

TESTIMONY
BEFORE THE SENATE COMMITTEE ON THE
JUDICIARY
ON
PROTECTING PRIDE: DEFENDING THE CIVIL
RIGHTS OF LGBTQ+ AMERICANS

BY

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ALLIANCE DEFENDING FREEDOM

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Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

Every person should be treated with dignity and respect—a goal that our diverse nation largely achieves. Americans gladly hire, serve, or rent to people from all walks of life and without regard to whether they identify as gay, lesbian, or transgender. This is because Americans as a whole are tolerant and fairminded, and anyone engaged in baseless discrimination will face swift social consequences.

Likewise, our laws should protect the constitutionally guaranteed freedoms of every person, no matter who they are. They should promote justice and fairness, benefit society, and support the common good—not just the interests of particular groups.

Unfortunately, laws and policies like the Equality Act that elevate “sexual orientation” and “gender identity” as protected classes or that redefine “sex” to include those categories (“SOGI”) are being misused by government officials to undermine freedom, fairness, safety, and the inherent dignity of countless Americans.

Government officials are increasingly pushing SOGI policies that harm everyday Americans across the country, much of it driven by the Biden Administration. For example, the Administration is pushing an unlawful interpretation of Title IX that redefines “sex” to include gender identity—actions that a federal court recently concluded “ignore[d] the limited reach of *Bostock*” which “only addressed sex discrimination under Title VII” and “does not require [the U.S. Department of Education’s] interpretations of Title VII and IX.”¹ This unprecedented effort to bypass Congressional authority and rewrite federal law causes dire consequences on human flourishing, including First Amendment rights, fairness and privacy for female athletes, and the health and safety of our nation’s children.

Even more troubling is the Biden Administration’s campaign to push dangerous, experimental gender transition procedures on children—specifically puberty blockers, cross-sex hormones, and irreversible surgeries²—all under the guise of federal SOGI policies. While many of the European countries that pioneered these procedures are reversing course to prioritize counseling and

¹*Tennessee v. United States Dep’t of Educ.*, 615 F. Supp. 3d 807, 833 (E.D. Tenn. 2022).

² *Gender-Affirming Care and Young People*, Office of Population Affairs, U.S. Dept. of Health and Human Services, available at <https://opa.hhs.gov/sites/default/files/2022-03/gender-affirming-care-young-people-march-2022.pdf>.

psychotherapy over drugs and invasive surgeries, the Administration unleashes its full might to pressure states, medical providers, and even parents to support the harmful medicalization of children.

The harms go on: Lorie Smith, owner of website-design company 303 Creative, is awaiting a decision from the U.S. Supreme Court over whether Colorado’s SOGI law can compel Lorie and her fellow Coloradans to speak messages they don’t believe.³ A women’s shelter in Alaska was told that it must allow men into female-only sleeping quarters—where the men would be an arm’s-length away from women fleeing sex trafficking and abusive situations, often at the hands of men—because of a local SOGI ordinance.⁴ And a Missouri college is challenging a federal Housing and Urban Development SOGI policy that would force the college to violate its beliefs by allowing males into girls’ dorms, showers, and restrooms.⁵

Government officials are using SOGI laws and policies to impose a devastating and unprecedented threat not only to our constitutional freedoms, but to the privacy and safety of women and the innocence and health of vulnerable children. In doing so, they do not offer equality or fairness—they create new victims.

Destructive Gender Ideology is Being Imposed on Children and Threatening Medical Professionals Who Have Conscientious Objections

Children who experience discomfort with their biological sex should be treated with dignity and respect, love and compassion, and have access to effective mental health care. But activists and profit-driven gender clinics have deceived children and parents alike into believing that unnatural, life-altering, and even permanently sterilizing puberty blockers, hormones, and surgeries are the solution to their struggle. These experimental “gender transition” procedures prevent healthy puberty, alter the child’s hormonal balance, frequently result in permanent infertility, and may even remove healthy external or internal organs and body parts.

In response, there is a growing movement of “detransitioners” who came to realize—after receiving puberty blockers, hormones, and more—that they were lied to and that their medical

³ *303 Creative LLC v. Elenis*, No. 21-476 (U.S. Sup. Ct.). Case documents at <https://adfmedia.org/case/303-creative-v-elenis>.

⁴ *The Downtown Soup Kitchen v. Municipality of Anchorage*, No. 3:18-cv-190 (D. Alaska). Case documents at <https://adfmedia.org/case/downtown-hope-center-v-municipality-anchorage-i>.

⁵ *The Sch. of the Ozarks, Inc. v. Biden*, No. 22-816 (U.S. Sup. Ct.). Case documents available at <https://adfmedia.org/case/college-ozarks-v-biden>.

“gender transition” was a devastating mistake. Many are bravely speaking out about the damage caused by being rushed into these drugs and surgeries without understanding the consequences, and without appropriate attention to the individual’s pre-existing mental health issues.

No study has ever demonstrated that the use of puberty blockers on children with gender dysphoria is safe. Rather, as a recent paper from Professor Michael Biggs of Oxford University explained, the claims that puberty blockers and other hormonal interventions are safe and reversible is “increasingly implausible.”⁶

Growing evidence shows that puberty blockers hurt a child’s physical, emotional, and psychological development in ways we still don’t fully understand:

- Fertility Issues: Puberty blockers prevent the natural development of a child’s reproductive organs (i.e., ovaries and testes). Yet there has not been a single study on whether children will develop full reproductive capacity after the prolonged use of puberty blockers—a fact even the 2017 Endocrine Society guidelines acknowledge.⁷
- Impaired Brain Development: Children experience vital neurological growth and development during puberty. But as the Endocrine Society warns, the use of puberty blockers on children “may include ... unknown effects on brain development.”⁸ A review team commissioned by the National Health Service has cautioned that:

A closely linked concern [arising from use of puberty blockers] is the unknown impacts on development, maturation and cognition if a child or young person is not exposed to the physical, psychological, physiological, neurochemical and sexual changes that accompany adolescent hormone surges.⁹

⁶ M. Biggs, *The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence*, ARCHIVES OF SEXUAL BEHAVIOR 348-368 (2022), <https://doi.org/10.1080/0092623X.2022.2121238>.

