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FIRST AMENDMENT DEFENSE ACT

H.R. 2802; S. 1598 (114th Congress)

What is the First Amendment Defense Act?

The First Amendment Defense Act (FADA) would legalize state sanctioned discrimination. While on its face, this bill would prohibit discrimination by the federal government based on individual beliefs about same-sex marriage, in reality, this bill would allow individuals, many businesses, and non-profit organizations—even those contracting with the federal government—to circumvent critical federal protections designed to protect LGBTQ families from harmful discrimination.

LGBTQ people and their families continue to face discrimination across our nation. FADA would allow individuals and businesses using taxpayer dollars to ignore the few federal policies that do exist to protect them if they claim the protections aren't in line with their individual beliefs about marriage.

Religious Freedom and Civil Rights Protections are Both Core American Values

FADA is a misguided attempt to solve a problem that just does not exist. The U.S. Constitution provides strong protections for individuals and organizations to practice their religion and to freely speak about beliefs. Nothing in federal law, including the right to receive exempt tax status, a federal grant or contract, or other federal benefit, can be denied on the basis of a sincerely held religious belief. The federal government also has an equally strong obligation and interest in eradicating harmful discrimination.

FADA Would Roll Back Critical Protections for LGBTQ People and Their Families

FADA would undermine core civil rights protections for LGBTQ people. For example:

- Following the U.S. Supreme Court decisions in *U.S. v. Windsor* and *Obergefell v. Hodges*, same-sex married couples are entitled to all federal spousal benefits regardless of where they live. Under FADA, however, individual businesses could run roughshod over the civil rights of these couples and deny them the spousal benefits they have earned and deserve.
- Executive Order 11,246 prohibits employment discrimination on the basis of sexual orientation and gender identity by federal contractors. However, under FADA, the federal government would be required to continue to contract with a non-profit business or organization with a record of discriminatory employment practices against LGBTQ people if that employer cited their belief that same-sex marriage was wrong as the reason for the discrimination.
- The Department of Housing and Urban Development has also recently issued guidance that shelters receiving HUD grants must not discriminate against same-sex married couples. An organization could cite FADA and provide their religious conviction against same-sex marriage as a reason to put a same-sex couple back on the street.
- Despite protections in the Fair Housing Act and strong administrative guidance from HUD, commercial landlords could be empowered to violate fair housing laws by refusing housing to a single mother or same-sex couple based on religious belief that sexual relations are reserved to different-sex married couples.
- The Violence Against Women Act (VAWA) provides explicit protections from discrimination against LGBTQ beneficiaries. However, under FADA, an emergency shelter receiving VAWA funds to provide services for survivors of intimate partner violence could turn away



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someone in a same-sex marriage because of their religious belief.

- The 1993 Family and Medical Leave Act grants a statutory right to 12 weeks of leave for personal illness or caregiving – including caring for a spouse. The Department of Labor has issued clear administrative guidance that these rights extend to same-sex married couples. However, under FADA, closely held businesses or not-for-profit organizations would be allowed to discriminate by refusing to let an employee care for their sick same-sex spouse despite these clear federal protections.
- Currently the vast majority of degree-granting institutions follow the American Psychological Association standards or those laid out by state-accreditation boards when designing psychology graduate programs, both of which reject the practice of conversion therapy. However, under this bill Universities accepting federal funds would be required to grant degrees to professional students who insisted in engaging in conversion therapy with clients as part of their studies.

What was the Status of the Bill in the 114th Congress?

FADA was introduced in the House by Rep. Raúl Labrador (R-ID) and in the Senate by Sen. Mike Lee (R-UT) on June 17, 2015. On September 14, 2015, Sen. Lee released an updated version of FADA on his website, and on July 7, 2016, Rep. Labrador released a further revised version of FADA on his website. Although neither revision was formally introduced in Congress, a hearing was held on the Labrador revised version of the bill in the House Oversight and Government Reform Committee on July 12, 2016. The bill was not voted on in the 114th Congress.

What is the Current the Status of the Bill?

FADA has not yet been introduced in the 115th Congress.



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TALKING POINTS: FIRST AMENDMENT DEFENSE ACT

H.R. 2802; S. 1598 (114th Congress)

The “First Amendment Defense Act” (FADA) is a solution in search of a problem.

- This bill is nothing more than a veiled attempt at allowing anti-LGBT discrimination with taxpayer dollars.
- The First Amendment of the U.S. Constitution provides meaningful and robust safeguards to ensure the freedom of religion, and these have been consistently upheld by the courts.
- No religious organization or clergy is required—or will ever be required—to sanction or perform same-sex marriage under any federal or state law. Federal courts have interpreted the First Amendment to protect religious organizations’ ability to proselytize and to freely express their beliefs without government interference.
- FADA ignores existing Constitutional protections.

Instead, the “First Amendment Defense Act” would allow blatant discrimination using taxpayer dollars.

- FADA would allow non-profit organizations and businesses contracting with the federal government to circumvent critical federal protections designed to protect LGBT families from harmful discrimination.
- FADA could allow hospitals to refuse a patient’s request that their same-sex spouse be allowed to visit them.
- FADA could allow an organization receiving a federal grant to serve the homeless to refuse service to a same-sex couple, forcing them back on the street.

