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CHIPPING AWAY AT EQUALITY:

**DEFEATED AT EVERY TURN, THE ANTI-LGBT RUMP IS NOW LAUNCHING
WAR OF ATTRITION IN STATE LEGISLATURES ACROSS THE COUNTRY**

Earlier this year, the Supreme Court announced that it will hear marriage equality cases from the U.S. Court of Appeals for the 6th Circuit – setting up a showdown that court observers have been anticipating for years.

Yet this case may not have the final say in whether committed and loving gay and lesbian couples truly have full access to marriage. That decision could be made in state legislatures across the country – where the national media isn't watching, and where core constitutional principles risk being overlooked.

In fact, beyond marriage equality, sweeping and vague new bills proposed in state houses across the country risk undermining, even crippling, fundamental protections and basic dignity for LGBT Americans and other minority groups.

Under some of these pieces of legislation, an evangelical police officer could feel empowered to refuse to patrol a Jewish street festival; a city clerk could shirk the law and refuse a marriage license to a lesbian couple, an interracial couple or a divorcee seeking to remarry; an EMT could claim the law is on his side after refusing service to a dying transgender person in the street; and the enforcement of other key sections of civil rights law could be dramatically undermined.

In short, these bills do nothing except empower discrimination in the cloak of religious belief.

It's time to sound the alarm. That's why the Human Rights Campaign, the nation's largest lesbian, gay, bisexual and transgender (LGBT) civil rights organization, has put together this guide. It's a look at the bills that have been proposed to date, just how close they already are to passing, and what the fair-minded majority of Americans can do to stop them.

1. What are these bills all about?

Seeing progress for both marriage equality and non-discrimination laws around the country, the opponents of LGBT equality have coalesced around a new strategy. Under the guise of "religious freedom," some of the original sponsors of bans on marriage equality and other hateful legislation are advancing new bills that would carve out, hobble, even completely undermine much of the progress toward equality LGBT people have made.



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Of course, no one should dismiss the importance of the free exercise of religion. It is, after all, guaranteed by the First Amendment of the U.S. Constitution. Constitution religious freedom is protected and enumerated throughout the federal code — including in Title VII of the 1964 Civil Rights Act, the Equal Access Act, and other statutes.

However, these new laws moving forward in the states are motivated by something much darker than the constitutional principle of religious freedom and personal religious practice. In fact, they predominantly serve as a vehicle to empower and codify anti-LGBT discrimination.

They do this in four ways:

1. Pass a statewide “Religious Freedom Restoration Act” (RFRA):

Seemingly the most popular form of bill so far in the 2015 legislative session, these RFRA require the state government to have a “compelling interest” before it can “substantially burden” personal religious practice.

This sounds nice on paper, but who decides what counts as a burden? These bills are often incredibly vague and light on details — usually intentionally. In practice, most of these bills could empower any individual to sue the government to attempt to end enforcement of a non-discrimination law. The evangelical owner of a business providing a secular service can sue claiming that their personal faith empowers them to refuse to hire Jews, divorcees, or LGBT people. A landlord could claim the right to refuse to rent an apartment to a Muslim or a transgender person.

By passing a state RFRA, the state puts the power to decide what constitutes religious discrimination in the hands of the state Supreme Court. Given the fact that state Supreme Courts tend to reflect the leanings of the state as a whole, this places a gay couple in Mississippi at much greater risk than a gay couple in Rhode Island.

2. Attack marriage equality:

Many bills we’re watching try to narrow their scope by only focusing on marriage-related services.

A new bill in Utah, for instance, gives broad leeway to city and county clerks to cite religious belief for refusing service to couples seeking marriage licenses. Others are dramatically broader. In Oklahoma and South Carolina, draft legislation bars state employees from issuing marriage licenses to gay and lesbian — and prevents them from collecting their salaries or pensions if they do so.

