims.
- Women's domestic violence shelters will have to allow a man identifying as a woman to share living quarters, showers, and bathrooms with vulnerable women.
- Sex-specific jobs like a counselor at an all-girls summer camp, an employee at a women's domestic violence shelter or a caregiver for an elderly woman could not be denied to a man identifying as a woman.

In addition, these bills contain no religious exemptions whatsoever, making them far more draconian than typical SOGI laws. Under these bills, churches, religious schools and colleges, and faith-based organizations that hold to a historic understanding of marriage and gender could not discriminate based on sexual orientation and gender identity:

- Although the law allows religious organizations to discriminate based on religion for employment decisions, they could not take into account a person's sexual orientation or gender identity for employment decisions.
- If they offer their facilities for events (weddings and receptions) to members of the general public they would have to make it available for same-sex weddings.
- If they have recreational facilities open to the public they would have to open their women's locker room and bathrooms to men who identify as women.
- Faith-based adoption and foster care agencies could no longer only place children with married heterosexual couples.

TOP 5 REASONS TO OPPOSE SOGI LAWS

1. **They undermine constitutionally guaranteed freedoms of speech and religion.** They require people and organizations to communicate messages or act contrary to their beliefs about marriage, sexuality, and what it means to be male and female. Creative professionals, adoption and foster care providers, homeless women's shelters, religious schools, and even churches have been victims of government coercion under these laws.

2. **They threaten women’s equality and privacy.** SOGI laws force sex-specific facilities, like women’s shelters, locker rooms, showers, and restrooms, to admit men who identify as women. These laws also threaten academic and athletic advances women have made by allowing men who identify as women to compete with them for spots on female teams and for scholarships reserved for women.
3. **They harm small businesses.** They force small-business owners to choose between their livelihood and operating consistent with their core values. Under SOGIs, business owners that serve all people face lawsuits, fines, and jail time just because they decline to communicate a message or participate in an event that violates their conscience.
4. **They do not solve a widespread problem.** These types of laws are solutions in search of a problem. The citizens of Arizona, like most Americans, do not refuse to hire, serve, or rent to people because of their sexual orientation or gender identity. This is not only because the people of Arizona are tolerant and fair-minded, but also because the free market, through boycotts and public pressure, would swiftly impose substantial social costs on anyone engaged in baseless discrimination.
5. **They are not required for economic growth.** SOGI proponents argue SOGIs are good for business. However, in Arizona, we see repeated announcements of new businesses moving to Arizona because of our favorable business climate. The lack of a statewide SOGI is not impeding growth. Arizona added three hundred new businesses and two hundred and forty nine thousand new jobs in the past four years. Further, of the “top ten states for business” according the 2018 Forbes rankings, six of them do not have SOGI laws. According to the American Legislative Exchange Council (ALEC), of the top ten states with best economic outlooks in 2018, only one of them had a statewide SOGI.

CONCLUSION

Instead of solving a problem, SOGI laws create a host of problems. They undermine constitutionally guaranteed freedoms of speech and religion, threaten women’s equality and privacy, and harm small businesses. All people should be free to peacefully live and work according to their core beliefs without fear of unjust government punishment.