The right to believe is fundamental. The right to use taxpayer dollars to discriminate is not.

- Both religious freedom and civil rights are core American values. These values are not mutually exclusive.
- The federal government has a strong obligation and interest in eradicating harmful discrimination.
- Policies and programs that discriminate against a third party—an employee, a hospital patient, a homeless family—have no business being funded by the federal government.

2016 STATE LEGISLATIVE REPORT

ANTI-TRANSGENDER LEGISLATION SPREAD NATIONWIDE, BILLS TARGETING TRANSGENDER CHILDREN SURGED

55 anti-transgender bills were filed in 20 states. 3 passed. 26 target children.

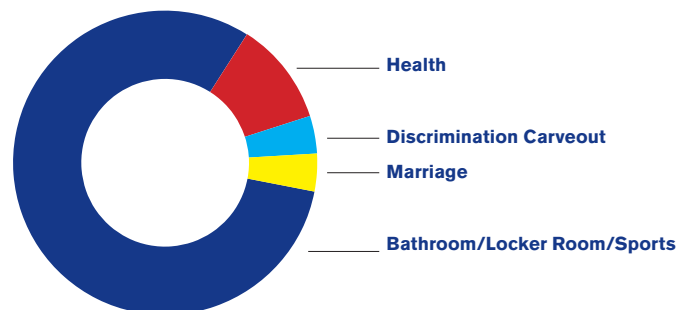
In many ways, 2015 was a great year for transgender people — so great, in fact, that some dubbed it a “transgender tipping point” due to the increased level of public awareness surrounding trans issues. Tragically, there was also an increased level of anti-transgender violence, particularly targeting transgender women of color. In 2015, at least 21 transgender people were victims of fatal violence in the United States, more killings of transgender people than any other year on record. Hard fought losses at the ballot box emboldened opponents to export their transphobic smear campaign to other places. And state legislatures across the country unleashed a slew of anti-transgender bills trying to stem the tide of rising social and legal acceptance of transgender people. **While none of these measures passed in 2015, the 2016 state legislative season threatened to be, and ultimately was, even worse.**

The quantity and diversity of this year’s legislative attempts to undermine the existing legal rights of transgender Americans, particularly transgender and gender nonconforming students, was unprecedented. **Until this year, 2015 had the largest quantity of anti-LGBT and specifically anti-transgender bills state legislatures had ever seen:** HRC tracked 100+ anti-LGBT bills, 21 of which particularly targeted transgender people. These ranged from bills limiting transgender people’s access to medically necessary gender-affirming care, to attempting to undo existing non-discrimination provisions related to transgender people, to placing a serious burden on transgender people’s fundamental constitutional right to marry the person they love. Most of all, however, the bills — 17 of them, more than 80% — attempted to deny transgender people access sex-segregated spaces consistent with their gender identity. None of these 21 bills passed, and only a few survived to be rolled over into the 2016 legislative session.

2015

100+ TOTAL BILLS TRACKED, 21 OF WHICH WERE ANTI-TRANS:

17 (81%) bathroom/locker room/sports, 2 health (including prisoner healthcare), 1 anti-trans marriage, and 1 discrimination carveout.

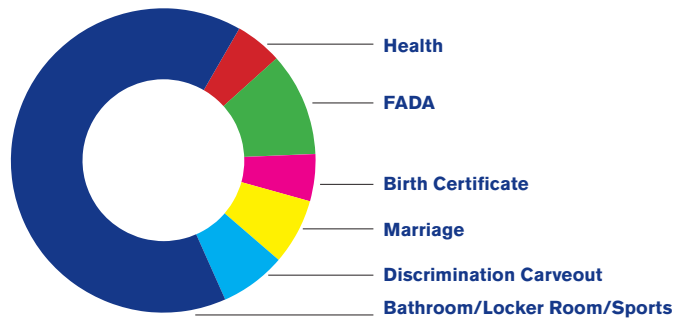




2016

200+ TOTAL BILLS TRACKED, 55 WERE ANTI-TRANS:

- 39 bathroom/locker room/sports,
- 2 health (including prisoner healthcare),
- 3 anti-trans marriage,
- 3 discrimination carveout,
- 2 birth certificate, and
- 6 FADAs.



As outrageous as the level of the 2015 legislative season's attacks on transgender people was, 2016 proved to be far worse. **A stunning 200+ anti-LGBT bills were filed in 34 states — that's 76% of states that had legislative sessions this year.** These bills ranged from attempts to turn the clock back on marriage equality to bills creating a license to discriminate against same-sex couples with taxpayer dollars to protecting those who peddle the discredited, abusive practice of so-called "conversion therapy". These bills would harm transgender people as well as lesbian, gay, and bisexual people, of course. But of the record 200+ anti-LGBT bills filed, 55 of those bills directly target transgender people. And this year, several of these bills presented serious threats of becoming law — and three did ultimately pass.

