

Transgender Rights in Hawai'i

What's Happening with Trump 2.0, State Protections, and Practical Concerns

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ACLU Hawai'i

The ACLU of Hawai'i

I. What is it?

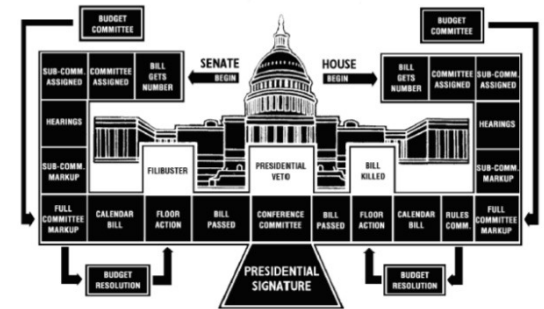
- Non-profit
- Non-partisan
- Civil rights / civil liberties watchdog

II. What does it do?

- Litigation
- Policy advocacy & lobbying
- Organizing
- Public education & press



How does a Bill become Law?



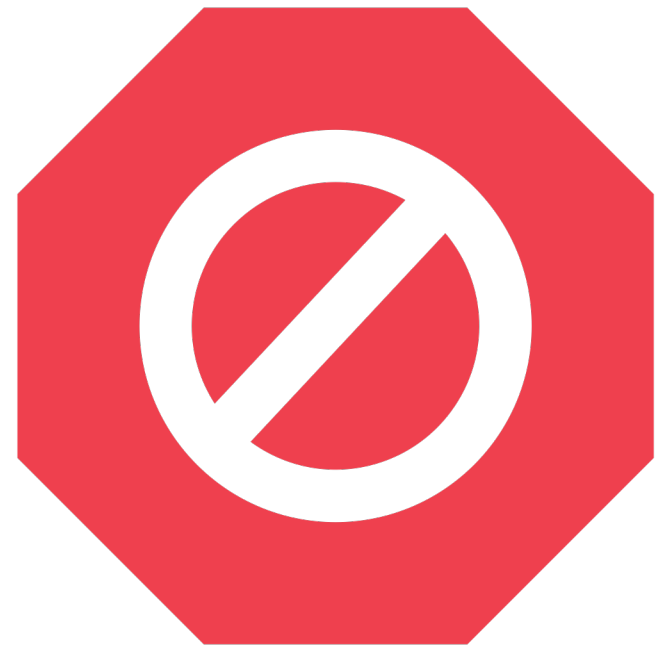
Today's Agenda

Transgender Rights in Hawai'i

1. Overview of Transgender Rights and Federal Landscape (Emily)
2. Transgender Participation in Sports (Emily)
3. Travel concerns: passports & State IDs (Prof. Kreiger)
4. Gender-Affirming Care (Shanda Brack, ARPN)
5. Legislative update & state-level protections (Michael Gologuch, Jr.)
6. Q&A

Disclaimer

- I. This presentation is for information purposes, it is not legal advice
- II. Consult with a lawyer if you have specific questions about your circumstances
- III. In this administration, policies and practices are changing quickly



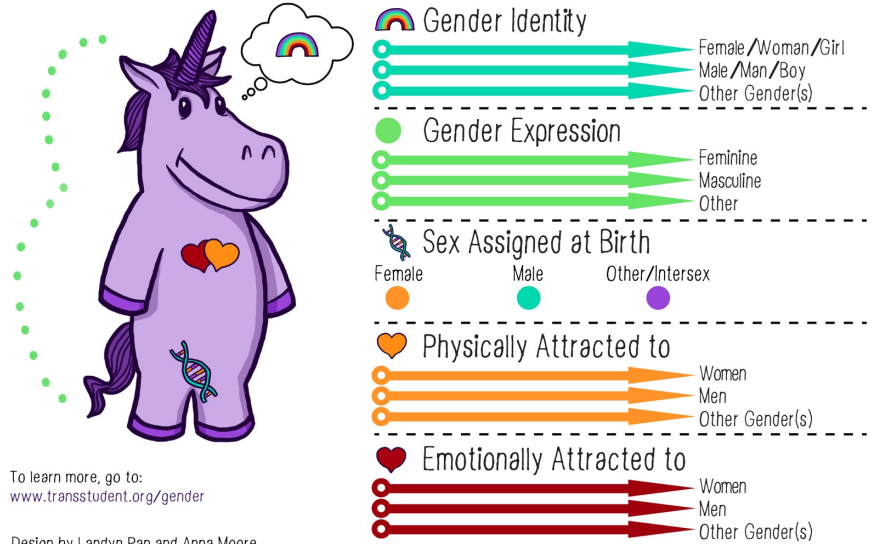
What is gender identity?