⁷ W. C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society* Clinical Practice Guideline*, THE JOURNAL OF CLINICAL ENDOCRINOLOGY & METABOLISM 102(11), 3880, 3895 (2017) (noting that there is no data on fertility “following prolonged gonadotropin suppression” (i.e., puberty blockers) and even disclaiming any “warranty, express or implied, regarding the guidelines and specifically excludes any warranties of merchantability and fitness for a particular use or purpose.”).

⁸ *Id.* at 3882 (further stating that “animal data suggests there may be an effect of GnRH analogs [puberty blockers] on cognitive function.”).

⁹ H. Cass, *Independent review of gender identity services for children and young people: Interim report* at 38 (Feb. 2022), <https://cass.independent-review.uk/wp-content/uploads/2022/03/Cass-Review-Interim-Report-Final-Web-Accessible.pdf>.

- FDA Warnings: In July 2022, the FDA issued a warning that puberty blockers carry a risk of pseudotumor cerebri, a disease with symptoms that include swelling of the optic nerve, headaches, vomiting, elevated blood pressure, and eye muscle paralysis.¹⁰

Just like with puberty blockers, there are no reliable studies about the safety of the long-term use of cross-sex hormones on minors. But there are serious consequences we do know:

- Extended use of cross-sex hormones poses a serious risk of life-long sterilization: As the Endocrine Society has explained, adolescents are at risk of “compromised fertility” if “treated with sex hormones.”¹¹ The prolonged use of testosterone on females “will result in ... temporary or permanent decreased fertility,” while cross-sex hormone use on males will cause their reproductive organs to “undergo atrophy.”¹² That led the Endocrine Society to recommend that adolescents be “informed of the (irreversible) effects and side effects of treatment (including potential loss of fertility...).”¹³
- Cross-sex hormones cause cardiovascular harm: Three different studies have found that cross-sex hormones increase the occurrence of several cardiovascular diseases, strokes, blood clots, and other severe cardiovascular issues.¹⁴

Putting a child experiencing gender dysphoria on puberty blockers is not a “pause button” as some gender activists claim. Instead, giving children puberty blockers and hormones pushes them down a one-way street that virtually always leads to sterilizing, irreversible surgeries.

For example, a recent study from the world’s largest gender clinic in the United Kingdom found that 98% of children administered puberty blockers went on to eventually receive cross-sex

¹⁰ Food and Drug Admin., *Update: Risk of pseudotumor cerebri added to labeling for gonadotropin-releasing hormone agonists* (2022), <https://www.fda.gov/media/159663/download>.

¹¹ Hembree, *supra* n.7 at 3882.

¹² *Id.* at 3878.

¹³ C. Guss et al., *Transgender and Gender Nonconforming Adolescent Care: Psychosocial and Medical Considerations*, CURRENT OPINIONS IN PEDIATRICS 26(4) 421 at 5 (2015).

¹⁴ Guss, *supra* n.13; D. Getahun et al., *Cross-sex Hormones and Acute Cardiovascular Events in Transgender Persons: A Cohort Study*, ANNALS OF INTERNAL MEDICINE, 169(4), 205 (2018); H. Asscheman et al., *A long-term follow-up study of mortality in transsexuals receiving treatment with cross-sex hormones*, EUROPEAN JOURNAL OF ENDOCRINOLOGY 164(4) 635–642 (2011).

hormones.¹⁵ This aligned with a similar study from the Netherlands that found that nearly 97% of children given puberty blockers went on to cross-sex hormones.¹⁶

And when children received cross-sex hormones alone (or with puberty blockers), 100% of those children then received damaging, irreversible surgeries according to three Dutch clinical studies.¹⁷ In other words, it is categorically false to claim that putting a child on puberty blockers merely “pauses” a child’s development to allow them to neutrally choose between equally plausible paths—embracing their biological sex or pursuing “gender transition.” Rather, puberty blockers decisively push nearly all children toward a persistent transgender identity—and toward cross-sex hormones and a lifetime of medicalization.

This one-way street toward “transition” surgeries destroys healthy bodies, turns children into lifelong patients of gender clinics, and irreparably deprives them of the fulfillment and basic human right of potentially becoming natural parents later in their lives, all with no proven long-term benefits. Worst of all, Sweden’s long-term study of suicide rates of adults who underwent surgery showed that these individuals had suicide rates almost 20 times higher than the general population.¹⁸ This shows that “gender transition” surgery does not lead to a happy, healthy life, nor does it eliminate the high rates of suicide among this population.

That’s why more and more nations, including many that pioneered medical transitions, are reversing course. Health authorities and medical associations in England, Sweden, Finland, Norway, France, Australia, and New Zealand are warning against, and even curtailing the use of, puberty blockers, hormones, and surgeries on children with gender dysphoria:

- Sweden: The country’s main gender clinic has severely limited the use of puberty blockers and hormones on minors because “the risks of puberty-inhibiting and gender-affirming

¹⁵ P. Carmichael et al., *Short-term outcomes of pubertal suppression in a selected cohort of 12- to 15-year-old young people with persistent gender dysphoria in the UK*, PLOS ONE, 16(2), e0243894 at 12 (2021).

¹⁶ T. Brik et al., *Trajectories of Adolescents Treated with Gonadotropin-Releasing Hormone Analogues for Gender Dysphoria*, ARCHIVES OF SEXUAL BEHAVIOR 29, 2611 (2020), <https://doi.org/10.1007/s10508-020-01660-8>.

¹⁷ S. Leibowitz & A. L. de Vries, *Gender dysphoria in adolescence*, INTERNATIONAL REVIEW OF PSYCHIATRY (Abingdon, England), 28(1), 21–35 (2016), <https://doi.org/10.3109/09540261.2015.1124844>.

