

# LGBTQ protections – Current law after Bostock vs. Equality Act vs. Fairness for All Act

By CHRIS JOHNSON   cjohanson@washblade.com	Now after Bostock	With Equality Act	With FFAA
<b>EMPLOYMENT</b>			
<b>Could a large secular employer, corporation or non-profit fire someone for being LGBTQ?</b>	No. Bostock explicitly found anti-LGBTQ discrimination is prohibited under Title VII.	No. The Equality Act would explicitly amend Title VII to make anti-LGBTQ discrimination illegal.	No. FFAA would explicitly amend Title VII to make anti-LGBTQ discrimination illegal.
<b>But what about...</b>			
<b>Could a religious hospital fire someone from a non-ministerial position for being LGBTQ?</b>	No. Title VII provides no exemption here.	No. The Equality Act provides no exemption here.	No. FFAA provides no exemption here.
<b>Could a religious school fire someone from working as a teacher for being LGBTQ?</b>	Probably yes. The 7th Circuit is now considering a case on whether Title VII's religious exemption applies.	Probably yes. The 7th Circuit is now considering a case on whether Title VII's religious exemption applies.	Definitely yes. FFAA has language explicitly giving religious schools an exemption.
<b>Could a religious non-profit/church fire a minister for being LGBTQ?</b>	Yes. The ministerial exemption to Title VII definitely applies.	Yes. The ministerial exemption to Title VII definitely applies.	Yes. The ministerial exemption to Title VII definitely applies.
<b>Could a small business with fewer than 15 employees fire someone for being LGBTQ?</b>	Yes. The Civil Rights Act has a carve-out in employment for small businesses. State and local laws may apply.	Yes. The Civil Rights Act has a carve-out in employment for small businesses. State and local laws may apply.	Yes. The Civil Rights Act has a carve-out in employment for small businesses. State and local laws may apply.
<b>HOUSING</b>			
<b>Could someone be denied housing for being LGBTQ?</b>	No. The logic in Bostock applies to the Fair Housing Act as interpreted by the Biden administration.	No. The Equality Act would amend the Fair Housing Act to explicitly ban anti-LGBTQ discrimination.	No. FFAA would amend the Fair Housing Act to explicitly ban anti-LGBTQ discrimination.
<b>But what about...</b>			
<b>Could a sex-segregated homeless shelter refuse to house a transgender person consistent with gender identity?</b>	No. The logic in Bostock applies to the Fair Housing Act, which applies to homeless shelters.	No. The Equality Act would amend the Fair Housing Act, which applies to homeless shelters.	Probably not. FFAA has language to allow "considering an individual's sex" in sex-segregated areas, provided that individuals are not discriminated upon based on gender identity.
<b>JURY SERVICE</b>			
<b>Could a person be denied sitting on a federal jury for being LGBTQ?</b>	No. The logic in Bostock applies to Title 28, which bans discrimination in jury service on the basis of sex.	No. The Equality Act would amend Title 28 of the U.S. code to explicitly ban anti-LGBTQ discrimination.	No. FFAA would amend Title 28 of the U.S. code to explicitly ban anti-LGBTQ discrimination.
<b>CREDIT</b>			
<b>Could a person be denied a loan and face disparate treatment for being LGBTQ?</b>	No. The logic in Bostock applies to Equal Credit Opportunity Act, which bans discrimination on the basis of sex.	No. The Equality Act would amend the Equal Credit Opportunity Act of the U.S. code to explicitly ban anti-LGBTQ discrimination.	No. FFAA would amend the Equal Credit Opportunity Act of the U.S. code to explicitly ban anti-LGBTQ discrimination.
<b>PUBLIC ACCOMMODATIONS</b>			
<b>Could a person be denied service at public accommodation for being LGBTQ?</b>	Generally yes. No federal laws bars sex discrimination in public accommodations (except in health care), so Bostock has no impact.	No. The Equality Act would amend Title II to bar discrimination on the basis of sex or LGBTQ status.	No. FFAA would amend Title II to bar discrimination on the basis of sex or LGBTQ status.