55 anti-transgender bills is more than twice as many as were introduced in last year's legislative session, and this year's attacks came in more varieties than they have before. In addition to the bills similar in kind to those we've seen previously — bills attempting to limit transgender people's access to medically necessary care; bills imposing serious, humiliating burdens on transgender people who seek to marry; bills trying to undo existing non-discrimination provisions related to transgender people; and the staggering 39 bills introduced, including HB2 in North Carolina, attempting to limit transgender people from equal access of sex-segregated spaces — there are two new variations on the anti-transgender legislation theme. Legislation making it effectively impossible to correct the gender marker on one's birth certificate surfaced in two states, and five states considered so-called "First Amendment Defense Acts" to permit publicly funded programs to refuse service on the basis of "sincerely-held religious beliefs" that a person's gender is determined by their anatomy at the time of birth. **Unfortunately, three anti-transgender bills passed this year: the infamous HB2 in North Carolina**, which mandates discrimination against transgender people in publicly-owned facilities at the same time it overturned LGBT-inclusive nondiscrimination ordinances, among other harmful provisions; **H.B. 1523 in Mississippi** which allows individuals and businesses to cite religious belief about marriage or gender identity as a legal reason to refuse service to LGBT people, single mothers, unwed parents and others; **and a non-binding legislative resolution passed in Oklahoma** in opposition to the guidance issued by the U.S. Departments of Justice and Education related to discrimination against transgender students in schools.

55 anti-transgender bills is more than twice as many as were introduced in last year's legislative session, and this year's attacks come in more varieties than they have before.

The proliferation of these bills is deeply disturbing. They popped up in states around the country, in the Northeast, Midwest, South, and West; in states with gender-identity inclusive non-discrimination laws and those without; and in states led by Democrats and Republicans. While each was undoubtedly an attempt to roll back the clock on equality, they are also each deeply misguided: some of these bills would, if passed, put



states directly at odds with federal law. Many of them would also conflict with other important state laws on the books. And they do so in an effort to address a phantom problem born of fear and a lack of understanding about transgender people. One legislator justified his support of an anti-trans bill in his state by characterizing transgender people as “twisted” — so battling back these bills is really about continuing to tip the scales toward the true tipping point for transgender Americans. An encapsulation of the anti-transgender legislation we’ve seen so far this legislative season is as follows.

SEX-SEGREGATED SPACES: TALKING ABOUT PRIVACY IN PUBLIC PLACES

Of the explicitly anti-transgender bills under consideration during this legislative session, the vast majority of them have to do with forbidding transgender people from having equal access to bathrooms, locker rooms, and other multi-user facilities in which people are likely to be in some state of undress. Over half of these anti-equal access “bathroom” bills expressly address bathrooms and locker rooms in primary and secondary schools, with several also addressing public institutions of higher learning. About a third of the bills apply to all multi-user bathrooms and similar facilities in the state. Some of the bills apply to buildings owned by the state government, and two bills relate exclusively to school sports. Each of these proposals attempt to restrict where transgender students and adults fit in spaces that are often designated by sex.

These bills are problematic in a number of ways, including that they put the physical and emotional safety of transgender people at risk. If a transgender person is forced to access the sex-segregated space that aligns with their assigned sex at birth, rather than the space that aligns with their authentic sense of self and likely their personal appearance, that person can become a target for attack and physical abuse.

SCHOOLS. 26 of the 55 anti-transgender bills filed this year are leveled at transgender children in schools and playing school sports. Research has shown that allowing transgender students to access the space consistent with their gender identity — something compelled for years by laws in 19 states as well as adopted by hundreds of cities and school districts around the country — have not resulted in problems. On the other hand, forcing transgender students to use sex-segregated facilities contrary to their identity can impose real harm on transgender students. The only students at risk in this discussion are transgender students — not the other students who may also be accessing the sex-segregated space.

These state bills also put schools in a conundrum. Title IX, the federal civil rights law that prohibits discrimination in education, has been interpreted by the federal government to include discrimination protections on the basis of gender identity — and there’s explicit federal guidance to clarify that includes restrooms and locker rooms.

Forcing transgender students to use sex-segregated facilities contrary to their identity can impose real harm on transgender students.

That means these student-focused bathroom bills put schools in an untenable position: if they comply with state law, they will be running afoul of federal law and therefore risk losing their federal funding. Either way, these bills set states up for expensive litigation — and that litigation has already begun.

Several of these bills also offer what they characterize as a “reasonable accommodation” — that a transgender student be restricted to the use of a single-stall facility (which may or may not exist or be anywhere near where the class-