¹⁸ C. Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLOS ONE 6(2), e16885 (2011).

hormone treatment for those under 18 currently outweigh the possible benefits” based on the concerns about “the effect and safety of the treatments based on scientific evidence.”¹⁹

- Finland: The country restricts the use of puberty blockers and hormones to exceptional cases and only after extensive psychiatric assessment of the child, warning that “no decisions should be made that can permanently alter a still-maturing minor’s mental and physical development.”²⁰
- United Kingdom: Recently, after conducting an independent review of its treatment of children with gender dysphoria, the National Health Service found a lack of quality evidence to support the use of puberty blockers and cross-sex hormones.²¹ It warned that “[l]ittle is known about the long-term side effects of hormone or puberty blockers in children with gender dysphoria,”²² suspended the use of puberty blockers and hormones except in exceptional circumstances and as part of carefully planned research, and instead announced that psychological support is the recommend treatment for gender dysphoria.
- France: The National Academy of Medicine issued a statement urging “great medical caution” when working with children experiencing gender dysphoria “given the vulnerability, particularly psychological, of this population and the many undesirable effects, and even serious complications, that some of the available therapies can cause.”²³

¹⁹ Press Release, Swedish Socialstyrelsen, *Updated recommendations for hormone therapy for gender dysphoria in young people* (Feb. 22, 2022), <https://www.socialstyrelsen.se/om-socialstyrelsen/pressrum/press/uppdaterade-rekommendationer-for-hormonbehandling-vid-konsdysfori-hos-unga/>.

²⁰ Council for Choices in Health Care in Finland, *Medical treatment methods for dysphoria associated with variations in gender identity in minors—recommendation* (June 16, 2020), [https://palveluvalikoima.fi/documents/1237350/22895008/Summary_minors_en+\(1\).pdf](https://palveluvalikoima.fi/documents/1237350/22895008/Summary_minors_en+(1).pdf).

²¹ National Institute for Health and Care Excellence, *Evidence review: Gonadotrophin releasing hormone analogues for children and adolescents with gender dysphoria* (Oct. 2020), https://cass.independent-review.uk/wp-content/uploads/2022/09/20220726_Evidence-review_GnRH-analogues_For-upload_Final.pdf; National Institute for Health and Care Excellence, *Evidence review: Gender affirming hormones for children and adolescents with gender dysphoria*, (2020) https://cass.independent-review.uk/wp-content/uploads/2022/09/20220726_Evidence-review_Gender-affirming-hormones_For-upload_Final.pdf.

²² *Treatment: Gender Dysphoria*, NHS, <https://www.nhs.uk/conditions/gender-dysphoria/treatment/>.

²³ Press Release, Académie Nationale de Médecine, *Medicine and gender transidentity in children and adolescents* (Feb. 25, 2022), <https://www.academie-medecine.fr/la-medecine-face-a-la-transidentite-de-genre-chez-les-enfants-et-les-adolescents/?lang=en>.

- Australia & New Zealand: The Royal Australian and New Zealand College of Psychiatrists recently emphasized that treatments for gender dysphoria should focus on psychotherapy and address “co-existing issues which may need addressing and treating.”²⁴

In other words, these countries are putting psychological treatment and counseling at the forefront of caring for these children, who often suffer from other psychiatric conditions. Yet the Biden Administration and other U.S. officials are ignoring the science and pushing puberty blockers, hormones, and irreversible surgeries on children through SOGI policies.

Not only do such policies harm children, but they coerce doctors, counselors, and healthcare practitioners to violate their conscience by requiring them to prescribe puberty blockers and hormones and facilitate or perform life-altering surgeries on otherwise healthy children who are struggling with their gender identity. After Michigan courts reinterpreted the state’s civil rights law to include SOGI and the Legislature doubled down by amending the law to add SOGI, the law now requires Christian Healthcare Center to provide cross-sex hormones and use certain pronouns contrary to their religious beliefs and medical judgment.²⁵ These requirements threaten this ministry’s ability to provide safe, high quality medical care to the community consistent with their religious beliefs.

Even speaking out about the potential dangers of “gender transition” drugs and surgeries can result in medical experts facing devastating professional consequences. Dr. Allan Josephson, who successfully led the University of Louisville’s Division of Child and Adolescent Psychiatry and Psychology for almost fifteen years, was ousted from his position, harassed, and later terminated after participating in a panel at The Heritage Foundation where he expressed his professional views on the treatment of youth experiencing gender dysphoria.²⁶

Denying the biological reality that we are either male or female hurts real people, especially vulnerable children. Science and common sense tell us that children are not mature enough to properly evaluate the serious, lifelong ramifications when making important medical decisions. And the decision to undergo dangerous, experimental, and likely sterilizing “gender transition” procedures is

²⁴ The Royal Australian and New Zealand College of Psychiatrists, *Recognising and addressing the mental health needs of people experiencing Gender Dysphoria* (2021), <https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/recognising-and-addressing-the-mental-health-needs-of-people-experiencing-gender-dysphoria>.

²⁵ *Christian Healthcare Centers, Inc. v. Nessel*, No. 1:22-cv-787 (W.D. Mich.). Case documents available at <https://adfmmedia.org/case/christian-healthcare-centers-v-nessel>.

²⁶ *Josephson v. Ganzel*, No. 23-5293 (6th Cir.). Case documents available at <https://adfmmedia.org/case/josephson-v-ganzel>.

certainly no exception. Yet SOGI laws and policies push children toward these life-altering procedures that cause permanent harm. And they silence any medical dissent raising the alarm about the dangers of these procedures, including counseling censorship laws in numerous states and local jurisdictions that threaten to revoke professional licenses from counselors—like the State of Washington’s Brian Tingley—who help consenting minors to accept their sex. Alliance Defending Freedom is working to protect Mr. Tingley’s free-speech rights in a pending U.S. Supreme Court case.

Government Officials are Undermining the Right and Duty of Parents to Raise and Care for Their Children

Parents take care of us before we can take care of ourselves. They bring us into the world; they teach us to walk, to talk, to love; and they prepare us for the challenges of life. Of all the people who share in shaping a child’s moral character and the adults they become—from teachers and coaches to spiritual mentors, extended family, and others—parents have far and away the deepest and most enduring influence. Therefore, our laws must protect that fundamental right and duty of parents to direct the care and upbringing of their children.

Sadly, we are seeing growing instances of government officials maliciously replacing parents as the ultimate determiners of what’s best for children. Relying on local SOGI policies and the Biden Administration’s efforts to unlawfully rewrite Title IX, some schools are indoctrinating students into destructive gender ideology and actively hiding students’ mental health struggles from parents.