Gender identity is one's own internal sense of self and their gender, whether that is man, woman, neither or both. Unlike gender expression, gender identity is not outwardly visible to others. (Yes, this is something that actually exists!)

Someone is **Transgender** when their gender identity is different from their assigned sex at birth.

The Gender Unicorn

Graphic by:
TSER
Trans Student Educational Resources



To learn more, go to:
www.transstudent.org/gender

Design by Landyn Pan and Anna Moore

**Sex/gender
discrimination**

Right to dignity

**Equal
protection**

Trans rights are civil rights.

**Right to personal
autonomy & Self-
determination**

**Right to Native
Hawaiian Cultural
Practices**

**Right to
privacy**

Freedom of Speech

**Federalism &
Self-Governance**

**Sex/gender
discrimination**

Right to dignity

**Equal
protection**

**Right to personal
autonomy & Self-
determination**

So what is happening??

**Right to Native
Hawaiian Cultural
Practices**

**Right to
privacy**

Freedom of Speech

**Federalism &
Self-Governance**

“Plastic straws are often replaced by paper straws, which are nonfunctional . . . It is therefore the policy of the United States to end the use of paper straws.”

Let's not
elevate the
degrading
language any
more than
necessary



(Obviously, this
should be a
governmental
priority...)

“Plastic straws are often replaced by paper straws, which are nonfunctional . . . It is therefore the policy of the United States to end the use of paper straws.”



(Obviously, this should be a governmental priority...)

“it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called “transition” of a child from one sex to another.”

“It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality.”

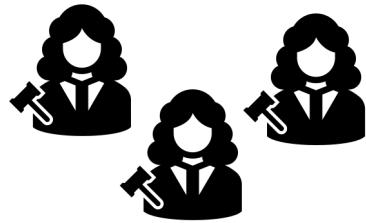


“gender ideology and discriminatory equity ideology”

Erasing transgender folks from society

“It shall . . . be the policy of the United States to oppose male competitive participation in women’s sports”

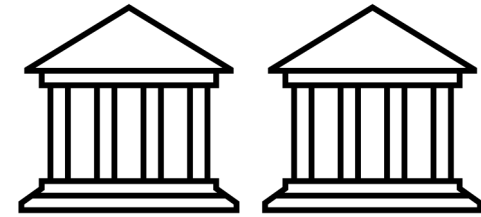
Three co-equal Branches of Government



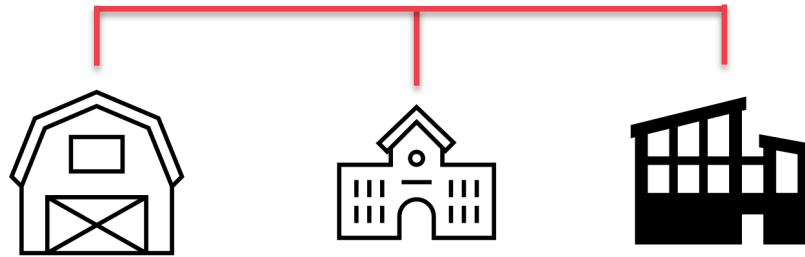
Courts



Executive
(a.k.a. President)



