

# POLICY BRIEF

## Proposed City Ordinance for Fayetteville, AR Sexual-Orientation and Transgender Nondiscrimination Ordinance

**Summary:** "Proposed Chapter 119" is a proposed ordinance for the City of Fayetteville, Arkansas, to prevent discrimination on the basis of sexual orientation and gender identity (the gender a person claims, regardless of whether or not that gender matches their biology). The proposal, however, carries a number of unintended consequences—especially in regard to the ability of churches to act in accordance with their religious convictions—and could open people of faith to criminal prosecution.

### Unintended Consequences of Proposed Chapter 119

- ❖ **The ordinance affects churches.** This ordinance defines a "business establishment" as "any entity, however organized, which furnishes goods, services or accommodations to the general public." This means that it will affect private organizations, including a church that lets non-members, such as a local Boy Scouts troop, utilize its property or rents out its fellowship hall or sanctuary to non-members for meetings or events.
- ❖ **This ordinance will open religious groups to criminal prosecution.** Because churches and other religious organizations and charities fall within the ordinance's definitions of "business establishment" and "place of public accommodation," a church that fails to make its facilities available for a same-sex ceremony or reception could face criminal prosecution.
- ❖ **The ordinance affects church employees.** The ordinance forces religious institutions to make their "secular" staff positions open to anyone, regardless of sexual orientation or gender identity. This requires churches to make a distinction between religious and non-religious staff positions, and could, for example, force a church to hire a transgender receptionist.
- ❖ **The ordinance allows men to use women's restrooms, locker rooms, and changing areas.** By protecting gender identity without including exceptions for public restrooms and similar facilities, the ordinance permits a biological male who claims to be female to use the women's restroom at any business or public site.
- ❖ **The ordinance does not exempt private schools.** The ordinance specifically exempts public schools, but not private. Private, Christian schools could be forced to hire gay or transgender teachers as a result, despite religious objections the school may have to homosexuality. Additionally, private schools could be forced to allow male students who claim to be female to use the girls' restrooms and locker rooms.
- ❖ **The ordinance will affect religious business owners.** Under this ordinance, any baker, florist, or photographer who has a deeply-held, religious objection to homosexuality could face criminal prosecution if they decline to photograph, bake a cake, or provide a floral arrangement for a same-sex commitment ceremony or reception.

**Please Ask the Members of the Fayetteville City Council to Vote AGAINST "Proposed Chapter 119: Civil Rights Administration"**



## **Questions and Answers**

- 1. Is this ordinance necessary? Answer:** Proponents claim the ordinance is necessary to prevent discrimination on the basis of sexual orientation or gender identity. However, we are not aware of any instances of discrimination based on sexual orientation or gender identity in the City of Fayetteville.
- 2. How will this ordinance affect me and my family? Answer:** Under this ordinance, your church could be forced to hire a gay bookkeeper or receptionist; your church could face criminal prosecution for refusing to allow a same-sex couple to use its fellowship hall for a wedding reception; your child's daycare could be forced to hire a man who dresses as a woman; your local exercise gym could be required to let men who claim to be female use the women's locker rooms and showers; and men would have legal cover to use the women's restrooms at your local parks, public pools, sports stadiums, and other places where children are present. These are just a few examples of ways this ordinance could impact you.
- 3. How will this ordinance affect religious businesspeople? Answer:** The businesspeople who probably stand to suffer the most are Christians who own bakeries, photography studios, florist shops, or wedding chapels. In other states, these businesspeople have faced lawsuits and criminal prosecution for declining to take part in same-sex wedding ceremonies or receptions. This ordinance would bring the same threat of prosecution to businesspeople in Fayetteville.
- 4. Does this ordinance contain religious exemptions? Answer:** The ordinance contains a vague provision against forcing churches to make sanctuaries available for certain ceremonies, but does not protect any other church property (e.g. fellowship halls, lawns and outdoor gardens, auditoriums, etc.). The ordinance also contains a narrow religious exemption, but it places the burden on the religious organization to prove in court that its objections to homosexuality and transgender activity are necessary. This means churches and charities will have to appear before a judge to prove they are religious, and a judge will have the final say on whether or not the church is exempted from parts of the ordinance. Religious organizations are not exempt when it comes to hiring "secular" staff members (e.g. bookkeepers, receptionists, etc.), and it is unclear whether Christian bookstores, wedding chapels, adoption services, charities, and similar organizations could qualify for any exemptions.
- 5. How will this ordinance affect churches and pastors who object to homosexuality? Answers:** The ordinance requires churches and religious organizations to make their secular staff positions open to any person regardless of sexual orientation or gender identity. For example, this means a Southern Baptist church could be required to hire a transgender receptionist or face criminal prosecution. A church could also face prosecution for refusing to rent out its fellowship hall for a same-sex "wedding" reception.
- 6. Has discrimination against homosexuals and transgender people occurred in Fayetteville?**  
**Answer:** We are not aware of any instances of discrimination based on sexual orientation or gender identity in the City of Fayetteville.
- 7. Besides Family Council, who opposes this ordinance? Answer:** The *Northwest Arkansas Times* recently published a column against Proposed Chapter 119. Alliance Defending Freedom—the nation's leading network of Christian attorneys—Family Research Council, and many local clergy and churches also oppose the ordinance.
- 8. Does this ordinance expand government? Answer:** Yes. Proposed Chapter 119 creates an office of Civil Rights Administrator tasked with implementing the ordinance and receiving complaints of violations. Additionally, the Civil Rights Administrator has the authority to refer violators of the ordinance to the City Prosecutor's Office for criminal prosecution. This will undoubtedly cause more local tax money to be expended funding the Civil Rights Administrator's office and paying for the cases prosecuted by the City Prosecutor's Office.
- 9. What would happen if my church refused to comply with this ordinance? Answer:** Under this ordinance, if, for example, your church refused to rent out its fellowship hall for a same-sex "wedding" reception, a complaint could be filed against your church with the ordinance's Civil Rights Administrator. The Civil Rights Administrator likely would then "mediate" between your church and the same-sex couple in an effort to convince your church to make its facilities available. If your church continued to deny the couple use of its facilities, the Administrator could turn the matter over to the City Prosecutor's Office, which could file criminal charges against your church.