- A policy of the South Madison Community School Corporation in Indiana instructed district employees to assist children of any age who are questioning their gender identity to adopt a transgender identity at school without notice to or consent from parents.²⁷ The SOGI policy required counselors, teachers, and other staff to conceal this action from the parents and even instructed employees to deceive the parents by calling the child by his or her preferred name at school but using the child’s birth name around his or her parents to keep them in the dark.
- A 12-year-old student in the Kettle Moraine School District in Wisconsin was experiencing increased anxiety and depression, and a counseling program pushed her to say she wanted to

²⁷ *McCord v. South Madison Community School Corp.*, No. 1:23-cv-866 (S.D. Ind.). Case documents at <https://adfmedia.org/case/mccord-v-south-madison-community-school-corporation>.

be a boy.²⁸ Her parents believed it best to slow things down and provide her with professional counseling to work through her anxiety and depression, but school officials said that no matter the parents' wishes, they would continue with the social transition of the child because of a SOGI policy. The school blatantly ignored the parents' decisions regarding their child's mental health.

- Parents with children enrolled in Harrisonburg Public Schools in Virginia were being excluded from conversations about their children's mental health, and teachers were instructed to deceive parents about their children's struggles.²⁹ Under the district's SOGI policy, teachers were required to affirm the school board's view on gender identity and assist with socially transitioning children. In fact, this policy forbids staff from even sharing this information with parents.
- And in Jacksonville, Florida, a family was devastated when they received a call that their elementary-aged daughter had attempted to hang herself in the bathroom at school.³⁰ As the family pressed for answers from school officials, they discovered that their daughter had been struggling with gender confusion. The school had been pushing this confusion, referring to the young girl by male pronouns and hiding the young girl's struggles from the parents because of hostility against the family's faith.

Parents' choices about how to raise their children should not be ignored or overruled by school officials or district SOGI policies. Instead, it is in kids' best interests for parents to be involved any time a child faces serious issues at school, whether academic, social, or mental or emotional health—including a child's anxiety or distress over his or her gender. Parents love and care for their children far more than any government bureaucrat ever will. And parents must be immediately informed when such issues arise so that they can help their child navigate and overcome any challenges.

²⁸ *B.F. v. Kettle Moraine Sch. Dist.*, No. 21-CV-1650 (Wi. Cir. Ct. Waukesha Cnty. Branch 4). Case documents at <https://adfmedia.org/case/bf-v-kettle-moraine-school-district>.

²⁹ *D.F. v. Harrisonburg City Public School Board*, No. CL22-1304 (Va. Cir. Ct. Rockingham Cnty.) Case documents at <https://adfmedia.org/case/figliola-v-harrisonburg-city-public-school-board>.

³⁰ *Perez v. Broskie*, No. 3:22-cv-83 (M.D. Fla.), <https://www.documentcloud.org/documents/21197504-complaint-as-filed>.

Organizations Working to Find Loving Homes for Kids in Our Nation’s Overloaded Foster Care Systems are Facing Discrimination

Vulnerable children in foster care deserve the greatest chance possible of finding a loving home. Unfortunately, SOGI laws and policies take life-changing opportunities away from these children by allowing states to discriminate against millions of Americans willing to serve as loving foster parents. SOGI laws also target faith-based service providers that help these children find loving homes. SOGI laws and policies lead to more discrimination, not less.

SOGI laws are already being used to turn away compassionate Americans ready to serve as foster and adoptive parents for children in their communities. For example, Jessica Bates was told by the state of Oregon that she could not adopt any sibling pair. Although Jessica explained that she would happily love and accept any child entrusted to her care, she could not in good conscience speak against her belief that God created us male and female or subject a child to harmful cross-sex hormones as part of a “gender transition.”³¹ Because of her beliefs, Oregon told Jessica she was ineligible to adopt or care for *any* child—including children who share Jessica’s own religious beliefs. But by discriminating against Jessica, the state is telling every kind-hearted person of faith that they cannot help children in the foster and adoption system unless they agree to give children dangerous and life-altering drugs that lead to a lifetime of dependence and irreversible damage. It dictates that only Americans who fully embrace gender identity ideology are eligible to participate in child welfare programs, while people with religiously informed views or who simply dissent from the state’s gender ideology orthodoxy are disqualified. That is clear discrimination. The government can’t exclude communities of faith from foster care and adoption services simply because the state doesn’t like their particular religious beliefs.

SOGI policies would not only lead to discrimination against millions of Americans who want to open their homes to care for children in the foster care system, but they would also close down service providers aiding these children and families. There have already been far too many examples of states using SOGI laws to discriminate against faith-based adoption and foster care providers in Pennsylvania, Massachusetts, California, Michigan, Illinois, New York, and Washington, D.C.³²

³¹ *Bates v. Pakseresht*, Case No. 2:23-cv-474 (D. Or.). Case documents at <https://adfmedia.org/case/bates-v-pakseresht>.

³² Ryan Anderson and Sarah Torre, *Adoption, Foster Care, and Conscience Protection*, THE HERITAGE FOUNDATION (Jan. 15, 2014), <https://www.heritage.org/marriage-and-family/report/adoption-foster-care-and-conscience-protection>; Monica

Vulnerable children suffered because government officials forced these faith-based service providers to choose between violating their beliefs and keeping their doors open. With nearly 400,000 children in foster care,³³ the government should be working with every organization available, not discriminating against them under SOGI laws and policies.

For example, citing a SOGI regulation, the City of Philadelphia discriminated against Catholic Social Services of Philadelphia (CSS) because CSS focused on finding foster parents who aligned with its religious mission. CSS served children in the Philadelphia area for over a century, but the state did not want to accommodate its request for an exemption to the SOGI policy, instead forcing it to choose between shutting down or abandoning its religion. After years of litigation, the U.S. Supreme Court fortunately recognized that the City could not discriminate against CSS's religious views by denying it an exemption.³⁴

Yet even after the legal victory at the high court, states continue to wield SOGI policies against faith-based adoption providers. The New York Division of Human Rights threatened to investigate and penalize New Hope Family Services, a Christian adoption agency, because it specifically places infants with couples consisting of a mother and father committed to each other in marriage.³⁵ Notably, New Hope has an extraordinary record of being willing to place—and successfully finding adoptive parents willing to accept—children who are categorized as “hard to place” due to disability, medical condition, race, or other factors.

