



January 16, 2018

Springfield City Commission
76 E High Street
Springfield, OH 45502

Re: Adding sexual orientation and gender identity as legal classifications

Dear Commissioners:

We recently learned that Springfield is considering adding sexual orientation and gender identity¹ as classifications to its nondiscrimination laws. In the past several years, many legislative bodies have considered similar proposals and have rejected them. In fact, from 2015 until today, legislatures in 25 states voted down scores of proposals that would have added sexual orientation or gender identity to state laws.

Why? Because these laws unconstitutionally threaten basic freedoms of conscience, religion, speech, and association; violate privacy rights; and expose citizens to significant legal and financial liability. Lawmakers seek to preserve the freedoms of every person to speak, teach, and live out one's beliefs in public life without fear of government censorship or coercion. But where sexual orientation and gender identity (SOGI) laws are enacted, they increase government regulation and advance government discrimination against people—who willingly employ and serve everyone—for seeking to peacefully live and work consistent with their beliefs.

There are many good reasons not to enact SOGI laws. Three reasons are particularly noteworthy:

1. A SOGI ordinance is unnecessary because the citizens of Springfield are already tolerant and welcoming to all people.
2. SOGI ordinances in other communities have proven divisive and have had a serious negative impact on the religious freedom and the free speech rights of business owners, religious ministries, and churches.
3. Adding gender identity to nondiscrimination ordinances forces schools, organizations, and businesses to allow biological males to access women's showers, locker rooms, and restrooms, which jeopardizes the privacy interests and safety of women and girls.

Simply put, SOGI laws trample First Amendment freedoms, strip away every citizen's right to privacy, and unnecessarily infringe on residents' right to run their businesses consistent

¹ The term "sexual orientation" in Springfield's proposed ordinance is defined to include "gender identity."

with their mission and values. SOGI laws do not protect equality before the law, but instead pick and choose which citizens enjoy constitutionally protected freedoms and which ones don't.

1. A SOGI law is unnecessary because the citizens of Springfield are already tolerant and welcoming to all people.

Historically, nondiscrimination laws in the United States have sought to address systemic and intractable instances of invidious discrimination. For example, Congress enacted the Civil Rights Act of 1964 because entire parts of the country were closed to black Americans. As one legal scholar has noted: "Civil rights laws were enacted against a background of devastating and widespread discrimination." Segregation, and institutionalized white-supremacy, was the law of the land in a number of states. In large swaths of the nation, black Americans were denied the opportunity to vote, excluded from the skilled trades, and denied access to many hotels, restaurants, and theaters.

Similarly, the Americans With Disabilities Act (the "ADA"), which prohibits places of public accommodation from discriminating against people because of their disability, was enacted in 1990 precisely because Congress determined that there was a pattern of widespread invidious discrimination against people who struggle with various disabilities.

But systemic discrimination of an invidious nature is completely absent in Springfield. Neither the city nor the businesses or employers in the city are closed to people who identify as gay, lesbian, bisexual, or transgender. Those individuals are welcome as neighbors, patrons, and friends. Indeed, the business community is voluntarily hiring and serving everyone fairly and equally.

If something is not broken, the government should not enact a law to fix it, particularly not a law with such troublesome implications for the constitutional rights of citizens. The people of Springfield are already treating one another with dignity and respect. A change to the nondiscrimination law is simply not needed.

2. SOGI ordinances in other communities have had a serious negative impact on the religious freedom and the free speech rights of business owners, religious ministries, and churches.

SOGI laws fail to ensure that every citizen of Springfield will be free to peacefully live and work consistent with their beliefs without fear of government fines or coercion. In particular, they disregard the consciences and liberties of people of good will who do not share the government's opinion regarding issues of marriage and human sexuality. Similar laws in other cities and states have been used to punish their citizens for holding certain beliefs. For example:

- Jack Phillips, a cake artist in Colorado, was sued because he declined to create a custom, expressive cake for a same-sex union—even though he told the couple that he would gladly sell them any other items in his shop. Jack had similarly declined to create custom cakes that were derogatory to LGBT individuals, that celebrated divorce, or that contained racist, anti-American, or other offensive messages. Jack lost his case, forcing

him to exit the wedding business—which resulted in him losing 40% of his business and having to lay off several employees. Jack’s case was recently argued at the U.S. Supreme Court, who is examining whether there are constitutional limits to the reach of harmful SOGI laws like the one used to punish Jack.