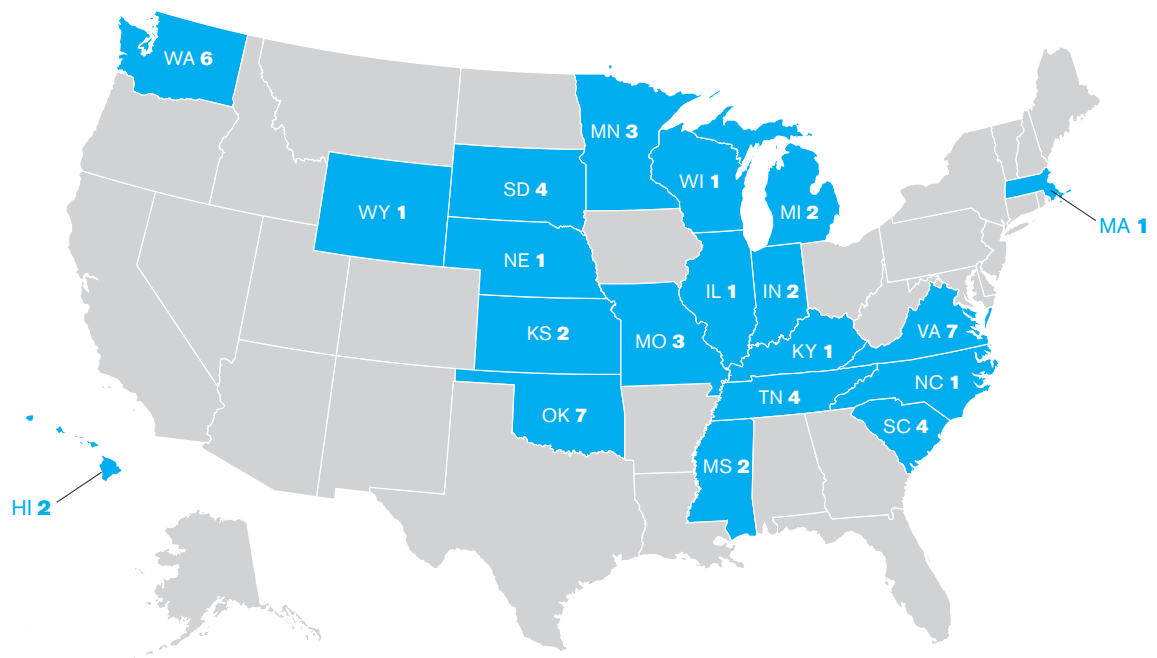
rooms are) or given limited access to a faculty facility (which also presents a host of logistical concerns). But even if these alternatives were convenient, forcing a transgender student to be isolated from their peers and sent to a separate facility is humiliating and degrading for the student. To be clear, compelling a student to use these separate facilities is neither reasonable nor an accommodation. It is simply thinly veiled, federally prohibited discrimination.



SPORTS. The principles outlined above also apply to sports — a person should not be forced to participate in a sex-segregated activity, such as many school sports, in a manner inconsistent with their authentic sense of self. The longstanding gender divide in sports sometimes prompts questions about where transgender students fit in, but major sporting associations — including the International Olympic Committee — have recognized those questions are easily resolved and adopted gender-identity inclusive non-discrimination policies. Where state legislators attempt to override the decisions of local sporting entities who have determined they will move forward with a policy that respects transgender students, they are meddling contrary to the best interests of the students, the sport’s governing body, and athletics as a whole.

RESTROOMS IN PUBLIC PLACES — FROM THE COFFEE SHOP TO CITY HALL. About a third of the anti-equal access “bathroom” bills under consideration in state legislatures would apply to all multi-user restrooms, locker rooms, and similar facilities within the state. North Carolina’s HB2 is an example: among other things, HB2 mandates that people using restrooms in publicly-owned facilities (including everything from airports to highway rest stops to the DMV to City Hall) do so according to the sex indicated on their birth certificate. Most people use public facilities on a daily basis at work and school, and at restaurants and other public places without a second thought. However, every day too many transgender people are forced to choose between this most basic need and avoiding harassment or intimidation. Transgender people often go to great lengths to avoid using the bathroom or to seek out single-occupancy facilities rather than risk their safety by using facilities contrary to their identity and gender expression, and bills that force them to use such facilities are hugely damaging. Some of the bills proposed this session would, if passed, impose criminal penalties upon a transgender person who accessed a sex-segregated space consistent with their identity. Others would condition access to such a space based on whether or not they’ve had surgery — a deeply personal matter which a person should not need to discuss publicly and which, given that restrooms have stalls for privacy, is totally irrelevant. Occupants of a restroom have no right to know anything about the genitalia of the other occupants. Indecent exposure, sexual assault, or any other illegal activity is criminal and should be punished accordingly — but those safety issues are wholly unrelated to equal access to bathrooms. The lawmakers behind these anti-equal access bills claim to be addressing safety concerns, but these are a red herring: rather, they are simply perpetuating fear and misunderstanding about transgender people.

2016 ANTI-TRANS BILLS





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FADA: SINCERELY HELD RELIGIOUS BELIEF THAT SEX IS BIOLOGICAL?

This legislative season has seen a new type of anti-transgender legislation emerge: it is a variation of a so-called “First Amendment Defense Act” (FADA) that protects a person or agency from the normal consequences of engaging in prohibited discrimination if the person or agency discriminating is doing so as a result of a sincerely held religious belief or moral conviction. In this context, the person or agency discriminating can be a public official, a person working at a public agency, or a private individual or agency who receives funds, licensing, or other recognition or benefits from the state — and who would stand to lose that recognition or benefits due to discriminatory behavior.