Legislature



Federal
Agencies



Money to States
& Organizations

Three co-equal Branches of Government



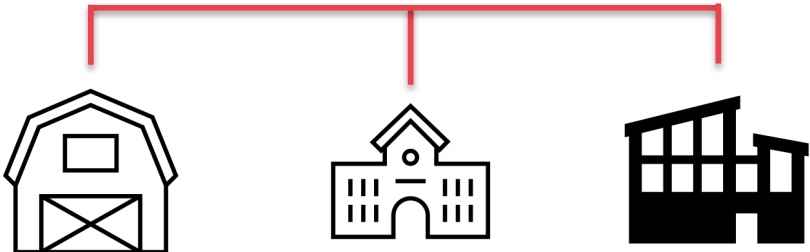
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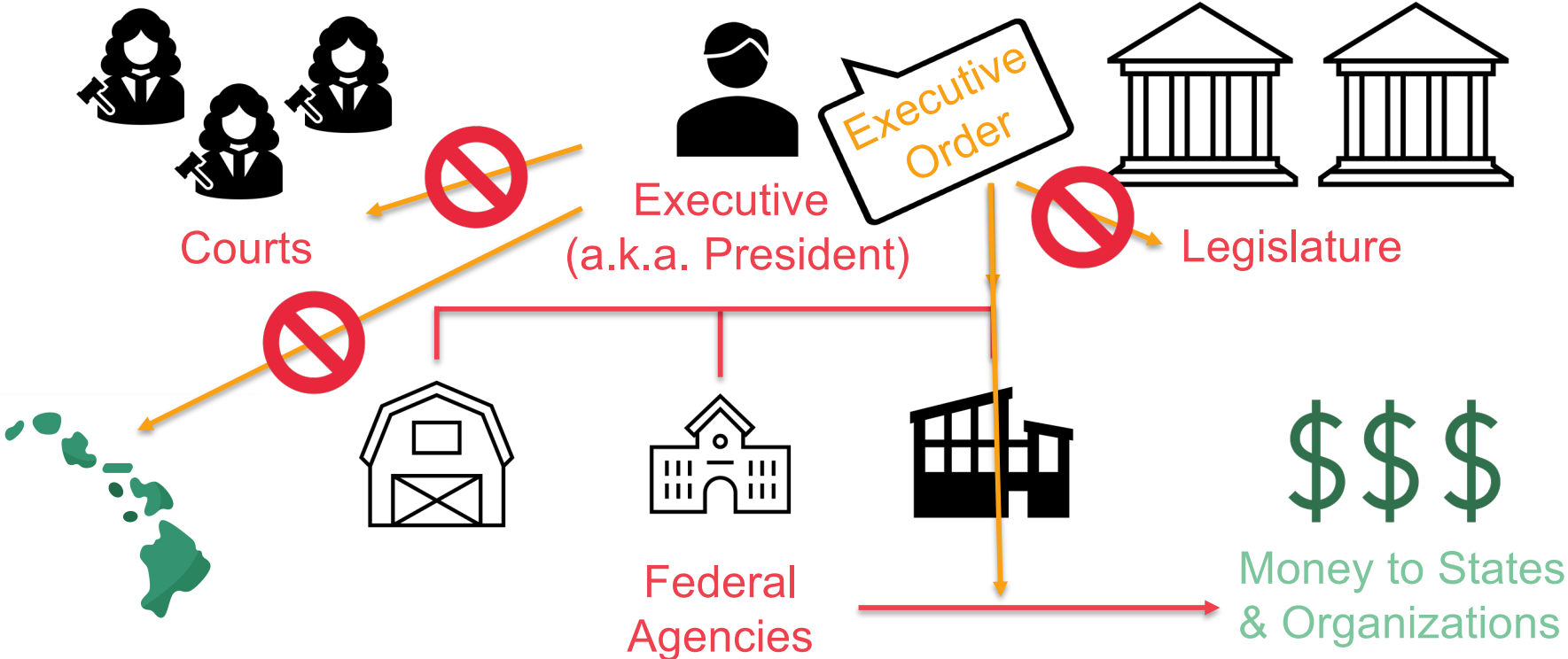


