

LGBTQ RIGHTS

ARE A STATE/CHURCH ISSUE

PROPOSED MODEL LEGISLATION



Why LGBTQ rights are a state/church issue: Ancient religious bigotry making modern legislation

Homophobic and transphobic bills have become commonplace in state legislatures, ranging from legalizing anti-gay discrimination to prohibiting transgender public school students from playing sports or even from using a washroom. Most people who oppose LGBTQ equality do so because of religion, as clichés like “God made Adam and Eve, not Adam and Steve” demonstrate. While 83 percent of unaffiliated accept homosexuality, only 36 percent of evangelical Protestants do, and 59 percent of those who attend weekly church services believe homosexuality should be discouraged.¹

One common thread linking many religious traditions is an unhealthy obsession with sexuality, including the notion that sex itself, and sexual desires, are inherently sinful unless confined to married heterosexual couples (preferably of the same race) attempting to procreate. Religious hostility toward same-sex relationships, interracial relationships and other private matters of consenting adults have tainted the law, in the United States and elsewhere, for centuries.

Without the religious perspective clouding these issues,

many bills being debated today become transparently harmful and pointless. Transgender girls are not dominating K-12 sports, and boys aren’t pretending to be transgender in order to gain access to girls’ restrooms. Same-sex marriages do not affect heterosexual married couples. The real point of these bills is the same as Reconstruction-era segregation laws: deliberately “othering” people who lawmakers view as inferior based on immutable characteristics. Such laws have no place in a free society or a secular government.

Transgender athlete bans, like bathroom bills, solve nothing and cause harm

In the past session, more than half of U.S. states considered bills banning transgender girls from competing in K-12 public school girls’ sports. The typical justification is that the bills are necessary to “save women’s sports,” and that without these bills transgender girls will dominate every sport due to an inherent biological advantage.

This is a lie. Just like anti-trans “bathroom” bills were never about bathrooms, transgender athlete bans are not about girls’ sports. The myriad anti-LGBTQ legislators who have made this a top priority have not suddenly simultaneously awakened to realize the importance of protecting female athletes. Elite athletic organizations have long considered



how to fairly regulate the effect of male puberty in women's sports, and they are the appropriate rulemakers in such circumstances.² But in first-grade soccer or JV basketball, these concerns are nonexistent. Most sponsors of trans athlete bans cannot point to a single example of trans athletes dominating a sport in their state, let alone a sweeping epidemic threatening to destroy women's sports.

The harm of a ban, however, is very real. Transgender teens have a vastly increased risk of depression, suicide³ and other issues that can potentially be mitigated by being part of a welcoming community, such as a sports team. The benefits of participating in sports are vast and well documented. While setting world records is a goal for a few, most student athletes play simply because they want to play, and state legislators ought to support that in their public schools, especially for kids who are at risk. These bills are harmful because they stigmatize children who are different, who are grappling with their identities. The bills may single out trans girls but they also signal government disapproval of LGBTQ children in general, trans boys and those increasingly identifying as nonbinary.

Safeguard same-sex marriage

With the Supreme Court overturning the individual rights described in *Roe v. Wade* based on dubious so-called "originalist" reasoning, the door is now open for judicial activists on the high court to strip away well-established rights dating back to, and including, the rejection of the "separate but equal" principle in *Brown v. Board*.

The first likely target of this unjust assault on individual liberties is same-sex marriage. *Obergefell v. Hodges* was decided less than a decade ago, and drew a fiery dissent from Chief Justice John Roberts, who now has five other justices sitting to his ideological right. There is no reason to think that the current results-oriented court will pass on the opportunity to overturn this decision in the near future. Like *Roe v. Wade*, their justification will be that this should be an issue for every state to decide individually.

State legislators must anticipate this assault and safeguard same-sex marriage rights at the state level immediately. State constitutions should be amended to recognize the right of consenting adults to marry, regardless of their gender or race. Every statutory scheme involving marriage should be updated to explicitly recognize same-sex marriages so that a reversal at the federal level will not have unexpected impacts on married couples in the future.

Thirty-five states ban same-sex marriage in their constitutions, state law or both. These currently unenforceable bans must be removed immediately. Utah state Sen. Derek Kitchen is drafting a bill to codify marriage equality in Utah,⁴ and similar efforts should be advanced in every other state as well.

Conversion therapy should be banned in every state

Less than half of U.S. states have enacted laws banning the debunked practice of "conversion therapy" that purports to convert a minor from being gay or bisexual into being straight and is almost always predicated on religious beliefs. CO HB 19-1129 is an example of a bill banning conversion therapy for minors.

Some bans apply only to registered therapists, while in practice, conversion therapy is conducted by religious clergy rather than by real therapists. The 11th U.S. Circuit Court of Appeals (affecting states in Alabama, Georgia and Florida) reached a bizarre conclusion in 2020 that therapists have a free speech right to conduct conversion therapy despite the consensus from medical professionals that the practice is illegitimate. Creative solutions are needed to fight against conversion therapy, since existing bans have run into practical problems in some states. Outside the 11th Circuit, strong conversion therapy bans should be implemented immediately.

The protection of LGBTQ rights is only the latest battleground in the fight for human rights, self-determination and dignity. State legislators who care about equal rights for all, and about standing up to religiously based bigotry influencing state legislation, must participate vigorously in this effort. We must work together to advance secular policies based on equality, compassion and evidence-based reasoning.

Endnotes

1 Views about Homosexuality, *Religious Landscape Study*, Pew Research Center
www.pewresearch.org/religion/religious-landscape-study/views-about-homosexuality/.

2 See, e.g., 2022 UPDATES TO NCAA TRANSGENDER STUDENT-ATHLETE PARTICIPATION POLICY, NCAA (Feb. 10, 2022), listing "dates, deadlines, testosterone thresholds and other details" in a variety of sports
ncaaorg.s3.amazonaws.com/inclusion/lgbtq/SSI_TransgenderSADeadlinesAndThresholds.pdf.

3 Suicide and Suicidal Behavior among Transgender Persons, NIH
www.ncbi.nlm.nih.gov/pmc/articles/PMC5178031/.

4 Kim Bojórquez, *Sen. Derek Kitchen's fight for same-sex marriage in Utah continues*, Axios (June 28, 2022)
www.axios.com/local/salt-lake-city/2022/06/28/senator-derek-kitchen-protect-same-sex-marriage-utah.

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