Generally these FADA bills have been designed to defend those who have religious beliefs opposing same-sex marriage and whose failure to serve same-sex couples would put their ongoing benefit or recognition from the state in jeopardy. This year, some of these bills additionally include a new provision which would also exempt people from the consequences of discrimination if they have a belief or conviction that there are “distinct and immutable biological sexes that are determined by anatomy and genetics at the time of birth”.

The consequences of allowing recipients of public funds to discriminate with taxpayer are simply unacceptable, as is interfering with a state's ability to rescind the license of a professional engaging in malpractice. These FADA bills are both radical and harmful to the LGBT community — and these new, explicitly anti-transgender provisions put a particularly fine point on the anti-LGBT animus motivating these bills. Mississippi passed such a law this year, and enforcement of the law has already been suspended by a federal court due to the likelihood of the law being found unconstitutional.

PREEMPTION BILLS: IF WE SAY NO TO EQUALITY, YOU HAVE TO SAY NO TOO

Hundreds of cities, counties, and school districts around the country have taken action to extend non-discrimination protections of their own volition where the state has been slow or refused to act. In some situations — like a school board working to comply with Title IX by adopting a policy of non-discrimination against lesbian, gay, bisexual or transgender students — the entities are responding to critically important external stakeholders. For cities and counties, the voices calling for these vital non-discrimination protections are businesses, chambers of commerce, and community leaders who know that treating people fairly is a requirement for a city or county to be able to attract and retain top talent. But state legislatures who would rather turn the clock back on equality are increasingly turning to laws that usurp the abilities of these local jurisdictions to pass such laws. Several state legislatures this year are considering these bills in several permutations, but only North Carolina's HB2 passed into law. Among its discriminatory provisions, HB2 overturned Charlotte's LGBT-inclusive nondiscrimination ordinance and prohibited other cities from passing such ordinances. Additionally, it also prohibited cities from passing ordinances setting a mandatory living wage.

For cities and counties, the voices calling for these vital non-discrimination protections are businesses, chambers of commerce, and community leaders who know that treating people fairly is a requirement for a city or county to be able to attract and retain top talent.



While in some cases these can appear more benign than the flagrantly anti-transgender “bathroom” bills, they have the same effect — or are sometimes even worse. They also similarly put schools in a situation where they have to choose between abiding by state law or forfeiting their federal funding and risking a federal lawsuit. By meddling in local affairs they also take away local jurisdictions’ ability to decide what is in their own best interest.

THEY’RE CALLED “PRIVATE” PARTS FOR A REASON

One of the most unfortunate themes in the slate of anti-transgender bills introduced across the country this legislative season has been an emphasis on euphemistically describing — and writing into state law — the current or former state of transgender people’s genitals. Some bills try to chastely allude to “chromosomes” or “deoxyribonucleic acid” (DNA) — disregarding that few people have tested their own DNA to know for sure what chromosomes they have — while the more coarse bills use the more colorful descriptors “anatomical sex” or “biological sex”. These bills insist that sex is as determined at birth and as recorded on a birth certificate. Others go even further, insisting that if a birth certificate is going to be accepted by a government agency for any reason (such as a school using a birth certificate to determine age) it must be accepted as the final word on all matters (such as mandating that transgender students must play sports based on their sex assigned at birth). Another would overturn existing state law to mandate that a sex designation on a birth certificate could only be changed in the case of a typographical error.

People are more complex than what can be determined in the first moments after birth, and imposing some unchangeable measure of who people are based on a description of their genitals is as foolish as it is reductive.

These laws lead to an invasion of privacy for all people — in fact, one legislator revised his anatomy-based bill after outcry that it would require inspections by adults of all children’s bodies before they were allowed to use school restrooms and locker rooms. Further, most people would consider it to be outrageous and unacceptable to be asked to describe their genitals to a stranger — be that stranger a clerk issuing marriage licenses, a proprietor engaged in gender-policing their customers, or a middle-school classmate. And yet these offensive bills all require this kind of disclosure of transgender people in various ways.

Reducing any person to a description of their genitals is offensive and absurd. People are more complex than what can be determined in the first moments after birth, and imposing some unchangeable measure of who people are based on a description of their genitals is as foolish as it is reductive. Regulations like these have no place in state law.

MEAN-SPIRITED AND OUTDATED: ANTI-TRANSGENDER MARRIAGE BILLS

In a year with an unprecedented number of anti-LGBT bills it perhaps isn’t a surprise that many of those proposals are in response to states being forced to grapple with marriage by same-sex couples. Unfortunately, some of these expressly target transgender people who seek to marry. One bill would require an applicant for a marriage license to disclose whether they’d ever undergone “a sex reassignment”, and then would print the answer on the marriage license when issued. Another would require a “husband” to be a “natural-born male as defined by the person’s original certificate of birth” and wife as a “natural-born” female also accord-