3. Attack adoption:

Similarly, some of these bills narrow their scope to adoption services. Under these bills, adoption service providers can deny service based on religious belief. Prospective parents of different denominations, ethnicities and sexual orientation could be at risk of rejection for reasons completely unrelated to their ability to parent a child.

4. Super-RFRAs:

This is the option anti-LGBT activists famously chose in Arizona last year, and these bills tend to fall into two broad categories.

First, whereas traditional state RFRA only allow individuals to challenge government entities, one category of “super-RFRAs” create a cause of action against private entities and individuals. In other words, a conservative Christian employee could sue their employer, for instance, for announcing a gay employee’s marriage at a staff meeting.

And second, another variety of super-RFRA lowers the standard for what constitutes a “burden” on someone’s religious practice. For example a new constitutional amendment introduced in Texas in the 2015 Legislative session, the standard for religious discrimination would be lowered from the current standard of a “substantial burdening” of personal religious beliefs to just a “burdening” of those beliefs. Under this standard, anyone who found their religious beliefs even mildly inconvenienced would have a cause of action to sue.

These bills are far from theoretical. In the 2015 Legislative session, we are seeing a coordinated push to actually pass these bills across the country. Take a look at where they’re emerging.



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III. Who is opposing these bills?

It's not merely LGBT Americans who stand to be harmed by these needlessly vague and harmful pieces of legislation, minority faith groups and the business communities are also at risk.

In response to Arizona's Super-RFRA last year, a coalition of businesses – including the Super Bowl – threatened to pull out of the state if Governor Jan Brewer did not veto the legislation that reached her desk. The same thing happened in Georgia, where a proposed RFRA last year led local employer Delta Airlines to speak publicly that these bills, “would cause significant harm to many people and will result in job losses.” That business drumbeat continues even more strongly this year, with the world's largest employer, Wal-Mart, coming out in opposition to a broad RFRA in Arkansas (see inset).

Many faith communities are speaking out as well. Earlier this month, sixty leaders of various faith denominations in Georgia spoke out against a proposed bill. “As faith leaders from diverse traditions, we believe freedom of religion is one of our most fundamental rights as Americans, but religious freedom does not give any of us the right to harm or exclude others,” they wrote.

“WE FEEL THIS LEGISLATION IS [...] COUNTER TO OUR CORE BASIC BELIEF OF RESPECT FOR THE INDIVIDUAL AND SENDS THE WRONG MESSAGE ABOUT ARKANSAS, AS WELL AS THE DIVERSE ENVIRONMENT WHICH EXISTS IN THE STATE.”

– Wal-Mart spokesperson declaring the company's opposition to Arkansas' RFRA bill, H.B. 1228

IV. What people are saying about these bills.

“These bills do not address a legitimate problem with current law. Rather, they are written with the intention of creating harmful consequences. They put minority groups at risk of being denied service everywhere from the convenience store to the doctor's office—and they send a harmful message that fairness, equality and the principles of our constitution are secondary to personal discomfort and prejudice.”

HRC Legal Director
Sarah Warbelow

New York Times columnist
Frank Bruni

“As governor, I have protected religious freedoms when there is a specific and present concern that exists in our state. [...] Senate Bill 1062 does not address a specific and present concern related to religious liberty in Arizona. I have not heard of one example in Arizona where a business owner's religious liberty has been violated.”

Arizona Governor **Jan Brewer**,
in her veto statement of
S.B. 1062 last year

“Would we be content to let a Muslim store owner who believes that a woman should always cover her hair refuse service to women who do not? Or a Mormon hairdresser who spurns coffee to turn away clients who saunter in with Frappuccinos? I doubt it. So why should a merchant whose version of Christianity condemns homosexuality get to exile gays and lesbians?”

Former GOP Attorney General
of Georgia **Michael Bowers**

“[A]s an attorney with over 40 years of law practice, a great deal of which has been involved with state government, [...] I believe if enacted into law this legislation will be an excuse to practice invidious discrimination. [...] The potential intended and unintended consequences are alarming.”