



Written by [Raven Clabough](#) on September 7, 2016

Mass. Law May Force Churches to Comply With Transgender Bathroom Policies

A new Massachusetts law may force churches to comply with controversial transgender bathroom policies, according to guidance issued by the Massachusetts Commission Against Discrimination, responsible for enforcing the state's anti-discrimination laws. The guidance suggests that the state's recently passed amendment allowing "gender identity" protections under its anti-discrimination law can be read in such a way that even churches would be acting in violation if they did not comply under certain circumstances.



The Massachusetts [law](#) set to take effect on October 1 defines "gender identity" as "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth."

The law permits transgender individuals to use restrooms and locker rooms that match their gender identity, and includes a provision for guidelines that address "any person whose assertion of a gender identity is for an improper purpose."

But critics of the law, such as the Massachusetts Family Institute, contend that despite this provision, it places women and children at risk by opening "the door for predators to enter public bathrooms, locker rooms and showers and to abuse this vague legislation."

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"Thousands of concerned citizens have contacted the governor's office over the past month, urging him to do the right thing and veto the bill," the group said in a written statement. "Instead, Gov. Baker ignored them and gave in to a radical and aggressive agenda of sexual expression and a denial of basic biological truth."

The law required the Massachusetts Commission Against Discrimination to issue guidance and recommendations regarding the law no later than September 1.

A draft of the nine-page [document](#) entitled "Gender Identity Guidance" was released on September 1 "to educate the public about discrimination based on gender identity, to describe what evidence may be submitted to support a claim of gender identity discrimination, to inform individuals of their rights, and to assist employers, providers of housing, mortgage services, and owners, managers and agents of places of public accommodation in understanding their obligations under Massachusetts law," the document states.

According to the guidance, the law does not require an individual to have undergone sex reassignment surgery or medical care in order to be classified as a gender different from that assigned biologically.



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Furthermore, the law does not permit companies or employers to ask for documentation of an individual's gender identity. This includes mortgage service companies or housing companies.

However, in the rare event that it is necessary, according to the guidance, proper documentation is simply anything that demonstrates "evidence that the gender identity is sincerely held as a part of the person's core identity."

It goes on to recommend best practices in order to ensure that discrimination is not taking place. These include items like updated employee records to reflect name and gender identity changes, prohibiting the use of "derogatory comments or jokes" about transgendered individuals from anyone in the workplace, ranging from employees to clients and vendors, and using pronouns for employees based on the stated gender identity.

"In the limited circumstances where it is necessary, an individual's gender identity may be demonstrated by any evidence that the gender identity is sincerely held as a part of the person's core identity."

The more controversial aspects of the guidance relate to its understanding of "public accomodation." The guidance refers to language in the Massachusetts law, which defines "public accommodation" as "any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public."

According to the guidance, "All persons, regardless of gender identity, shall have the right to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation."

It continues, "This means that a movie theater that has restrooms designated as 'Men's Restroom' and 'Women's Restroom' must allow its patrons to use the restroom which is consistent with their gender identity. A health club with locker rooms designated as male and female must grant all persons full enjoyment of the locker room consistent with their gender identity. A public swimming pool with changing rooms designated male and female must allow the public to use the changing room consistent with their gender identity."

It controversially suggests that churches may fit that category. "Even a church could be seen as a place of public accommodation if it holds a secular event, such as a spaghetti supper, that is open to the general public," the guidance notes. The specific criteria involved in classifying something as "secular" have yet to be outlined.

Attorney Matt Sharp for Alliance Defending Freedom contends that the law is a major violation of First Amendment rights, and that the guidance takes significant liberties by suggesting that a church could be considered public accommodations simply because it hosts an event such as a "spaghetti supper."

Despite the backlash, a spokesperson for the commission claims the guidance "addresses religious freedom and first amendment rights," seemingly based on a footnote to the guidance that states: "All charges, including those involving religious institutions or religious exemptions, are reviewed on a case-by-case basis."

The language does little to assuage concerns that churches may be asked to violate their religious doctrines at the discretion of the state.



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