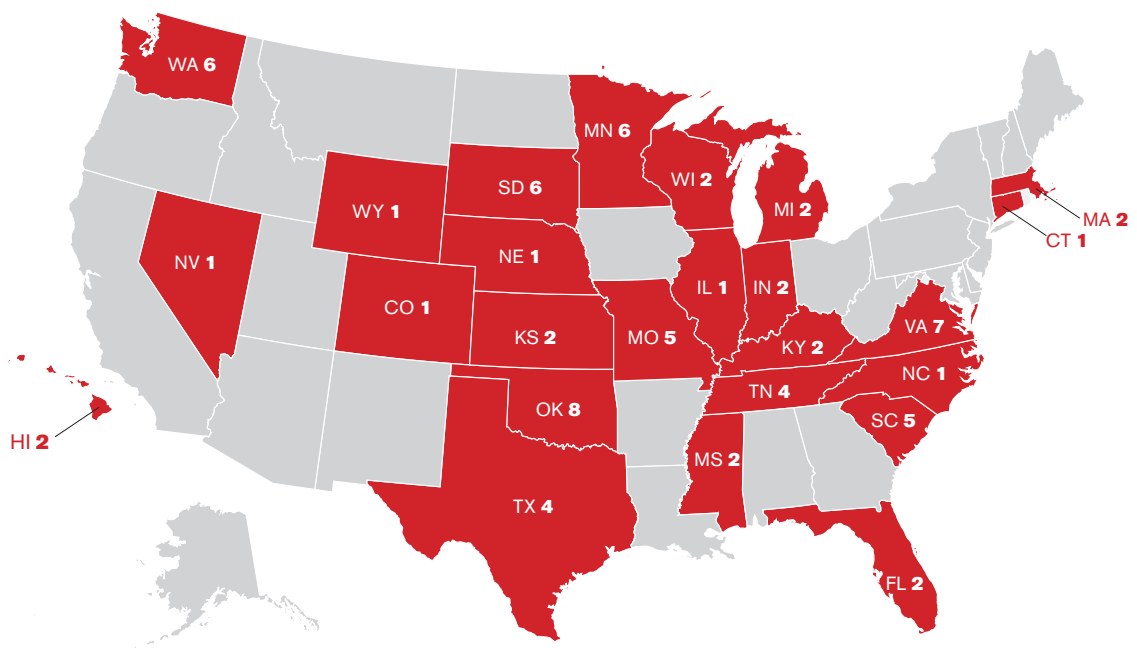
ing to her original birth certificate. The first bill would result in a humiliating and wholly unnecessary invasion of privacy; the second, which may be an ill-conceived attempt to circumvent marriage equality, would result in making marriage by transgender people difficult or even impossible. These legislatures are fighting a battle about marriage that they have already lost, and they are continuing to try to place burdens on people exercising their fundamental constitutional right to marry.

STATE INTERFERING WITH MEDICALLY NECESSARY CARE

A smaller number of bills are targeting a critically important concern: they are limiting transgender people's access to medically necessary healthcare. Whether it be through doubling down on existing exemptions around transition-related care that appear in state disability law, or in trying to avoid financial responsibility for medically necessary care for inmates of the state, states continue to defy medical best practices in excluding transgender people from access to health care services they need.

Winning over hearts and minds has always been crucial in winning the fight for equality for LGBT Americans, and the anti-transgender fearmongering manifested by this wave of anti-transgender legislation is a stark reminder of how much work remains to be done in educating Americans about who transgender people are. HRC will continue to work with our state and national partners to vigorously oppose and defeat anti-equality legislation and to advance critically needed protections at the state and federal level for all LGBT people.

2015–2016 ANTI-TRANS BILLS





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SAMPLE LEGISLATION TO PROTECT YOUTH FROM CONVERSION THERAPY

INTRODUCTION

This document is meant to provide lawmakers and advocates with sample state legislation appropriate to protect both children and adults from the harmful practice of conversion therapy. Conversion therapy is a set of dangerous and discredited practices that falsely claim to be able to change a person's sexual orientation, change their gender identity or expression, or lessen their same-sex sexual attraction. These practices have been rejected by all mainstream medical and mental health organizations, and there is no credible evidence that they are effective.

The language provided herein draws from best practices in both the jurisdictions which have passed laws to protect youth from conversion therapy and the more than 20 states that have introduced similar legislation. This sample language also draws from the Therapeutic Fraud Prevention Act, a federal bill that takes a fraud-based approach to regulate conversion therapy. Footnotes are provided throughout this document to explain how this language might be adapted to state law; and additional legislative approaches are provided in an optional section which follows the base legislation.

While this document provides a basis from which to consider drafting appropriate legislation to regulate conversion therapy, any legislation introduced will need to be modified to work in concert with state law. We urge you to contact experts at the National Center for Lesbian Rights and the Human Rights Campaign who can help with this process and provide technical assistance. To discuss this with our attorneys, please contact Samantha Ames (sames@NCLRrights.org) or Alison Gill (alison.gill@HRC.org).

When citing this Sample Legislation, we suggest using the following citation:

Gill A.M. & Ames S. (2015). *Sample Legislation to Protect Youth from Conversion Therapy*. Washington, DC: Human Rights Campaign and National Center for Lesbian Rights.