Federal
Agencies

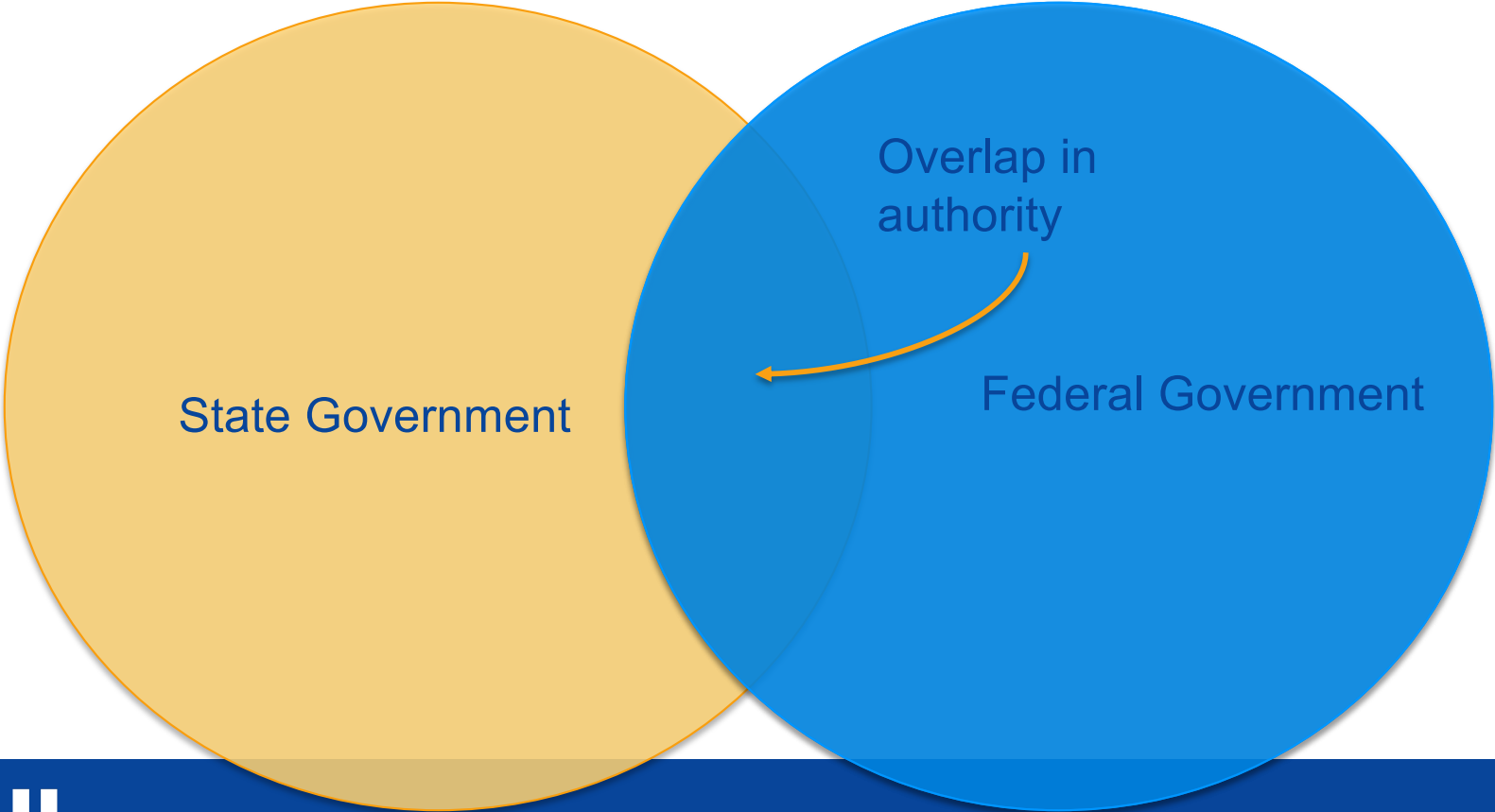


Money to States
& Organizations

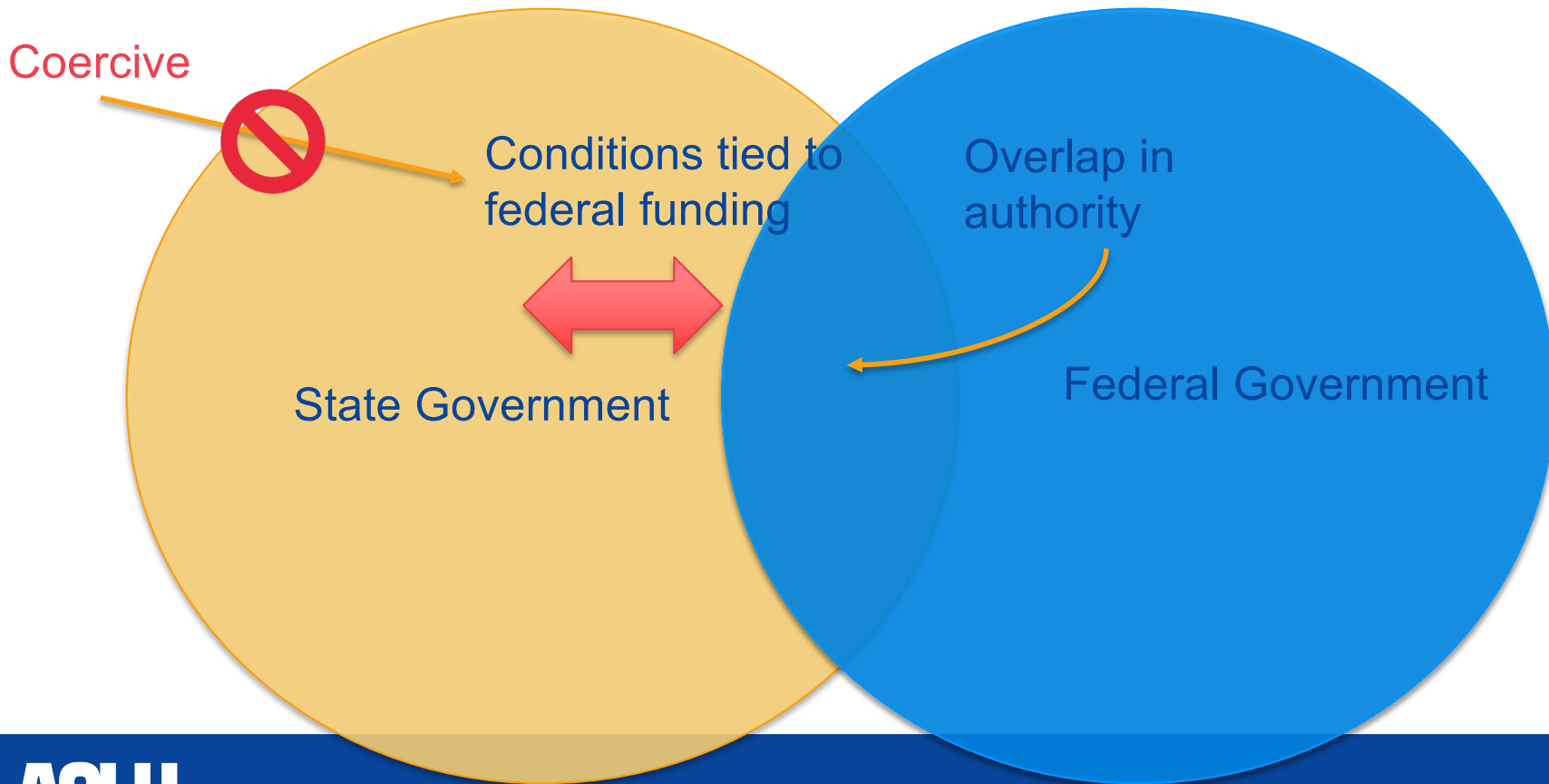
Three co-equal Branches of Government



Federalism (a.k.a. State's Rights)



Federalism (a.k.a. State's Rights)



Hawai'i Anti-Discrimination Laws

Hawai'i Constitution Article I, Section 3

Equality of rights under the law shall not be denied or abridged by the State on account of sex.

Hawai'i Constitution Article I, Section 5

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

“Because of Sex” = open constitutional question

“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”

Bostock v. Clayton Cnty., Georgia, 590 U.S. 644, 660 (2020)

Note: this rule is in real danger at the Federal level, unclear what Federal rights will be re: Equal Protection, discrimination in education, etc.

HRS § 368D-1: No Educational Discrimination

“No person in the State, on the basis of sex, including gender identity or expression as defined in section 489-2, or sexual orientation as defined in section 489-2, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any covered educational program or activity.”