<b>But what about...</b>			
<b>Could a medical provider refuse service to LGBTQ people?</b>	Probably not. Section 1557 of Obamacare prohibits sex discrimination in health care. A court injunction barring HHS from applying to LGBTQ people stands, but that's being challenged.	No. Section 1557 applies and will be bolstered by the Equality Act's amendment to Title II.	No, but FFAA has language allowing providers to refer to another "when necessary for a patient's best interests" and lack of professional expertise.
<b>Could a religious hospital refuse transition-related care to a transgender person?</b>	Probably not. Section 1557 of Obamacare prohibits discrimination in health care, although the hospital may seek a religious exemption. The Trump administration instituted a "conscience rule," but it was enjoined in court.	Probably not. Section 1557 and the change to Title II applies, although the hospital may seek a religious exemption.	It depends. Section 1557 and the change to Title II applies, although the hospital may seek a religious exemption. Alternatively, a hospital is allowed to not provide certain procedures to anybody, but may not pick and choose based on the patient's gender identity
<b>Could a religious camp or religious retreat refuse admission to someone for being LGBTQ?</b>	Yes. See above on no federal law against sex or LGBTQ discrimination in public accommodations.	Probably no based on the change to Title II, but the camp or retreat might be able to claim a religious exemption.	Definitely yes. FFA explicitly exempts the institutions from federal civil rights law.
<b>Could a medical provider deny service if the procedure is an abortion?</b>	Yes. See above on no federal law against sex or LGBTQ discrimination in public accommodations.	Unclear. It would depend if the courts conclude denying an abortion is tantamount to sex discrimination.	Yes. FFAA has explicit language stating the law doesn't apply to abortion.
<b>Could a marital counselor deny counseling to a same-sex couple?</b>	Yes. See above on no federal law against sex or LGBTQ discrimination in public accommodations.	Probably not, although the provider might be able to claim a religious exemption.	Yes. FFAA has an explicit carve-out for counselors providing marital services, but requires the counselor to provide a referral.
<b>Could priest, rabbi or other religious minister deny a religious service, such as officiating a wedding?</b>	Yes. See above as well as First Amendment protections.	Yes. The Equality Act doesn't enumerate this issue, but First Amendment protections apply.	Yes. FFAA explicitly addresses this issue, which is already protected under the First Amendment.
<b>Could a small business with 15 or fewer employees refuse to serve LGBTQ people?</b>	Yes. However, state and local laws may prohibit anti-LGBTQ discrimination in public accommodations.	No. The Equality Act's change to Title II would provide no exception to small businesses.	Yes if it were a store, shopping center, or online retailer. FFAA explicitly provides them a carve-out, but not other venues like restaurants.
<b>Could a church refuse to admit someone for being LGBTQ?</b>	Yes. See above as well as First Amendment protections.	Yes. No explicit language, but First Amendment applies.	Yes. FFAA has an explicit exemption for churches.
<b>Could organizers holding a commercial event at a church, such as community potluck, deny admission to LGBTQ people?</b>	Yes. However, state and local laws against anti-LGBTQ discrimination may apply.	Probably yes. An LGBTQ person might be able to sue under Title II, but would have hard time claiming it's a purely commercial event.	Yes. FFAA declares that a church building is never a public accommodation
<b>Could a provider of wedding services refuse to make custom-made product over religious objections?</b>	Yes. However, state and local laws may prohibit anti-LGBTQ discrimination here.	Probably no. The Equality Act's change to Title II would provide no exception here, but another Masterpiece Cakeshop-like challenge may win out at SCOTUS.	Probably yes. FFAA's small business carve-out would likely apply here and providers may be able to claim a religious exemption.
<b>Could a fitness center or spa refuse service to an LGBTQ person, such as for a massage?</b>	Yes. However, state and local laws may prohibit anti-LGBTQ discrimination here.	No. The Equality Act's change to Title II would provide no exception here.	No, but a provider whose "services or facilities are intended for the exclusive use of persons of the same sex" may be provided "exclusively to persons of that sex." Think Curves gym.