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SAMPLE LEGISLATION

AN ACT concerning the protection of minors from attempts to change sexual orientation, gender identity, or gender expression.¹

BE IT ENACTED by the [LEGISLATIVE BODY] of the State of [STATE]:

SECTION 1. SHORT TITLE.

This act shall be known and may be cited as the “Youth Mental Health Protection Act”.

SECTION 2.² LEGISLATIVE FINDINGS.

The Legislature finds and declares that:

- a. Contemporary science recognizes that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness;
- b. The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts, and issued a report in 2009. The task force concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources;
- c. The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: “[T]he [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth”;
- d. The American Psychiatric Association published a position statement in March of 2000 in which it stated:
 1. “Psychotherapeutic modalities to convert or ‘repair’ homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of ‘cures’ are counterbalanced by anecdotal claims of psychological harm. In the last four decades, ‘reparative’ therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric Association] recommends that ethical practitioners refrain from attempts to change individuals’ sexual orientation, keeping in mind the medical dictum to first, do no harm”;

¹ This description of the bill will need to be modified if the optional sections described herein are included.

² Please note that not all states allow for legislative findings or titles in bills. If you live in a state that does not allow either of these components, sections 1 and/or 2 may need to be removed. Legislative findings are important because they show how conversion therapy is a dangerous and discredited practice. If legislative findings are not possible, you should consider other mechanisms for entering this information into the legislative record.



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2. "The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed"; and
 3. "Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his or her sexual homosexual orientation";
- e. The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation";
 - f. The American Medical Association Council on Scientific Affairs prepared a report in 1994 in which it stated: "Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it";
 - g. The National Association of Social Workers prepared a 1997 policy statement in which it stated: "Social stigmatization of lesbian, gay, and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful";
 - h. The American Counseling Association Governing Council issued a position statement in April of 1999, and in it the council states: "We oppose 'the promotion of "reparative therapy" as a "cure" for individuals who are homosexual";
 - i. The American School Counselor Association issued a position statement in 2014 which states that: "It is not the role of the professional school counselor to attempt to change a student's sexual orientation or gender identity. Professional school counselors do not support efforts by licensed mental health professionals to change a student's sexual orientation or gender as these practices have been proven ineffective and harmful";
 - j. The American Psychoanalytic Association issued a position statement in June 2012 on attempts to change sexual orientation, gender identity, or gender expression, and in it the association states: "As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice"; and

"Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes";



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- k. The American Academy of Child and Adolescent Psychiatry in 2012 published an article in its journal, *Journal of the American Academy of Child and Adolescent Psychiatry*, stating: “Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated”;
- l. The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in 2012 stating: “These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements.” The organization also noted that reparative therapies “lack medical justification and represent a serious threat to the health and well-being of affected people”;
- m. The American Association of Sexuality Educators, Counselors, and Therapists issued a statement in 2014 stating: “[S]ame sex orientation is not a mental disorder and we oppose any ‘reparative’ or conversion therapy that seeks to ‘change’ or ‘fix’ a person’s sexual orientation. AASECT does not believe that sexual orientation is something that needs to be ‘fixed’ or ‘changed.’ The rationale behind this position is the following: Reparative therapy (for minors, in particular) is often forced or nonconsensual. Reparative therapy has been proven harmful to minors. There is no scientific evidence supporting the success of these interventions. Reparative therapy is grounded in the idea that non-heterosexual orientation is ‘disordered.’ Reparative therapy has been shown to be a negative predictor of psychotherapeutic benefit”;
- n. The American College of Physicians wrote a position paper in 2015 stating: “The College opposes the use of ‘conversion,’ ‘reorientation,’ or ‘reparative’ therapy for the treatment of LGBT persons. . . . Available research does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons”;
- o. Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse compared with peers from families that reported no or low levels of family rejection. This is documented by Caitlin Ryan et al. in their article entitled *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults* (2009) 123 *Pediatrics* 346; and
- p. [STATE] has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy.

SECTION 3. CONVERSION THERAPY DEFINED.

As used in this section, “conversion therapy” means any practices or treatments that seek to change an individual’s sexual orientation or gender identity, including efforts to



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change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy shall not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

SECTION 4. VIOLATIONS AND ENFORCEMENT.

- a. A person who is licensed to provide professional counseling under [CITE TO RELEVANT STATE LAW], including, but not limited to, a psychiatrist, licensed practicing psychologist, certified social worker, licensed clinical social worker, licensed social worker, licensed marriage and family therapist, certified psychoanalyst,³ or a person who performs counseling as part of the person's professional training for any of these professions, shall not engage in conversion therapy with a person under 18 years of age.
- b. Any conversion therapy practiced by a licensed professional, as defined in section 4(a), on a patient under 18 years of age shall be considered unprofessional conduct and shall subject them to discipline by the relevant licensing entity.
- c. The Department of Health⁴ shall have concurrent authority to initiate proceedings for violations of this section. The department shall promulgate rules in accordance with this section.

SECTION 5. SEVERABILITY.

If some provisions of this act, or certain applications of those provisions, are found to be unconstitutional, the remaining provisions, or the remaining applications of those provisions, will continue in force as law.

