

# FAMILY ISSUE FACT SHEET

NO. 2020-06 (JANUARY 2020)

## **SB 1321/HB 2716 ANTIDISCRIMINATION; HOUSING; EMPLOYMENT; PUBLIC ACCOMMODATIONS**

### **EXECUTIVE SUMMARY**

Current Arizona law prohibits discrimination in housing, employment, and public accommodations based on the protected classes of a person's race, color, religion, sex, age, disability, familial status or national origin. Sexual orientation and gender identity (SOGI) laws — like SB 1321 and HB 2716 — add sexual orientation and gender identity to these protected classes.

These “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 and girls' 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.

In fact, HB 2716 goes even further and amends our state Religious Freedom Restoration Act to allow government to “substantially burden a person's exercise of religion” with laws that prohibit discrimination on the basis of sexual orientation or gender identity. A company or individuals would be compelled to provide access to any health care service, including providing abortion coverage, abortion drugs, puberty blockers to minors and gender reassignment surgery and treatment to individuals. Health care professionals even could be forced to perform or participate in an abortion.

### **BACKGROUND**

Six cities in Arizona currently have a SOGI law: Phoenix, Tucson, Flagstaff, Tempe, Sedona, and Winslow. 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. This might explain why a 2019 [poll](#) found that among 600 likely Arizona voters, 47.8% oppose adding sexual orientation and gender identity as new protected classes under civil rights laws, while only 35.1% support doing so. The same poll found an overwhelming 77%

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support for the freedom of fellow Arizonans to live and work according to their deeply held religious beliefs, even if those beliefs are unpopular.

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

In September 2019, the Arizona Supreme Court [ruled in favor of the artists](#), finding Phoenix could not compel them to create custom wedding invitations celebrating same-sex wedding ceremonies because it would violate their free speech rights under the [Arizona Constitution, article 2, section 6](#), and their religious freedom rights under the Free Exercise of Religion Act (FERA), [A.R.S. §41-1493.01](#).

The Court reasoned, “The rights of free speech and free exercise, so precious to this nation since its founding, are not limited to soft murmurings behind the doors of a person’s home or church, or private conversations with like-minded friends and family. These guarantees protect the right of every American to express their beliefs in public. This includes the right to create and sell words, paintings, and art that express a person’s sincere religious beliefs.” [¶1](#).

And that, “Freedom of speech and religion requires tolerance of different beliefs and points of view. In a diverse, pluralistic society such as ours, tolerance of another’s beliefs and point of view is indispensable to the survival and growth of our democracy. For this reason, we have always recoiled at those governments and societies that repress or compel ideas or religious beliefs.” (Citations omitted) [¶164](#).

HB 2716 would effectively overturn the Arizona Supreme Court’s decision upholding the Arizona Religious Freedom Restoration Act.

## **PROBLEMS WITH SB 1321 AND HB 2716**

SOGI laws, like SB 1321 and HB 2716, create substantial privacy, safety and equality 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.
- Women and girl athletes could be forced to compete against biological males who identify as female, rolling back decades of accomplishments for women. Across the country, we see [examples](#) of girls and women losing titles, trophies, and college

scholarships to men and boys. More than [60% of Arizonans support](#) laws prohibiting males from competing on women's and girls' sports teams.

- 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 show a profound disdain for the free exercise of religion, 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 follow their beliefs. In addition to the above examples regarding HB 2716, both bills would require these religious institutions to operate as follows:

- If they offer their facilities for events (weddings and receptions) to members of the general public they would have to make them 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. **These laws 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 (like the artists of Brush & Nib), adoption and foster care providers, homeless women's shelters, religious schools, and even churches have been victims of government coercion under these laws.
  - a) **HB2716 goes further in offending religious rights by effectively overturning a recent Arizona Supreme Court [holding](#)** that creative professionals in the wedding industry can't be forced to communicate custom messages that violate their religious beliefs. The House bill takes an axe to religious freedoms by amending Arizona's Religious Freedom Restoration Act to allow government to "substantially burden a person's exercise of religion" in these SOGI laws. It essentially places LGBTQ community above the long-standing and constitutionally protected right to exercise one's religion.
2. **These laws 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. **These laws harm small businesses.** They force small-business owners to choose between their livelihood and operating consistent with their core values. Under SOGI laws, 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. **These laws do not solve a widespread problem.** These 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. **These laws are not required for economic growth.** SOGI proponents wrongly argue SOGI laws 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. The Phoenix metro area job growth ranked [1st in the nation](#) last year, Arizona job growth ranked [2nd in the nation](#), and [#1 for newcomers](#). Arizona also ranked [4th in the nation](#) for GDP last year. In addition, Arizona continues to draw major sporting events and the financial benefits that go with it. Arizona has hosted three Super bowls, and will host another in 2023. Arizona hosted the NCAA Men's Division One Final Four in 2017, and will host it [again in 2024](#). And Arizona hosts the Phoenix Open and Spring Training every year. Further, of the "top ten states for business" according to 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. HB2716 goes so far as to allow government to "substantially burden" the right to exercise one's religion to accommodate SOGI law. All people should be free to peacefully live and work according to their core beliefs without fear of unjust government punishment.