In fact, faith-based adoption providers have unique strengths to serve foster parents.³⁶ They attract new foster and adoptive parents through connections with faith communities. They supplement state funds with private donations that help cover school expenses and even extracurricular activities. And they have experience placing children with unique needs, such as older children, sibling groups, and children with special needs. For example, forty-five percent of Catholic

Burke, *States Must Stop the War on Faith-Based Adoption Agencies*, THE HERITAGE FOUNDATION (Aug. 30, 2018), <https://www.heritage.org/marriage-and-family/commentary/states-must-stop-the-war-faith-based-adoption-agencies>.

³³ U.S. Dep't of Health and Human Services, Admin for Children and Families, Admin. on Children, Youth and Families, Children's Bureau, *The AFCARS Report* (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf>.

³⁴ *Fulton v. City of Philadelphia*, 593 U.S. ___, 141 S. Ct. 1868 (2021).

³⁵ *New Hope Family Services v. James*, No. 21-cv-1031 (N.D.N.Y.). Case documents at <https://adfmmedia.org/case/new-hope-family-services-v-james>.

³⁶ Natalie Goodnow, *The Role of Faith-Based Agencies in Child Welfare*, THE HERITAGE FOUNDATION (May 22, 2018), <https://www.heritage.org/civil-society/report/the-role-faith-based-agencies-child-welfare>.

Charities adoptions in 2016 were children with special needs.³⁷ States should be welcoming such organizations with open arms, not threatening and discriminating against them because of their faith.

SOGI laws would force faith-based adoption and foster care providers to violate their beliefs or stop their important work. That means fewer providers available to help connect kids with a loving family at a time when there are over 113,000 children in foster care looking for permanent, loving homes.³⁸ These kids deserve more opportunities to find a loving home, not fewer. SOGI laws take away opportunities by denying parents the chance of serving as foster parents, removing the vital support that faith-based providers give to parents, and worst of all, reducing the number of loving homes available to the hundreds of thousands of vulnerable children in need.

Women and Girls are Deprived of Countless Opportunities Due to an Unfair Playing Field in Athletics

SOGI policies—particularly those that ignore the physiological differences between women and men—nullify the equal opportunities promised by Title IX and similar state laws which guarantee women equal access to athletics, scholarships, and educational opportunities on the same basis as men. When males are allowed to compete in the female category, women lose the chance to compete, medal, and potentially even earn college scholarships, and they may even be placed at greater risk of physical injury. The whole basis for separating men and women within the athletic context is to ensure women are provided opportunities they would not otherwise have.

Science proves that biological males have inherent athletic advantages over female athletes. Males generally have a 10-50% performance advantage over comparably fit and trained female athletes, depending on the sport.³⁹ Even the world's best female Olympic athletes would lose to thousands of men and boys on any given day. In 2017 alone, men and even high school boys beat the lifetime best of female U.S. Olympic and World Champion gold medalist Allyson Felix in the 400-meter dash more than 15,000 times.⁴⁰

³⁷ *Id.*

³⁸ *The AFCARS Report*, *supra* n.33.

³⁹ E. N. Hilton & T.R. Lundberg, *Transgender women in the female category of sport: perspectives on testosterone suppression and performance advantage*, *SPORTS MEDICINE* 51:199-214, 211 (2021).

⁴⁰ Doriane Lambelot Coleman & Shreve Wickliffe, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*, <https://web.law.duke.edu/sites/default/files/centers/sportslaw/comparingathleticperformances.pdf>.

Female-only sports are essential to ensuring women and girls can safely and fairly compete. Before Title IX was passed, fewer than 30,000 young women participated in collegiate sports. By the 2020-2021 academic year, that number had skyrocketed to over 215,000 female college athletes.⁴¹ That same disparity existed at the high school level as well: 294,000 girls participated in high school sports before Title IX; afterwards, over 3.4 million were using their talents on the playing field.⁴²

The benefits of athletic participation for young women extend far beyond the trophy case. Ninety-four percent of females in corporate leadership positions played sports, and their experiences taught them confidence, teamwork, how to overcome adversity, and other skills that contributed to their success.⁴³

But under the Biden Administration's SOGI policies, including its rewriting Title IX, the life-changing opportunities for young women both on and off the playing field are being permanently eroded. Schools and colleges that receive federal money would be compelled to allow biological males who identify as female to compete in the female category. Students who choose to attend universities that protect women with single-sex dorms, locker rooms, and sports teams could be cut off from federal tuition assistance.

This is playing out in states with SOGI policies that displace women on the podium and erase their records. In Connecticut, two biological males captured 15 girls' high school state championship titles, set 17 new individual meet records, and took over 85 opportunities to advance in competition in the 2017-19 seasons alone that rightfully belonged to females. One of the males competed for three seasons in the male category and never qualified for a championship, and then switched just a couple of weeks later to begin competing in the girls' category and dominated girls' track events. That hurt female athletes like Chelsea Mitchell and Alanna Smith that are challenging Connecticut's policy.⁴⁴

Track stars Madison Kenyon and her fellow female athletes repeatedly lost to a male athlete in collegiate competition, such as the NCAA 2020 Indoor Big Sky Conference Championships where they watched helplessly as that male dominated two women's events, knocking female athletes off the

⁴¹ *50 Years of Title IX*, WOMEN'S SPORTS FOUNDATION (2022), https://www.womenssportsfoundation.org/wp-content/uploads/2022/04/FINAL6_WSF-Title-IX-Infographic-2022.pdf.

⁴² *Id.*

⁴³ Rebecca Hinds, *The 1 Trait 94 Percent of C-Suite Women Share (And How to Get It)*, INC.COM (Feb 8, 2018), <https://www.inc.com/rebecca-hinds/the-1-trait-94-percent-of-c-suite-women-share-and-how-to-get-it.html>.