SECTION 6. This act shall take effect immediately.⁵

OPTIONAL SECTIONS

VULNERABLE ADULTS⁶ (ALTERNATIVE SECTION 4)

SECTION 4. VIOLATIONS AND ENFORCEMENT.

- a. A person who is licensed to provide professional counseling under [CITE TO RELEVANT STATE LAW], including, but not limited to, a psychiatrist, licensed practicing psychologist, certified social worker, licensed clinical social worker, licensed social worker, licensed marriage and family therapist, certified psychoanalyst, or a person who performs counseling as part of the person's professional training for any of these professions, shall not engage in conversion therapy with a person under 18 years of age or a vulnerable adult, as defined in [CITE TO RELEVANT STATE LAW].

³ This language will vary from state to state based on what medical and mental health professionals are required to have state-issued licenses.

⁴ The agency responsible for enforcing this provision will vary by state and may have a different name.

⁵ Depending on the state, this law should either take effect immediately or in accordance with the standard timeline for legislation to go into effect in a state.

⁶ This optional section is only appropriate if a state has laws already defining a "vulnerable adult" or equivalent term for the purposes of healthcare decision-making.



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- b. Any conversion therapy practiced by a licensed professional, as defined in section 4(a), on a patient under 18 years of age or a vulnerable adult shall be considered unprofessional conduct and shall subject them to discipline by the relevant licensing entity.
- c. The Department of Health⁷ shall have concurrent authority to initiate proceedings for violations of this section. The department shall promulgate rules in accordance with this section.

CONSUMER FRAUD

SECTION [X]. UNFAIR OR DECEPTIVE ACTS AND PRACTICES RELATED TO CONVERSION THERAPY.

- a. It shall be unlawful for any person to –
 1. provide conversion therapy to any individual if such person receives monetary compensation in exchange for such services; or
 2. advertise for the provision of conversion therapy where such advertising claims –
 - A. to change another individual's sexual orientation or gender identity;
 - B. to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender; or
 - C. that such efforts are harmless or without risk to individuals receiving such therapy.
- b. A violation of subsection (a) shall be considered an unfair or deceptive act or practice,⁸ as defined in [CITE TO RELEVANT STATE LAW], and shall be subject to the same enforcement, liabilities, and penalties as set forth in [CITE TO RELEVANT STATE LAW].

STATE FUNDS

SECTION [X]. PROHIBITION ON STATE FUNDING FOR CONVERSION THERAPY.

No state funds, nor any funds belonging to a municipality, agency, or political subdivision of this state, shall be expended for the purpose of conducting conversion therapy, referring a person for conversion therapy, health benefits coverage for conversion therapy, or a grant or contract with any entity that conducts conversion therapy or refers individuals for conversion therapy.

⁷ The agency responsible for enforcing this provision will vary by state and may have a different name.

⁸ This language will vary based on the prohibited activities in the state consumer fraud law. Because consumer fraud laws vary widely between states, this section may not be appropriate in some states.

The Problem

LGBT people across the country remain vulnerable to discrimination on a daily basis and too often have little recourse. In many states, LGBT people have the right to marry but have no explicit non-discrimination protection under state law. In reality, this means that a lesbian couple could legally marry one day and risk being evicted from their apartment or denied legal services the next – simply because of who they are. Or a transgender man could be refused a tux rental for his wedding. The current patchwork of protections for LGBT people across the country is inadequate.

Clear, Consistent Protections Under Federal Civil Rights Law

The Equality Act amends existing federal civil rights laws to prohibit discrimination on the basis of sexual orientation and gender identity in employment, housing, credit, and jury service. The bill also amends existing laws to prohibit discrimination in public accommodations and federal funding on the basis of sex, sexual orientation, and gender identity. By adding sexual orientation and gender identity to existing laws, LGBT people will be afforded the exact same protections as other covered groups.

Public Services and Spaces

The Equality Act amends Title II of the Civil Rights Act of 1964 to provide basic protections against discrimination in public services and spaces on the basis of sex, sexual orientation, and gender identity. In addition to adding “sex, sexual orientation, or gender identity” to the list of classes protected from discrimination, it also expands the definition of a “public accommodation.”

Education

The Equality Act amends Title IV of the Civil Rights Act of 1964 to add sexual orientation and gender identity to the list of protected classes under the Act.

Federal Funding

The Equality Act amends Title VI of the Civil Rights Act of 1964 to provide basic protections against discrimination in Federal Funding on the basis of sex, sexual orientation, and gender identity.

Employment

The Equality Act amends Title VII of the Civil Rights Act of 1964, the Civil Service Reform Act of 1978, the Government Employee Rights Act of 1991, and the Congressional Accountability Act of 1995 to provide basic protections against workplace discrimination on the basis of sexual orientation or gender identity.

Housing

The Equality Act amends the Fair Housing Act to add sexual orientation and gender identity to the list of protected classes under the Act.

Credit

The Equality Act amends the Equal Credit Opportunity Act to add sexual orientation and gender identity to the list of protected classes under the Act.

Jury Service

The Equality Act amends the Jury Selection and Services Act to add sexual orientation and gender identity to the list of protected classes under the Act.