HRS § 489-2: Gender Identity

“Gender identity or expression” includes a person’s actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

HRS § 378-2: No Employment Discrimination

Unlawful for employer to “to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment” because of “sex including gender identity or expression.”

HRS § 489-3: Public Accommodations

“Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race; sex, including gender identity or expression; sexual orientation; color; religion; ancestry; or disability, including the use of a service animal, are prohibited.”

HRS § 431:10-A-118.3: Health Insurance

Health insurance providers “shall [not] discriminate with respect to participation and coverage under the policy, contract, plan, or agreement against any person on the basis of actual gender identity or perceived gender identity.”

HRS § 431:10-A-118.3: Health Insurance (cont'd)

Discrimination =

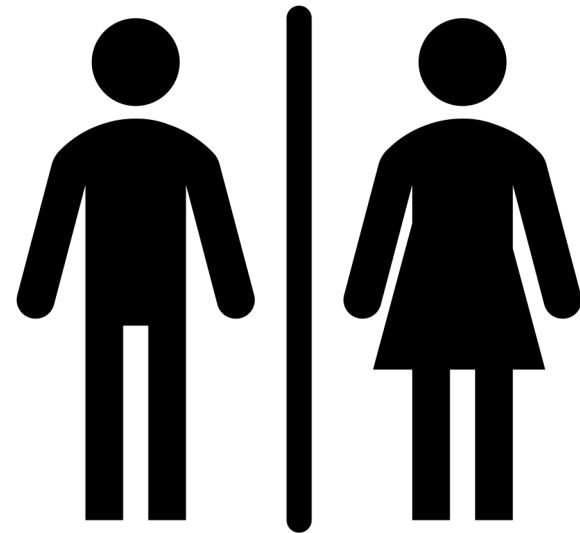
(4) Denying, canceling, or limiting coverage for services on the basis of actual gender identity or perceived gender identity, including but not limited to the following:

(A) Health care services related to gender transition; provided that there is coverage under the policy, contract, plan, or agreement for the services when the services are not related to gender transition; and

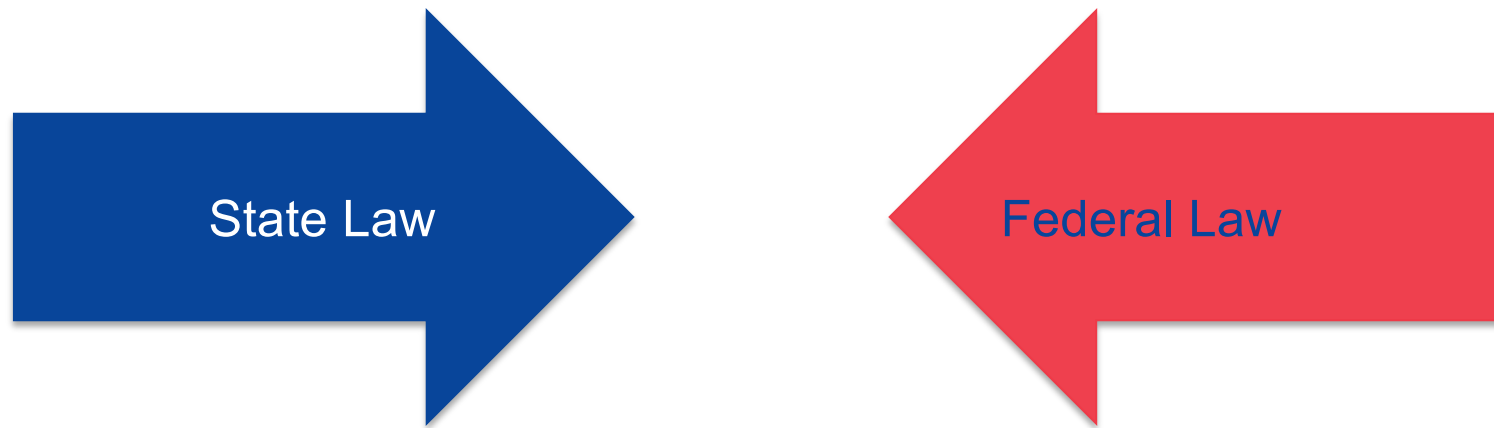
(B) Health care services that are ordinarily or exclusively available to individuals of any sex.