⁴⁴ *Soule v. Connecticut Ass'n of Sch.*, No. 3:20-cv-201 (D. Conn.). Case documents at <https://adfmmedia.org/case/soule-v-connecticut-association-schools>.

podium. Madison and another young woman are now stepping up to defend Idaho's Fairness in Women's Sports Act to ensure that no other female athlete suffers the same fate on the playing field.⁴⁵

In sports, biology is what matters. Whatever philosophical or ideological view one holds as it relates to the difference between the sexes, the truth is that men—no matter how they identify—have a comparative physiological advantage. When we adopt SOGI policies that ignore science and biological reality, women pay the price, putting them in harm's way and relegating them to being spectators in their own sports.

Women's Privacy and Dignity is Violated by Forcing Them to Share Private Spaces with Men

Across the country, SOGI policies have forced women's facilities to be open to men. This is an egregious violation of women's and girls' privacy, safety, and dignity, and the most vulnerable women—those who experienced sexual abuse and trauma—would suffer most.

For example, many homeless shelters offer sex-specific sleeping areas to give women fleeing sexual abuse and violence a safe, comfortable place to sleep, shower, and heal. But SOGI policies force these shelters to allow biological males who identify as female to share sleeping areas, changing rooms, and restrooms with women. This leaves these women with no safe space where they can avoid further trauma from encountering a male in a sensitive place like a shower or communal bedroom.

This tragic scenario played out in Anchorage, Alaska, where the Downtown Hope Center had provided food, clothing, career training, and other services to homeless and low-income families in the community for over 30 years.⁴⁶ It annually serves over 142,000 meals to needy individuals. A few years ago, the Hope Center began offering a safe shelter to women, many of whom have suffered physical, emotional, and sexual abuse—often at the hands of men—or are the victims of sex-trafficking. On any given night, it provides overnight shelter to around 70 women seeking a safe and secure place to sleep. Using a local SOGI ordinance, Anchorage officials tried to force the Downtown Hope Center to allow men who identify as female to sleep just three feet away from women who are there seeking out safety and care.

⁴⁵ *Hecox v. Little*, No. 1:20-cv-184 (D. Idaho). Case documents at <https://adfmedia.org/case/hecox-v-little>.

⁴⁶ *The Downtown Soup Kitchen v. Municipality of Anchorage*, Case No. 3:18-cv-190 (D. Alaska). Case documents available at <https://adfmedia.org/case/downtown-hope-center-v-municipality-anchorage-i>.

The harms of SOGI policies also extend into our nation’s schools, where young girls are deprived of privacy and safety because males are allowed to use girls’ facilities in school—including locker rooms, changing rooms, and overnight lodging on school field trips.

For instance, Pascha Thomas, a young mother to a five-year-old little girl, experienced every parent’s nightmare when her daughter was sexually assaulted in her Decatur, Georgia elementary school restroom by a male classmate allowed into the girls’ restroom under the school’s SOGI policy.⁴⁷ When Pascha reported the sexual assault to school officials, the school refused to do anything about it: it would not change its policy, place the boy in a different classroom, or even assure Pascha that the girls’ restroom would be reserved in the future for girls’ use only. Pascha was left with no choice but to remove her daughter from the school for the child’s emotional and physical safety.

Blake Allen, a high school athlete in Vermont, was shocked and humiliated when a 14-year-old male student who identifies as female and played on the girls’ volleyball team entered the girls’ locker room while the girls were changing.⁴⁸ Relying on a school SOGI policy, school officials told the concerned girls and their parents that the male student could use the girls’ locker room even while the girls are undressing or showering. When Blake shared her concerns with three classmates explaining that the male student “doesn’t belong in the girls’ locker room,” the school launched an investigation against Blake, claiming that her comments constituted harassment and bullying. Blake was told she would be suspended and go through re-education so that she understands that a boy should be allowed to use the girls’ locker rooms if he identifies as female.

These are the tangible and devastating consequences of SOGI laws and policies—and the gender ideology they promote—in our schools, our shelters, and our lives. Women are told that they must accept men in their private spaces, and young girls are placed in unacceptable situations with boys in locker rooms, showers, dormitories, and overnight trips.

⁴⁷ See Complaint filed with U.S. Dept. of Education, Office for Civil Rights (May 22, 2018), available at <https://adfflegal.org/sites/default/files/2022-07/Thomas-v-City-Schools-of-Decatur-2018-05-22-Complaint.pdf>. Additional information and documents available at <https://adfmedia.org/press-release/us-opens-investigation-sexual-assault-minor-child-georgia-violation-title-ix>.

⁴⁸ *Allen v. Millington*, Case No. 2:22-cv-197 (D. Vt.). Case documents available at <https://adfmedia.org/case/allen-v-millington>.

Government Officials are Forcing People Who Willingly Serve Everyone to Promote Messages and Celebrate Events that Conflict with Their Beliefs

No American should be forced to say something they don't believe. But for years, state and local governments have misused public accommodation laws to coerce people who serve everyone regardless of who they are to speak messages with which they disagree on pain of investigation, fines, and even jail time. The government should not bully, persecute, or eliminate anyone from the public square because it doesn't agree with their beliefs. Everyone, including artists and business owners, should be free to say what they believe and, as important, free to decline to say something they believe to be false.

Let's not forget that America's commitment to free speech has enabled some of our most significant progress—from abolishing slavery and securing women's right to vote to passing the 1964 Civil Rights Act. Those movements flourished because our nation refused to silence or coerce people. Without the freedom to speak, we impair the search for truth and shutter meaningful debate and the conditions for progress and self-government.

Lorie Smith is a graphic artist who runs her own design studio, 303 Creative.⁴⁹ She specializes in custom graphic and website design and loves to visually bring stories to life. Lorie loves to work with everyone, including those who identify as LGBT. As with many artists, Lorie always looks at what message she's being asked to create when deciding whether to take on a new project. But for years now, Colorado officials are misusing a Colorado law to censor Lorie's speech and require her to create designs that violate her sincere beliefs about marriage. Lorie is hoping that the U.S. Supreme Court will uphold the freedom of all Americans to say what they believe without fear of government censorship in her case *303 Creative v. Elenis*.

