

HB 2323: No Need, Yet Great Harm

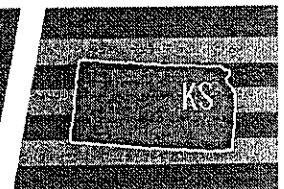
Adding sexual orientation and gender identity as protected classifications in the law is a troublesome—and unnecessary—proposal that inflicts great harm on all citizens.

- **Freedom to live and work according to one's convictions** – People across the political spectrum agree that adding sexual orientation and gender identity to the law imperils First Amendment freedoms by requiring citizens to act contrary to their religious beliefs or convictions regarding marriage or human sexuality. If those citizens choose to act consistently with their conscience, the government subjects them to fines, penalties, and, in some jurisdictions, jail time. Just ask Elaine Huguenin, Barronelle Stutzman, Jack Phillips, Blaine Adamson, or Cynthia Gifford. They are small-business owners that gladly serve all people, including those who identify as gay and lesbian, but are facing government punishment because they declined to participate in certain events or create custom art that violated their conscience. And now, because of these laws, they risk losing their businesses and, in some instances, everything they own. For example, Elaine had to close her photography company, and Barronelle, if she does not prevail in the lawsuit brought against her, will be forced to pay hundreds of thousands of dollars for the legal fees incurred in prosecuting her. Americans do not support government coercion. For example, an AP poll from July 2014 revealed that the majority of Americans support (59% support and only 39% oppose) the right of wedding-related businesses to decline to help celebrate a same-sex wedding for religious reasons.
- **Bathrooms and locker rooms** – These laws require that sex-specific facilities, like bathrooms and locker rooms, must admit individuals in accordance with their chosen gender identity. This means that men who profess a female identity must be permitted to access women's bathrooms and locker rooms.
- **Harm small businesses** – These laws threaten small-business owners with devastating financial liability for actions based not on objective traits, but on subjective and unverifiable identities. The concept of gender identity, in particular, is so fluid and ill-defined that even its proponents admit that it may vary by time and place for a particular person. Due to their vague language, broad reach, and inclusion of unverifiable traits, these laws may be used to punish small-business owners even when they do not intend, or even know, that they are

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acting in violation of the law—indeed, even if they are trying to prevent men who as women from entering women’s bathrooms.

- **No problem of widespread discrimination based on sexual orientation** – These laws are solutions in search of a problem. The citizens of Kansas, like most Americans, do not refuse to hire, serve, or rent to people simply because they identify as gay or lesbian. This is not only because Kansans are tolerant and fair-minded, but also because the free market, through boycotts and public pressure, would swiftly impose substantial social costs on anyone engaged in baseless discrimination.
- **Opposition to these laws is widespread and varied** – The myriad concerns with these laws unite (1) libertarians and free-market proponents concerned about economic liberty and (2) social conservatives concerned about religious liberty.
- **The people and their elected officials are rejecting these laws throughout the country** – In 2015, the legislatures of Idaho, Nebraska, Missouri, Pennsylvania, Wyoming, North Dakota, and numerous cities—including large cities like Charlotte, NC and Scottsdale, AZ—declined to pass these laws. And since December 2014, citizens in three cities—Fayetteville, AR, Springfield, MO, and Houston, TX—voted to repeal these anti-diversity, coercive laws.

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