

## **TRANS RIGHTS and the LAW (FAQs)**

The ACLU champions transgender people's right to be themselves. We are fighting discrimination in employment, housing, and public places, including restrooms. We are challenging obstacles to changing the gender marker on identification documents and obtaining legal name changes. We are fighting to protect the rights and safety of transgender people in prison, jail, and detention facilities as well as the right of Trans and gender nonconforming students to be treated with respect at school.

### Discrimination in Employment, Housing, Public Places, and Schools

**Does the U.S. Constitution protect transgender people from discrimination?**

Although the U.S. Supreme Court has never considered this question, we think the answer is yes. It is important to remember, however, that constitutional protections only cover discrimination or mistreatment by the government. The U.S. Constitution's guarantee of equality protects transgender people from being treated differently by the government because of fear or hostility. If, for example, a government supervisor imposes a dress code on a male-to-female transgender worker that is different from that required of other female workers for no reason other than his or her dislike of transgender people, that violates the constitutional right to equal treatment. Equality protections for transgender people are not yet nearly as robust as those for people of color and women. In our view, the First Amendment, which bars government from censoring speech or expression, also protects our right to dress in a way consistent with our gender identity. The way we dress is an important form of personal expression. Finally, individuals have important interests in the determination of their gender and the expression of their gender through personal appearance and mannerisms, which are interests that we believe the Due Process Clause recognizes and protects. These constitutional arguments, however, have not yet achieved widespread acceptance by courts. State constitutions are also a source of protection against discrimination by government actors.

## **Are there laws that specifically protect transgender students from discrimination?**

Some states have comprehensive laws banning bullying and harassment of any sort but not mentioning gender identity. The federal law prohibiting sex discrimination in educational programs receiving federal funds (Title IX of the Education Amendment Acts of 1972) bars sexual harassment of a transgender student. Title IX also prohibits gender-based harassment, which includes harassment based on a student's refusal to conform to sex stereotypes. Therefore, Title IX ought to protect transgender students from harassment and discrimination, but the courts are still grappling with the issue.

## **Does the law protect a transgender person's right to use the restroom consistent with his or her gender identity?**

Mississippi does not prohibit discrimination in public accommodations based on sexual orientation and gender identity. The Minnesota Supreme Court has ruled that even a law prohibiting gender identity discrimination does not necessarily protect an individual's desire to use a gender identity-appropriate restroom at work. In a non-workplace context, a New York appeals court has ruled that it is not sex discrimination to prevent transgender people from using gender identity-appropriate restrooms in a building housing several businesses. Some government agencies, however, make clear that denying transgender people the right to use a gender identity-appropriate restroom violates their nondiscrimination law. Many businesses, universities and other public places are installing single-use, unisex restrooms, which alleviate many of the difficulties that transgender people experience when seeking safe restroom access.

## **Do laws that prohibit sex discrimination protect transgender people?**

An increasing number of courts say yes. Although there are some bad older decisions saying that the federal law banning sex discrimination (Title VII of the 1964 Civil Rights Act) does not prohibit gender identity discrimination, federal courts that have considered the issue more recently (e.g., the Courts of Appeals for the Sixth and Ninth Circuits, covering Kentucky, Michigan, Ohio

and Tennessee as well as the West Coast states, Alaska, Arizona, Hawaii, Idaho, Montana and Nevada) have found some protections in the 1964 Civil Rights Act for transgender people. Reflecting the federal trend, some state courts and administrative agencies (in Connecticut, Hawaii, Massachusetts, New Jersey, New York and Vermont) have said that their state or local sex discrimination law covers discrimination against transgender people.

### **Do laws that prohibit sexual orientation discrimination protect transgender people?**

In some cases, yes. If the law banning discrimination based on sexual orientation defines it to include gender identity (as Minnesota's does), it does protect transgender people as well as lesbians and gay men. Most sexual orientation nondiscrimination laws prohibit discrimination based on perceived as well as actual sexual orientation. Therefore, a transgender person is protected by these laws if the perpetrator's actions stemmed from his or her belief (accurate or not) that the victim was gay.