That same Colorado law is also being used against Jack Phillips, owner of Masterpiece Cakeshop. Like Lorie, Jack serves everyone, including those who identify as LGBT. The day that the U.S. Supreme Court agreed to hear Jack's first case in June 2017, attorney Autumn Scardina contacted Jack's shop and requested a custom cake with a pink-and-blue design to celebrate and symbolize a

⁴⁹ *3030 Creative LLC v. Elenis*, No. 21-476 (U.S. Sup. Ct.). Case documents available at <https://adfmmedia.org/case/303-creative-v-elenis>.

“gender transition.”⁵⁰ Jack couldn’t express that message because it was contrary to his religious beliefs about what it means to be male and female. A few months later, Scardina also asked Jack for a cake with Satan smoking marijuana, which Jack couldn’t create either. Scardina admitted to making these cake requests to “test” Jack and to “correct the errors of [his] thinking.” Scardina filed a discrimination complaint and then a lawsuit against Masterpiece Cakeshop under Colorado’s public accommodation law. Colorado and activists have now used this law to harass Jack for over a decade, subjecting him to years of litigation and significant human cost.

And there are still others, including Chelsey Nelson, a Kentucky photographer and blogger forced to use her artistic talents to promote same-sex wedding ceremonies if she photographs and blogs celebrating weddings between one man and one woman,⁵¹ and Emilee Carpenter, a New York photographer who faces fines of up to \$100,000, a revoked business license, and up to a year in jail under the state’s SOGI law.⁵²

Government officials are misusing the law to single out and punish citizens for their peacefully expressed beliefs. In doing so, they take away constitutionally guaranteed freedoms and provoke intolerance toward people with beliefs different than those in political power.

Government Officials Coerce Uniformity of Thought and Speech on Beliefs About Marriage, Sex, and What It Means to Be Male and Female

No one should lose their job or get suspended from school for voicing their opinion about what it means to be male or female or declining to use pronouns that do not reflect biological fact. But again and again, schools and other government officials are using SOGI policies to coerce Americans to embrace and speak gender ideology with which they disagree.

Liam Morrison, a seventh-grade student in Massachusetts, was punished when he wore a shirt saying “There are only two genders” to peacefully share his belief, informed by a scientific

⁵⁰ *Masterpiece Cakeshop, Inc. v. Scardina*, Case No. 2023SC00116 (Colo. Sup. Ct.). Case documents available at <https://adfmedia.org/case/scardina-v-masterpiece-cakeshop>.

⁵¹ *Chelsey Nelson Photography, LLC v. Louisville-Jefferson Cty., KY Metro Gov’t*, Nos. 22-5884; 22-5912 (6th Cir.). Case documents at <https://adfmedia.org/case/chelsey-nelson-photography-v-louisville-jefferson-county-metro-government>.

⁵² *Emilee Carpenter, LLC v. James*, No. 22-75 (2d Cir.). Case documents at <https://adfmedia.org/case/emilee-carpenter-photography-v-james>.

understanding of biology, that there are only two sexes: male and female.⁵³ Liam was sent home when he declined to remove the shirt. Liam then tried to wear a shirt reading “There are censored genders” to protest the fact that only some messages about gender were permitted by school officials. He was again told that he could not wear that shirt at school either—an act of clear viewpoint discrimination.

John Kluge, a beloved and effective high school orchestra teacher in Indiana, was forced out of his job when he declined to use to use students’ preferred names and pronouns.⁵⁴ Mr. Kluge asked for—and was at first granted—a modest accommodation: calling all students by their last names only, which would allow him to stay neutral on transgender issues and focus on teaching music. But after a handful of teachers and students grumbled about it, the school revoked the accommodation leading to Mr. Kluge’s ouster from his job and the teaching career he loved.

Peter Vlaming was a high school French teacher in Virginia who was fired for declining to refer to a female student with male pronouns.⁵⁵ Vivian Geraghty, a middle school English teacher in Ohio, was forced to resign after the school district began requiring its teachers to personally participate in the “social transition” of children by using students’ preferred names and pronouns.⁵⁶ Pamela Ricard, a math teacher in Kansas, was suspended for declining to refer to students by titles and pronouns inconsistent with the student’s biological sex.⁵⁷ And Dr. Nicholas Meriwether, a professor at Shawnee State University in Southern Ohio, was disciplined by the university for declining to refer to a male student by female titles and pronouns.⁵⁸

In each of these cases, school officials didn’t care how well the educators treated their students or the fact that they went above and beyond to show their students compassion and respect in a way that allowed the educators to stay true to their deeply held beliefs. Rather, relying on SOGI policies and practices, the officials embarked on a crusade to compel conformity with the school’s ideology.

⁵³ *L.M. v. Town of Middleborough*, No. 1:23-cv-11111 (D. Mass.) Case documents available at <https://adfmedia.org/case/lm-v-town-middleborough>.

⁵⁴ *Kluge v. Brownsburg Cmty. Sch. Corp.*, No. 21-2475 (7th Cir.). Case documents at <https://adfmedia.org/case/kluge-v-brownsburg-community-school-corporation>.

⁵⁵ *Vlaming v. West Point Sch. Board*, No. 211061 (Va. Sup. Ct.). Case documents at <https://adfmedia.org/case/vlaming-v-west-point-school-board>.

⁵⁶ *Geraghty v. Jackson Local Sch. Dist. Bd. of Educ.*, No. 5:22-cv-2237 (N.D. Ohio). Case documents at <https://adfmedia.org/case/geraghty-v-jackson-local-school-district-board-education>.

⁵⁷ *Ricard v. USD 475 Geary Cty. Schools Sch. Board Members*, No. 5:22-cv-4015 (D. Kan.). Case documents at <https://adfmedia.org/case/ricard-v-usd-475-geary-county-schools-school-board-members>.

⁵⁸ *Meriwether v. The Trustees of Shawnee State Univ.*, No. 1:18-cv-753 (S.D. Ohio). Case documents at <https://adfmedia.org/case/meriwether-v-trustees-shawnee-state-university>.