- Washington State and the ACLU sued Barronelle Stutzman under a SOGI law because she declined to create custom floral arrangements for the same-sex wedding ceremony of a long-time friend and customer, whom she had served for a decade. She now faces losing everything she owns, including her business.
- Carl and Angel Larsen are videographers who use the storytelling power of film to celebrate marriage. But the Minnesota SOGI law forces them to create films about marriage that violate their beliefs under threat of civil penalties, criminal penalties, fines, and even up to 90 days in jail.
- The Iowa Civil Rights Commission interpreted its state-wide SOGI to apply to churches, meaning that churches and pastors could be prosecuted for operating consistent with their church’s doctrines or for not allowing a visitor to use the restroom or changing areas designated for the opposite sex.
- California attempted to strip religious colleges of funding, while Massachusetts threatened their loss of accreditation, unless the schools abandoned their faith’s teachings on marriage and sexuality.

Importantly, the narrow exemption contained in the Springfield proposal—which exempts “religious schools” and “churches engaged in religious activities” from the provisions related to sexual orientation and gender identity—does nothing to satisfy these concerns. For example, if a church had a community carnival that was open to the public, they could be subject to the SOGI since they are not “engaged in religious activities” during the carnival. Indeed, Massachusetts sought to enforce its SOGI against churches if they held a spaghetti dinner that was open to the public.

3. Adding gender identity to nondiscrimination ordinances forces schools, organizations, and businesses to allow biological males to access women’s facilities, which jeopardizes the privacy interests and safety of women and girls.

Every person has a right to privacy, but SOGI laws strip away that right, resulting in humiliation and embarrassment. These laws threaten every person’s privacy and dignity by allowing men to share intimate facilities, undress, and even shower with women and girls. While a law that adds gender identity as a protected class may not on its face require a man to be permitted to use a woman’s restroom, time and time again, courts and state agencies have relied upon such laws to mandate that result. For example:

- In January 2014, the Maine Supreme Court ruled that the Maine Human Rights Act (MHRA), which bans discrimination in public accommodations based on “a person’s actual or perceived gender identity or expression,” requires a biological male student to

be permitted to use the girls' restroom at school. *Doe v. Regional School Unit 26*, 86 A.3d 600 (Me. 2014). The court found that the student “was treated differently from other students solely because of her status as a transgender girl.” *Id.* at 606. “This type of discrimination is forbidden by the MHRA.” *Id.*

- Relying upon the Washington state non-discrimination law which includes sexual orientation and gender identity, the state Human Rights Commission implemented a new regulation effective December 26, 2015, that required all public accommodations and public schools to allow individuals to use the facilities “that are consistent with that individual’s gender expression or identity.” WAC 162-32-060.
- The Colorado Division of Civil Rights issued a rule under the state SOGI law requiring that “all covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity.” In June 2013, the Division enforced this against the Fountain-Fort Carson School District when the school district would not allow a biologically male kindergarten student to use the female restrooms.
- After Massachusetts amended its state non-discrimination law to include gender identity, the state Department of Elementary and Secondary Education issued guidance requiring schools to allow a “student [to] access the restroom, locker room, and changing facility that corresponds to the student’s gender identity.”

These are just a few of the more prominent instances where state SOGI laws have been used to require that men be allowed to use female restrooms and locker rooms—both in places of public accommodation and in public schools.

Conclusion

SOGI laws raise many constitutional concerns. If enacted in Springfield, it will be used to compel businesses to speak messages they do not want to speak and to support expressive events in violation of their conscience. It will also force schools, businesses, and other organizations to open their showers, locker rooms, and other facilities to both sexes—creating situations that will violate the privacy rights of women and girls and place their safety at risk. The proponents of these laws would have the cities like yours jeopardize the rights of its citizens in these ways, even though no systemic pattern of invidious discrimination justifies a law like this. Springfield can respect the dignity of all of its citizens without enacting new laws that have devastating consequences for families, businesses, and people of faith. .

Sincerely,



J. Matthew Sharp, Senior Counsel
Alliance Defending Freedom



Aaron Baer, President
Citizens for Community Values