<b>FEDERALLY FUNDED PROGRAMS</b>			
<b>Could federally funded programs, including social service providers refuse admission to someone for being LGBTQ?</b>	Yes. However, the Biden administration has signaled it will restore regulations prohibiting anti-LGBTQ discrimination in federal programs.	No. The Equality Act would amend Title II to prohibit discrimination on the basis of sex and LGBTQ status in federal programs.	No. The FFAA would amend Title II to prohibit discrimination on the basis of sex and LGBTQ status in federal programs.
<b>But what about...</b>			
<b>Could a federally funded adoption or foster care provider refuse child placement to same-sex couple?</b>	Yes. However, the Biden administration has signaled it will restore regulations prohibiting anti-LGBTQ discrimination in federal programs.	No. The Equality Act's change to Title VI would apply here, although the provider might be able to claim a religious exemption in court.	No. FFAA would replace current federal funding of adoption and foster care services with a 'charitable choice' model.
<b>Could a religious organization providing social services otherwise refuse access to an LGBTQ person?</b>	Yes. However, the Biden administration has signaled it will restore regulations prohibiting anti-LGBTQ discrimination in federal programs.	No. The Equality Act's change to Title VI would apply here, although the provider might be able to claim a religious exemption in court.	No. However, the FFAA stipulates the loss of funding that would occur as a consequence would be only for that specific program.
<b>Could a federal prison refuse to place a transgender person consistent with gender identity?</b>	Yes. Trump administration rescinded guidance requiring prisons to respect gender identity.	No. The Equality Act's change to Title VI would make it illegal.	Probably not. FFAA's change to Title VI would make it illegal, although there's language to allow "considering an individual's sex" in sex-segregated areas, but can't discriminate based on gender identity.
<b>EDUCATION</b>			
<b>Could a school deny access or discriminate against a student for being LGBTQ?</b>	No. The logic in Bostock applies to Title IX of the Education Amendments of 1972, which bars sex discrimination in schools.	No. Title IX would still apply, and the Equality Act would amend Title VI of the Civil Rights Act of 1964 to bar sex and LGBTQ discrimination in schools.	No. FFAA would amend Title VI of the Civil Rights Act of 1964 to bar sex and LGBTQ discrimination in schools. Bill has language saying it takes no position on Title IX.
<b>But what about...</b>			
<b>Could a religious school deny admission to an LGBTQ kid or kid from LGBTQ family?</b>	Probably not. Title IX would apply, although the school might be able to draw on the religious exemption in the law.	No. The Equality Act's change to Title VI would apply here, as well as Title IX.	Maybe. Federally funded religious schools could not deny admission to a kid from an LGBTQ family, but they might be able to exclude a student who is LGBTQ if done pursuant to written, consistently enforced religious admission standards.
<b>Could a school refuse to allow transgender kids to participate in sports consistent with their gender identity?</b>	Probably no. Bostock's logic should apply to Title IX of the Education Amendments. Also there are constitutional protections under 14th Amendment.	Probably no. It's likely the sports issue would be worked out in regulations under the Equality Act.	Probably no. FFAA doesn't address sports, but would amend Title VI to ban anti-trans discrimination. It's likely the sports issue would get worked out in regulations.
<b>IN ALL OF THESE CONTEXTS...</b>			
<b>Could a transgender person be denied access to locker room, bathroom consistent with gender identity?</b>	Probably not. Bostock's logic would apply, but the ruling cautioned it makes no judgment here. Still being litigated.	Definitely not. The Equality Act bars denying access to restroom, a locker room and a dressing room inconsistent with gender identity.	Probably not. FFAA doesn't explicitly address the issue.
<b>Could a party accused of discrimination use the Religious Freedom Restoration Act as a response?</b>	Yes. The accused could cite a religious objection and argue government hasn't taken the least restrictive path in enforcing the law.	No. The Equality Act explicitly bars the accused from invoking RFRA in cases of discrimination.	Yes. FFAA doesn't address RFRA, so that law will remain as a potential defense.
<b>Could a religious non-profit lose its tax-exempt status for beliefs against same-sex marriage, being LGBTQ?</b>	Maybe. They have religious freedom protections, but that didn't stop IRS from stripping Bob Jones University for opposition to interracial marriage.	Maybe. The Equality Act doesn't say anything one way or the other. See Bob Jones case.	No. FFAA explicitly bars stripping non-profits of tax-exempt status