But freedom of speech and religion include the freedom not to speak messages that violate our core beliefs. Public schools should not force students and teachers alike to endorse beliefs with which they disagree.

Protections for Religious Liberty are Being Eroded, and Faith-Based Charitable Organizations Face Punishment

Charitable religious groups throughout America serve people in need with free volunteer operations. Inspired by their faith, these groups help the homeless, the hungry, the sick, the elderly, those afflicted by natural disasters, underserved communities, and many others in need. These services not only build strong personal relationships in communities, but they also provide \$720 billion in socio-economic contributions to the communities they serve.⁵⁹ These philanthropic organizations:

- Care for Homeless: They operate shelters and transitional housing programs and provide them temporary accommodations, counseling, job training, and assistance in finding permanent housing.
- Food for the Hungry: They operate food banks, soup kitchens, and meal programs to provide nutritious meals to the hungry and food-insecure individuals and families.
- Care for the Sick: They run clinics, hospitals, and mobile medical units to provide health care, including medical check-ups, vaccinations, preventive care, and access to medications for underserved communities.
- Care for the Elderly: They operate nursing homes, assisted living facilities, and home care services for the elderly, ensuring they receive proper care, companionship, and assistance with daily activities.
- Education for Underserved Communities: They provide education and tutoring services with schools, after-school programs, and tutoring centers to provide education and academic support to children from low-income backgrounds.
- Counseling and Recovery: They offer counseling services, support groups, and mental health programs to help individuals and families facing emotional or psychological

⁵⁹ Brian J. Grim & Melissa E. Grim, *The Socio-economic Contribution of Religion to American Society: An Empirical Analysis*, 12 INTERDISC. J. OF RES. ON RELIGION (2016).

challenges. They run rehabilitation centers and addiction recovery programs, providing support for individuals struggling with substance abuse and addiction.

The government should support these groups and the people they serve. Unfortunately, at the federal and state level, SOGI laws and policies punish these charitable groups for living out their religious beliefs about marriage, sexuality, and what it means to be male and female.

For example, California stopped federal funding for a food program for low-income immigrant children at Dayspring Christian Learning Center, a church-run preschool, because of the church's beliefs about human sexuality.⁶⁰ To do so, it relied in part on the Biden administration's unlawful interpretation of the term "sex" to include gender identity in Title IX. The church and preschool had participated in the food program for nearly 20 years, helping to feed needy students in its daycare and preschool daily. Dayspring serves all families and children, including several LGBT families who understand and appreciate the religious instruction their children receive at the preschool. While the church and preschool serve all families, they do not teach or promote all messages.

SOGI laws target these charitable service providers by requiring them to abandon the faith that inspires their service or shut down their operations. Even more troubling, SOGI laws could forbid churches from opening their doors to their communities through food programs and counseling and recovery services. Houses of worship should be protected from state overreach, yet states have already targeted churches for serving their communities.

Massachusetts officials used the state SOGI law to target churches hosting public events, even events like spaghetti suppers.⁶¹ Officials issued a guidance document stating that churches are public accommodations when they host events open to the community. As such, the churches must change their policies protecting women's private spaces like restrooms or sleeping arrangements on overnight church trips for youth. Violators were threatened with civil penalties and jail time.

And the Iowa Civil Rights Commission interpreted its state-wide public accommodations law to apply to churches and other houses of worship.⁶² Because that law included sexual orientation and

⁶⁰ *Church of Compassion v. Johnson*, No. 3:23-cv-00470 (S.D. Cal.). Case documents at <https://adfmedia.org/case/church-compassion-v-johnson>.

⁶¹ *Horizon Christian Fellowship v. Williamson*, 1:16-cv-12034 (D. Mass.). Case documents at <https://adfmedia.org/case/horizon-christian-fellowship-v-williamson>.

⁶² *Fort Des Moines Church of Christ v. Jackson*, No. 4:16-cv-00403 (S.D. Iowa). Case documents at <https://adfmedia.org/case/fort-des-moines-church-christ-v-jackson>.

gender identity, state officials could use the law to prosecute churches, pastors, and other religious groups for operating consistent with their faith's doctrines or for requiring visitors to use restroom and changing areas consistent with their sex.

Enacting a federal SOGI law could bring this problem to houses of worship across the country, from churches to mosques, synagogues to temples. Most places of worship serve their communities by providing a wide array of charitable services in addition to meeting spiritual needs. These harmful SOGI policies would allow states and the federal government to require houses of worship to comply with gender identity and sexual orientation rules if they host any public activity. In attempting to reduce discrimination in this country, SOGI laws would do just the opposite by inviting state-sponsored discrimination against churches and millions of faithful Americans across the country.

Conclusion

SOGI laws and policies—such as the Equality Act and the Biden Administration's attempt to rewrite the meaning of Title IX—raise many constitutional concerns. They force schools, businesses, and other places to open women's sports teams, showers, locker rooms, and other private spaces and facilities for use by men—creating unfair situations that violate the privacy and safety of women. They compel individuals to speak messages against their will and to support expressive events in violation of their beliefs. And they violate the freedom of faith-based organizations to operate consistent with their religious beliefs. These new laws have devastating consequences for children, women, charitable organizations, small businesses, and people of faith. They also inflict the severest possible physical and mental health harms on the vulnerable minors who take puberty blockers and undergo invasive surgeries that best medical practices around the world do not support.



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Since joining ADF in 2010, Sharp has authored federal and state legislation, regularly provides testimony and legal analysis on how proposed legislation will impact constitutional freedoms, and advises governors, legislators, and state and national policy organizations on the importance of laws and policies that protect First Amendment rights. He has testified before the United States Congress on the importance of the Religious Freedom Restoration Act.

Sharp has also worked on important cases advancing religious freedom and free speech. He has won cases upholding the rights of students to form religious clubs, invite classmates to church, and even perform a religious song at a school talent show. He authored an amicus brief to the U.S. Supreme Court on behalf of nearly 9,000 students, parents, and community members asking the Court to uphold students' right to privacy against government intrusion.

Sharp earned his J.D. in 2006 from the Vanderbilt University School of Law. A member of the bar in Georgia and Tennessee, he is also admitted to practice in several federal courts.