

FAMILY ISSUES FACT SHEET

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HB 2739 ANTIDISCRIMINATION; PUBLIC ACCOMMODATIONS; EMPLOYMENT; HOUSING HB 2703 ANTIDISCRIMINATION; EMPLOYMENT; HOUSING; PUBLIC ACCOMMODATIONS

EXECUTIVE SUMMARY

[HB 2739](#) and [HB 2703](#) are broad bills that undermine the rights of religious believers and small businesses. They add “sexual identity” and “gender identity” to current Arizona law that 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.

Nondiscrimination laws are meant to be a shield to protect people from unjust discrimination. However, adding sexual orientation and gender identity (SOGI) to the protected classes enables these “nondiscrimination laws” to be 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, such as 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, HB 2739’s purported religious exemptions do not provide the protection required by the First Amendment. It places a target on individuals and organizations that hold to a historic understanding of marriage and gender. While the U.S. Supreme Court ruled in [Bostock v. Clayton County](#) that Title VII of the federal Civil Rights Act of 1964 forbids covered employers from firing a person merely for their sexual orientation or gender identity, these bills go much further.

BACKGROUND ON SOGI LAWS

Eleven cities in Arizona currently have a SOGI law. 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.

The public does not support this kind of power grab by government. A 2022 poll found that among 600 likely Arizona voters, nearly 69% of voters oppose nondiscrimination laws when they threaten creative professionals.ⁱ More than 63% of voters oppose laws that undermine religious freedom.ⁱⁱ

Not only does the public oppose SOGI laws, but so does the Constitution. 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 weddings. 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 U.S. Supreme Court will rule this year on an important case, [*303 Creative LLC v. Elenis*](#), that asks to protect the First Amendment free speech rights of a website designer who serves everyone but cannot create messages that violate her conscience and her deeply held religious beliefs.ⁱⁱⁱ A broad decision from the Court could clarify the limits of such “nondiscrimination” laws that compel creative businesses to speak for government.

PROBLEMS WITH SOGI LAWS

SOGI laws 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.

Claims by proponents of HB 2739 that the proposed law addresses these concerns are not grounded in the bill's provisions. Weak language both allows for certain businesses to separate accommodations by sex, while also requiring those businesses to treat individuals in accordance with their gender identity, effectively negating the claimed protections.

And again, the bill specifically applies to private schools, undermining the sovereignty of their mission. The exemption for religious schools is weak and subject to court challenge. Such broad language throughout allows proponents to claim the bill protects religious organizations while using vague terms that can be argued otherwise.

HB 2703 doesn't even attempt to address the clear First Amendment violations.

SOGI laws display a profound disdain for the free exercise of religion by requiring 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. A recent poll shows Arizonans overwhelmingly (more than 73%) oppose allowing biological males into women’s restrooms and locker rooms.^{iv}
- 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. Again, proponents claim they addressed this concern, but the language in HB 2739 doesn’t distinguish between sex and gender identity and uses vague terms such as “where appropriate” without defining them.
- 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.
- Businesses, churches, and nonprofits that offer their facilities to the public for events (weddings and receptions) likely would have to make them available for same-sex weddings.
- 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 HB 2739 AND HB 2703

1. **They undermine constitutionally guaranteed freedoms of speech and religion.** It requires 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, and will be victims of coercion, under these laws.
2. **They threaten women’s equality and privacy.** The bill forces sex-specific facilities, like women’s shelters, locker rooms, showers, and restrooms, to admit men who identify as women, something more than 73% of Arizonans oppose. An example of the dangers includes the sexual assault of a female student in Loudoun County, Virginia at the hands of a male student using the girls’ restroom.^v
3. **They harm small businesses.** The bill forces business owners to choose between their livelihood and operating consistent with their core values. Under the bill, business owners

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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. A large majority of Arizonans oppose such coercion.

4. **They 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. Arizonans are tolerant and fair-minded, and 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 wrongly argue the laws are good for business. But the lack of a statewide SOGI law has not impeded growth.
 - Last year, Arizona ranked #1 in economic performance over the past decade and #3 for economic outlook^{vi}
 - In 2020, Arizona’s job growth ranked 2nd in the nation and [#1 for newcomers](#)
 - Arizona also ranked 4th in the nation for Gross Domestic Product (GDP)
 - Phoenix metro area job growth ranked 1st in the nation in 2019
 - Arizona continues to draw major sporting events, which bring coveted tourist dollars to the state
 - This year marked Arizona’s fourth Super Bowls in the valley
 - Arizona hosted the NCAA Men’s Division One Final Four in 2017, with another scheduled in [2024](#)
 - Arizona continues to host a major PGA golf tournament and spring training games annually

CONCLUSION

Instead of solving a problem, HB 2739 and HB 2703 create a host of problems. By adding sexual orientation and gender identity to state nondiscrimination laws, they undermine constitutionally guaranteed freedoms of speech and religion, threaten women’s equality and privacy, hurt vulnerable children, and harm small businesses.

HB 2739 and HB 2703 threaten our First Amendment freedoms. As the Arizona Supreme Court eloquently wrote, “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.”^{vii} Arizonans must be free to peacefully live and work according to their core beliefs without fear of unjust punishment.

ⁱ Datal Orbital 12/13-19, 2022 600N

ⁱⁱ *Ibid.*

ⁱⁱⁱ <https://www.scotusblog.com/2022/12/conservative-justices-seem-poised-to-side-with-web-designer-who-opposes-same-sex-marriage/>

^{iv} Data Orbital *Ibid.*

^v <https://www.nationalreview.com/news/they-failed-at-every-juncture-loudoun-county-mishandled-bathroom-sex-assault-grand-jury-finds/>

^{vi} Arizona ranked #1 in economic performance, AZ BEX, May 4, 2022

^{vii} Brush & Nib Studios, LC v. City of Phoenix, 247 Ariz. 269, 274 (Ariz. 2019).