Hawai'i Civil Rights Commission (HCRC)

- Right to use bathroom in accordance with gender identity (not AGAB)
- Not forced to use private restroom



Heading toward a collision... but not there yet!



Transgender Participation in Sports

Executive Order 14168

- Gender does not exist
- “Sex” cannot be changed
- “Sex” is determined at “conception”

Can he really just make
gender not exist? No.

Sec. 2. Policy and Definitions. It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality. Under my direction, the Executive Branch will enforce all sex-protective laws to promote this reality, and the following definitions shall govern all Executive interpretation of and application of Federal law and administration policy:

- (a) “Sex” shall refer to an individual’s immutable biological classification as either male or female. “Sex” is not a synonym for and does not include the concept of “gender identity.”
- (b) “Women” or “woman” and “girls” or “girl” shall mean adult and juvenile human females, respectively.
- (c) “Men” or “man” and “boys” or “boy” shall mean adult and juvenile human males, respectively.
- (d) “Female” means a person belonging, at conception, to the sex that produces the large reproductive cell.
- (e) “Male” means a person belonging, at conception, to the sex that produces the small reproductive cell.

Executive Order 14201: “Transgender Sports Ban”

Therefore, it is the policy of the United States to withdraw all funds from educational programs that deprive women and girls of equal opportunities, which results in the endangerment, humiliation, and discrimination of women and girls and deprives them of privacy. It shall also be the policy of the United States to oppose male competitive participation in women's sports broadly, as a matter of safety, fairness, dignity, and truth.

This is not a ban!

What does E.O. 14201 NOT do?



- Ban transgender athletes
- Require schools to ban transgender students (not there yet)
- Require athletic organizations to ban transgender female athletes

So, what *does* E.O. 14201 do?

- Secretary of Education to continue changing Title IX regulations (this was already ordered in E.O. 14168)
- Secretary of Education to weaponize Title IX (more on that next)
- All agencies to review grants to educational programs and, “where appropriate,” rescind funding to programs that fail to comply with the policy
- Secretary of State to review and adjust admission to the United States of “males seeking to participate in women’s sports” – guidelines to be issued

So, what does E.O. 14201 do? (cont'd)

- Convene representatives of athletic organizations and bodies to “promote” polices that are fair and safe
- Convene State Attorneys General
- Rescind support for international sports programs that based on identity not sex
- Promote international rules and norms, try to amend International Olympic Committee standards

ACLU & GLADD challenge E.O. 14201



- Add legal challenge to E.O. 14201 to existing transgender sports case in New Hampshire
- Feb. 12, 2025 – Motion to Amend Complaint

Weaponization of Title IX

- Prohibits sex-based discrimination in schools receiving federal funding
- Per Trump:
 - Existence of transgender people violate Title IX
 - Allowing transgender girls to play sports discriminates against cisgender girls



Weaponization of Title IX (cont'd)

9th Circuit already decided this issue:

Nowhere does the [Title IX] statute explicitly state, or even suggest, that schools may not allow transgender students to use the facilities that are most consistent with their gender identity. That is, Title IX does not specifically make act [redacted] not to provide facilities segregated by “biolo [redacted]” suggestion, the statute does not cre [redacted] rights” that may be vindicated through s [redacted]

Certiorari Denied by
SCOTUS

Parents for Privacy v. Barr, 949 F.3d 1210, 1227 (9th Cir. 2020).

Recall:

HRS § 368D-1: No Educational Discrimination

“No person in the State, on the basis of sex, including gender identity or expression as defined in section 489-2, or sexual orientation as defined in section 489-2, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any covered educational program or activity.”

The Bottom Line.



Cisgender children are allowed to play on teams that match their gender identity.

Banning all transgender children (regardless of age or competitive level) from playing on teams that correspond to their gender identity is discrimination.

Doe v. Horne, 115 F.4th 1083, 1091 (9th Cir. 2024)

What can you do to help?

- Donate time, money, resources, expertise...
- Volunteer attorney network
 - LGBTQ+ Issues
 - Immigration Issues
- Follow Michael's advice re: involvement in policy work!

Contact Me:

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Contact ACLU of Hawai'i:

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