



Competitive Workforce Act Position Paper December 9, 2019

The Competitive Workforce Act (CWA) would establish new classes of protected persons on the basis of sexual orientation and gender identity in employment, housing and public accommodations in Florida's Civil Rights Act. There are concerns with the bill's imprecise definitions and mandated acceptance of flawed concepts of human sexuality and anthropology. Specific concerns that prompt opposition to the bill include:

1. Definition of sexual orientation is imprecise and creates unneeded protections.

The bill defines sexual orientation as an individual's "heterosexuality, homosexuality or bisexuality." This definition is very broad and fails to distinguish between sexual *orientation* and sexual *activity*. A proper definition of "sexual orientation" would limit itself to a person's prevailing sense of attraction.

While every instance of unjust discrimination based on sexual orientation should be avoided, it is far better to affirm rights based on verifiable traits. Sexual orientation does not constitute a quality comparable to race or sex in this respect. A person's sexual orientation is generally not known to others, which greatly diminishes concerns for discrimination.

2. Definition of gender identity deviates from an objective human anthropology.

Gender identity has the following definition in the bill:

gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, and which gender-related identity can be shown by the person providing evidence. This evidence includes:

- Medical history, care, or treatment of the gender-related identity;
- Consistent and uniform assertion of the gender-related identity; or
- Other evidence that the gender-related identity is a sincerely held part of a person's core identity and is not being asserted for an improper purpose.

All persons must be afforded respect, dignity and appropriate assistance. However, including protections on the basis of gender identity in law would require an assent to a view of the human person that is in conflict with reason. Such a view rejects the fact that biology is integral to gender. Instead, it incorrectly accepts gender incongruence, gender dysphoria or similar experiences as rightly ordered and not in conflict with an integral human ecology.

Persons with gender dysphoria comprise a vulnerable population. The most prominent longitudinal study into the effects of attempts to alter physical appearance through surgery or hormone treatment was conducted in Sweden over a thirty-year period.¹ Over time, the suicide rate of those receiving

¹ Dhejne C, Lichtenstein P, Boman M, Johansson ALV, Långström N, Landén M (2011) Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden. PLoS ONE 6(2): e16885.
<https://doi.org/10.1371/journal.pone.0016885>.

appearance-altering manipulations was 19 times the rate of the untreated gender dysphoric control group. These surgical/chemical interventions provide false hope of relief.

It is notable that one's genetic makeup – reflected in DNA – cannot change. Sex is biological and unchangeable at the cellular level.²

While this bill seeks to address some of the challenges faced by those with gender dysphoria and similar experiences, such attempts to “transition” ought not be supported nor encouraged in law. The legislation would perpetuate a dualistic myth that human biology is “incidental” and separate from identity, needlessly damaging vulnerable persons.

3. Bill lacks meaningful religious or conscience protections.

A section of the bill states that nothing in the proposal will limit the free exercise of religion guaranteed by the United States and Florida Constitutions. As positive as this may sound initially, it is effectively meaningless, as no unconstitutional law can withstand legal challenge. The bill also fails to account for the legitimate privacy and safety concerns of those not be protected by this legislation.

The lack of meaningful protections highlights that the CWA would become a “sword” wielded against people with deeply held moral or religious convictions rather than a “shield” protecting a legal minority. Explicit protections are needed for religious and private organizations, as well as individuals who base their decisions and actions on the conviction that men and women are physically distinct from one another, and that each gender has a biological basis that is unchanging.

Experience from other states amply demonstrates the negative effects of these laws on society. Laws with the same construct have victimized those who do not subscribe to the protected ideology. This is detailed in last year's U.S. Supreme Court ruling in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*. The Court found that assessing a bakery owner's religious beliefs as the reason for declining to make a cake for a same-sex couple's wedding celebration violated the free exercise clause. Similar cases arising in other states include a Washington florist (Baronelle Stutzman) and two Arizona calligraphy artists (Joanna Duka and Breanna Koski). All have had their livelihoods threatened and some are at risk of incarceration.

4. Bill unnecessary for economic growth.

It is notable that proponents of the CWA suggest that its adoption would benefit Florida's economy. Proponents offer no empirical evidence to support this claim. Florida is a national leader in economic growth, along with other states without such provisions, including Arizona, Pennsylvania and Ohio. The majority of states, as well as the federal government, do not include these protections in the areas of employment, housing and public accommodation.

Conclusion

Legislative proposals such as the Competitive Workforce Act reach far beyond the proposition of protecting vulnerable persons. They assert a gender ideology that violates reason, science and a traditional understanding of what it means to be human.

Such bills are unnecessary to protect intended beneficiaries whose human rights precede categories proposed; rather, these bills confound society's core understanding of anthropology and human sexuality; they misrepresent bodily realities of the human person, and ultimately place fundamental liberties at risk. They must not be supported.

² Institute of Medicine Committee on Understanding the Biology of Sex and Gender (2001) Exploring the Biological Contributions to Human Health: Does Sex Matter? National Academies Press.
<https://www.ncbi.nlm.nih.gov/books/NBK222288/>.