

# **FAMILY ISSUE FACT SHEET**

NO. 2021-16 (FEBRUARY 2021)

## **SB 1425/HB 2642/HB 2744 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 1425, HB 2642, and HB 2744 add these categories to the protected classes.

These “nondiscrimination laws” are meant to be a *shield* to protect people from unjust discrimination. However, SOGI laws are used as a *sword* against individuals and organizations who have a historic understanding of marriage and gender. SOGI laws do not solve problems; they create them - like undermining constitutional freedoms of speech and religion, threatening women's and girls' equality and privacy, and limiting religious organizations that serve women and children.

Further, these bills fail to provide religious exemptions required by the First Amendment. They limit narrow legal protections and place a target on houses of worship, religious schools, and faith-based organizations that hold to a historic understanding of marriage and gender. While the U.S. Supreme Court ruled in [Bostock v. Clayton County](#) that an employer may not fire an person merely for their sexual orientation, these laws go much further than that.

SB 1425, HB 2642, and HB 2744 amend our state Religious Freedom Restoration Act (RFRA) to allow government to “*substantially burden a person's exercise of religion*” with laws that ostensibly prohibit discrimination on the basis of sexual orientation or gender identity.

### **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 laws 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 2021 poll<sup>1</sup> found that among 600 likely Arizona voters, 53% of voters oppose non-discrimination laws when they threaten creative professionals. Nearly 60% of voters, including more than 50% of Democrats, oppose laws that “undermine religious freedom.”

In September 2019, the Arizona Supreme Court ruled in [Brush & Nib Studio v. City of Phoenix](#), that Phoenix could not compel artists to create custom wedding invitations celebrating same-sex wedding. The Court found doing so would violate the artists' [constitutional free speech rights](#) and religious rights under the [Free Exercise of Religion Act](#) (FERA).

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.” (¶1) And “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)

SB 1425, HB 2642, and HB 2744 likely raise the same, significant constitutional questions and would be overturned at least in part by the courts.

## **PROBLEMS WITH SB 1425, HB 2642, AND HB 2744**

SOGI laws generally create substantial privacy and safety concerns for women and girls, impede religious nonprofits from helping women, children, and foster families, as well as harm small businesses. These bills go further and show a profound disdain for the free exercise of religion. These bills would require state-run organizations, private businesses, and religious institutions to operate as follows:

- Churches, religious schools and colleges, and faith-based organizations that hold to a historic understanding of marriage and gender could be required to compromise beliefs.
- Fitness Centers, water parks, YMCAs, public swimming pools, 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 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.
- Under [President Biden's Executive order](#) 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 [lawsuits](#) filed on behalf of girls and women losing titles, trophies, and college scholarships to men and boys. Nearly 60% of Arizonans support laws prohibiting males from competing on women’s and girls’ sports teams.<sup>ii</sup>
- 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 deny a job to a man identifying as a woman.
- Business, churches, and nonprofits that offer their facilities to the public for events (weddings and receptions) would have to make them available for same-sex weddings.
- Faith-based adoption and foster care agencies could no longer only place children with married heterosexual couples.
- A company or individual may be compelled to provide access to any health care service, including puberty blockers and gender reassignment surgery and treatment – even for children.

## TALKING POINTS – 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 or act contrary to their beliefs about marriage, sexuality, and what it means to be male and female. Artists, adoption and foster care providers, homeless women’s shelters, religious schools, and even churches have been victims of coercion under these laws. The laws allow government to “substantially burden a person’s exercise of 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 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 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 do not refuse to hire, serve, or rent to people because of the lack of a statewide SOGI law. This is not only because Arizonans 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 the laws are good for business. But the lack of a statewide SOGI law has not impeded growth. Phoenix metro area job growth ranked [1st in the nation](#) in 2019, and in 2020 Arizona’s job growth ranked [2nd in the nation](#) and [#1 for newcomers](#). Arizona also ranked [4th in the nation](#) for GDP. As of October 2020, amid COVID-19, Arizona’s economic strength continues with a rank of [3rd in economic momentum](#). Arizona continues to draw major sporting events, including three Super Bowls with another in 2023; an NCAA Men’s Division One Final Four in 2017 with another in [2024](#). Arizona continues to host a major PGA golf tournament and spring training games annually.

## 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, hurt vulnerable children, and harm small businesses. SB 1425, HB 2642, and HB 2744 allow government to “substantially burden” the right to exercise religion in order to accommodate SOGI laws. All people should be free to peacefully live and work according to their core beliefs without fear of unjust government punishment.

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<sup>i</sup> [Data Orbital 12/16-19 2020 600N](#)

<sup>ii</sup> Ibid